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Kate Brown, Governor

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May 16, 2018

President Tom Hughes
Metro Council
600 NE Grand Avenue
Portland, Oregon 97232

Commissioner Jim Bernard, Chair
Clackamas Co Board of Commissioners
2051 Kaen Road
Oregon City, Oregon 97045

Commissioner Deborah Kafoury, Chair
Multnomah Co Board of Commissioners
501 SE Hawthorne Boulevard, Suite 600
Portland, Oregon 97214

LCDC Acknowledgment of Metro Urban Reserves, and Clackamas County, Multnomah County Rural Reserves (Order No. 18-ACK-001894)

Dear President Hughes, Commissioner Bernard, and Commissioner Kafoury,

I am pleased to inform you that the Land Conservation and Development Commission has acknowledged the Metro Urban Reserves and the Clackamas County and Multnomah County Rural Reserves submittal. The LCDC acknowledgment order finalizing this decision is enclosed.

Judicial review of this order may be obtained by filing a petition for review within 21 days from the service of this final order, pursuant to ORS 197.651.

We appreciate the efforts of Metro, Clackamas County, and Multnomah County in completing the urban and rural reserves. Please contact your regional representative, Jennifer Donnelly at (503)725-2183 or email jennifer.donnelly@state.or.us , if you have any questions or need further assistance.

Yours truly,

Jim Rue
Director

cc: Roger Alfred, Metro Counsel
Jed Tomkins, Multnomah County Counsel
Michael Cerbone, Multnomah County Planning Director
Nate Boderman, Clackamas County Counsel
Mike McCallister, Clackamas County Planning Director
Steven Pfeiffer, Perkins Coie, Counsel for Metropolitan Land Group

Christopher James, The James Law Group, Counsel for Springville Investors, LLC, et al.
Jeff Bachrach, Bachrach Law, Counsel for Lanphere Construction and Development LLC
Wendie Kellington, Kellington Law Group, Counsel for Barker's Five, LLC
Carl Keseric
Thomas VanderZanden
Hank Skade
Anne Sigrun (email only)
DLCD (Donnelly, Howard, Abbott, MacLaren)
Steven Shipsey, DOJ

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON

IN THE MATTER OF THE REVIEW	**)**	
OF THE DESIGNATION OF URBAN	**)**	**COMPLIANCE**
RESERVES BY METRO AND RURAL	**)**	**ACKNOWLEDGEMENT**
RESERVES BY CLACKAMAS COUNTY	**)**	**ORDER 18-ACK-001894**
AND MULTNOMAH COUNTY	**)**	

The Matter of the Review of the Designation of Urban Reserves by Metro and Rural Reserves by Clackamas County and Multnomah County, hereafter "Metro Urban and Rural Reserves Submittal" came before the Land Conservation and Development Commission (Commission) as a referral by the director of the Department of Land Conservation and Development (DLCD or Department), pursuant to ORS 195.137 to 195.145, ORS 197.626, and OAR chapter 660, divisions 25 and 27. In issuing this Compliance Acknowledgement Order, the Commission fully considered:

- Metro Ordinance No. 10-1238A, the June 23, 2010 joint and concurrent submittal of Clackamas County, Multnomah County, Washington County, and Metro (initial submittal);
- Metro Ordinance No. 11-1255, the May 13, 2011 (re-designation submittal);
- Metro Ordinance No. 17-1405, the July 24, 2017 joint and concurrent submittal of Clackamas County, Multnomah County, and Metro (remand submittal);
- Objections received to remand submittal;
- The Department's staff reports on remand submittal;
- Written exceptions to the Department's reports on remand submittal; and
- Arguments presented at Commission hearings conducted on November 17, 2017.

I. INTRODUCTION

A. Procedural History

1. On June 23, 2010, the Department received Metro Ordinance No. 10-1238A, the joint and concurrent submittal of Clackamas County, Multnomah County, Washington County, and Metro pursuant to ORS 197.626 (initial submittal).

2. Pursuant to OAR 660-025-0150(1)(c), the director referred the initial submittal to the Commission for review pursuant to ORS 197.626(1)(c) and (f).

3. On October 19-22, 2010, the Commission held a public hearing in Portland, Oregon; the hearing was continued to October 29, 2010.

4. On October 29, 2010, the Commission voted to remand a portion of the initial submittal as it applied to certain reserve designations in Washington County.

5. On May 13, 2011, the Department received the re-designation submittal, Metro Ordinance No. 11-1255.

6. On August 18-19, 2011, the Commission held a public hearing in Portland, Oregon.

7. On August 19, 2011, the Commission voted to approve the Metro Urban and Rural Reserves Submittal in its entirety, including the 2010 initial submittal, as revised by the 2011 re-designation submittal.

8. On August 14, 2012, the Department issued Order 12-ACK-001819 implementing the Commission's acknowledgement of Metro urban and rural reserves.

9. On February 20, 2014, the Court of Appeals reversed and remanded for further action consistent with the principles expressed in its opinion, but otherwise affirmed Order 12-ACK-001819 on judicial review. *Barker's Five, LLC v. LCDC*, 261 Or App 259, 323 P3d 368 (2014).

10. On April 1, 2014, House Bill 4078 became effective. This bill, primarily codified as ORS 195.144, established and acknowledged urban reserves and rural reserves in Washington County.

11. On July 30, 2014, the State Court Administrator sent a copy of the appellate judgment to the Commission and the Court of Appeals decision became effective on that date pursuant to ORAP 14.05.

12. On August 25, and November 13, 2014, the matter of the Review of the Designation of Urban Reserves by Metro and Rural Reserves by Clackamas County, Multnomah County and Washington County, came before the Commission on remand from the Court of Appeals pursuant to ORS 197.651.

13. On January 15, 2015, the Department issued Remand Order 14-ACK-001861. Six petitions for Commission review of that order were filed pursuant to OAR 660-002-0020.

14. On February 5, 2015, the Department withdrew Remand Order 14-ACK-001861.

15. On March 12, 2015, the Commission accepted oral argument from the parties on the petitions for review of Remand Order 14-ACK-001861.

16. On March 15, 2015, the Commission issued Remand Order 14-ACK-001867, concluding that the application of urban and rural reserve factors to designate areas as rural or urban reserves in Clackamas and Multnomah counties in the Reserves Submittal complies with ORS

195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and other applicable rules of the Commission, except with respect to (1) Multnomah County's explanation of why its consideration of the rural reserve factors yields a rural reserve designation of all land in Rural Reserve Area 9D; and (2) Metro's explanation of why the designation of Areas 4A, 4B, 4C, and 4D as Urban Reserves is supported by substantial evidence. The Commission remanded Rural Reserve Area 9D to Multnomah County and Metro, and Urban Reserve Areas 4A, 4B, 4C, and 4D to Metro and Clackamas County for further action consistent with the principles expressed in *Barker's Five*.

17. On November 12, 2015, the Metro Council adopted a population and employment forecast for the region by Metro Ordinance No. 15-1361, the 2014 Urban Growth Report.

18. On February 4, 2016, the Metro Council adopted Metro Ordinance No. 16-1368 to address the remand issues arising out of the designation of the urban reserve areas identified as Areas 4A, 4B, 4C, and 4D in Clackamas County, concluding that those areas were correctly designated as urban reserves.

19. On April 13, 2017, the Metro Council adopted Metro Ordinance No. 17-1397, which addressed OAR 660-027-0005(2) regarding the "best achieves" standard and OAR 660-027-0040(2) regarding the amount of land designated urban reserves, in light of (1) the Metro Council's adoption of newer regional urban growth projections in the 2014 Urban Growth Report, and (2) the reduction of urban reserve acreage in Washington County via ORS 195.144.

20. On May 23, 2017, the Clackamas County Board of Commissioners adopted Ordinance No. 06-2017, which includes supplemental findings and conclusions explaining why the Stafford area was designated as urban reserves under the applicable factors.

21. On June 1, 2017, the Multnomah County Board of Commissioners adopted Ordinance No. 1246, which includes supplemental findings and conclusions explaining why Area 9D was designated as rural reserve under the applicable factors.

22. On June 15, 2017, Metro Council adopted Metro Ordinance No. 17-1405, which responded to the remand from the Court of Appeals and the Commission and adopts and incorporates Clackamas County and Multnomah County's findings and ordinances.

23. On July 24, 2017, Metro submitted the completed amendments to the Department for review.

24. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the remand submittal was August 14, 2017. The Department received seven timely objections.

25. On September 19, 2017, pursuant to OAR 660-025-0150(1)(c), the director referred the remand submittal to the Commission for review pursuant to ORS 197.626(1)(c) and (f).

26. On October 26, 2017, the Department issued its staff report on the remand submittal (DLCD October 26, 2017 Report).

27. Pursuant to OAR 660-025-0160(5), the deadline to file exceptions to the staff report was November 6, 2017. The Department received five exception filings to the staff report.

28. On November 9, 2017, the Department issued its supplemental staff report (DLCD November 9, 2017 Report).

29. On November 17, 2017, the Commission held a public hearing in Florence, Oregon.

30. This Compliance Acknowledgment Order memorializes the decision of the Commission.

B. Background and Overview of Metro Urban and Rural Reserves Decision

In 2010, the Metro Urban and Rural Reserves Submittal before the Commission included amendments to the Clackamas County, Multnomah County, and Washington County comprehensive plans, and the Metro Regional Framework Plan (RFP) and Urban Growth Management Functional Plan (UGMFP) to designate urban and rural reserves in the metropolitan area using the process authorized by the Oregon legislature in 2007. ORS 195.137 to 195.145. The Commission reviewed the submittal and objections to the submittal, heard arguments from the parties, and decided to either sustain or reject each of the objections. Following initial hearings on the matter in 2010, the Commission voted to approve the initial submittal in part; and to reverse and remand portions of that submittal to Metro and Washington County. In response to the Commission vote, Metro and the counties filed a re-designation submittal. The Commission approved the re-designation submittal after its review at a hearing in 2011. The Department issued Order 12-ACK-001819 memorializing the Commission's decision. Twenty-two parties sought judicial review of Order 12-ACK-001819 by the Oregon Court of Appeals. *Barker's Five, LLC v. LCDC*, 261 Or App 259, 323 P2d 368 (2014) (*Barker's Five*).

In 2014, the Court of Appeals issued its opinion in *Barker's Five*, reversing and remanding the Commission's approval of the urban and rural reserves. Later in 2014, the Oregon legislature enacted HB 4078, designating urban and rural reserves in Washington County. This legislative action, primarily codified as ORS 195.144, obviated further action by Washington County, Metro, and the Commission on reserves in that county.

In 2015, the Commission remanded the re-designation submittal by Remand Order 14-ACK-001867. The Commission concluded that the application of urban and rural reserve factors to designate areas as rural or urban reserves in Clackamas and Multnomah counties complies with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and other applicable rules of the Commission, except with respect to (1) Multnomah County's explanation of why its consideration of the rural reserve factors yields a rural reserve designation of all land in Rural Reserve Area 9D; and (2) Metro's explanation of why the designation of Areas 4A, 4B, 4C, and 4D as Urban Reserves is supported by substantial evidence. The Commission remanded Rural Reserve Area 9D to Multnomah County and Metro, and Urban Reserve Areas 4A, 4B, 4C, and 4D to Metro and Clackamas County for further action consistent with the principles expressed in *Barker's Five*. No party sought judicial review of Remand Order 14-ACK-001867.

Metro, Clackamas County, and Multnomah County submitted amended findings and conclusions in response to the remand. On review of the remand submittal, the Commission considers whether: (1) Multnomah County explained why its consideration of the rural reserve factors yields a rural reserve designation of all land in Rural Reserve Area 9D; (2) Metro supported its explanation of the Urban Reserves designation of Areas 4A, 4B, 4C, and 4D with substantial evidence in the record; (3) the joint submittal explains how the Metro Urban and Rural Reserves Submittal establishes "a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents"; and (4) to sustain or reject each of the objections to the remand submittal.

The Commission reviews urban and rural reserves for approval "in the manner provided for review of a [periodic review] work task." ORS 197.626(1)(c) and (f). This item is before the Commission as a referral from the director of the Department. The Commission reviewed the remand submittal, the objections to that submittal, the Department's reports that responded to those objections, and exceptions to the Department's reports filed by the parties, heard arguments from the parties, and decided to either sustain or reject each of the objections. This is a review on the record submitted by Metro and the two counties.

1. Purpose of Urban and Rural Reserves

Under ORS 195.143, the designation of urban and rural reserves in the Portland metro region is a cooperative process, in which Metro designates urban reserves and the counties designate rural reserves. The authority provided by statute for designating reserves in this way is dependent on Metro and the counties agreeing on both the urban and rural reserve designations. The purpose section of the Commission's rules implementing ORS 195.143 provides:

> "Urban reserves designated under this division are intended to facilitate long-term planning for urbanization in the Portland metropolitan area and to provide greater certainty to the agricultural and forest industries, to other industries and commerce, to private landowners and to public and private service providers, about the locations of future expansion of the Metro Urban Growth Boundary. Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization. The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2).

In adopting the initial submittal, Metro amended Title 11 of the UGMFP, wherein section 3.07.1105 explains the purpose of planning for the urban reserves:

> "The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to

> mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long-range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow urbanization become applicable to the areas." Exhibit D to Ordinance No. 10-1238A; Metro 2010 Record at 8.

The counties define their intent for rural reserves as follows:

> "Rural Reserve areas are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization." Clackamas Co. 2010 Record at iv.

> "Rural reserves are intended to provide long-term protection of agricultural and forest land and landscape features that enhance the unique sense of place of the region." Multnomah Co. Ordinance 1161, Policy 6-A.

> "Rural reserves are areas outside the Regional Urban Growth Boundary (UGB) that provide for the long-term protection of agriculture, forestry and/or important natural landscape features." Washington Co. 2010 Record at 9549.

The Commission recognizes that the region has substantial discretion in determining the location of urban and rural reserves. In exercising that discretion, Metro and the counties are guided by the statutory and regulatory provisions related to consideration of the urban and rural reserve factors and ultimately, two standards:

1. The overall amount of urban reserves, which must be based on forecasted population and employment growth (ORS 195.145(4)), and

2. The commission's articulation of the purpose of reserves: "a balance in * * * urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2).

The Court of Appeals decision in *Barker's Five*, confirmed the validity of the Commission's methodology for both reviewing the submittal for the proper consideration and application of the reserve factors and for the best achieves standard. Although the court reversed and remanded the Commission's approval order, the court's opinion resolved the important legal questions in accordance with the Commission's understanding of the statutory and its regulatory scheme.

2. History

The Commission approved the 2010 initial submittal, as revised through the 2011 re-designation submittal, and the director of the Department issued Order 12-ACK-001819, the

final order implementing the Commission's approval.[1] Twenty-two parties petitioned the Oregon Court of Appeals for judicial review of Order 12-ACK-001819. The court described the "myriad contentions" as ranging "from the sublime to the arcane to the mundane." *Barker's Five,* 261 Or App at 285. The case was argued and submitted on January 16, 2013. On February 20, 2014, the court issued its final opinion and order. The court rejected all challenges to the validity of OAR chapter 660, division 27, the Commission's rules governing the designation of urban and rural reserves. The court also rejected assignments of error pertaining to Metro's authority to designate reserves outside of its service district boundary; whether too much land was designated as urban reserves, and whether the designation complies with particular Statewide Planning Goals. The court expressly upheld nine fundamental legal premises underlying the Commission's decision regarding Metro and the counties "consideration" and "application" of the reserves factors and the meaning and application of the "best achieves standard." However, the court found four errors in the Commission's order that rendered it unlawful in substance. Specifically, the decision states:

> "[We] conclude that LCDC erred in four respects, including in concluding that it has authority to affirm a local government's decision where its findings are inadequate if the evidence 'clearly supports' the decision. Further – and most significantly – LCDC's order is erroneous in the following three respects:
>
> "*First*, LCDC's order is unlawful in substance to the extent that it approved Washington County's legally impermissible application of the rural reserve factors pertaining to agricultural land. Thus, on remand, LCDC must, in turn, remand Washington County's reserves designation as a whole for reconsideration and remand the submittal to Metro and the counties so that they can ultimately assess whether any new joint designation, in its entirety, satisfies the best achieves standard.
>
> "*Second*, LCDC's order is unlawful in substance to the extent that it concluded that Multnomah County's 'consideration' of the factors pertaining to the rural reserve designation of Area 9D was legally sufficient. On remand, LCDC must determine the effect of that error on the designations of reserves in Multnomah County in its entirety.
>
> "*Third*, LCDC's order is unlawful in substance because LCDC has failed to demonstrate that it adequately reviewed Stafford's urban reserve designation for substantial evidence. On remand, LCDC should meaningfully explain, why—even in light of the evidence that the RTP indicates that, by 2035, almost all of the transportation facilities serving Stafford will be failing – the designation of Stafford as urban reserves is supported by substantial evidence.
>
> "Accordingly, because LCDC's order is unlawful in substance in those respects, we reverse and remand the order for further action consistent with the principles expressed in this opinion. ORS 197.651(10)(a) (providing that '[t]he

[1] For a detailed history of the events preceding that Compliance Acknowledgment Order, see Order 12-ACK-001819 at 8-10 and *Barker's Five*, 261 Or App at 282-285.

Court of Appeals shall reverse or remand the order only if the court finds the order is[,]' among other things, '[u]nlawful in substance').

"Reversed and remanded for further action consistent with the principles expressed in this opinion." *Barker's Five*, 261 Or App at 363-364 (footnote and citation omitted).

On April 1, 2014, Governor Kitzhaber signed HB 4078 and it took effect that same April Fools' Day. Oregon Laws 2014, chapter 92, *inter alia*, designated urban and rural reserves in Washington County as acknowledged. The boundaries of such reserves designated by the legislation differed from those adopted by Metro and Washington County.[2] The legislation, codified as ORS 195.144, resolved the Court of Appeal's remand of Washington County's reserves designation as a whole for reconsideration. The legislation also authorized the Commission to affirm on remand a reserves decision where the findings are inadequate if the evidence 'clearly supports' the decision. Or Laws 2014, ch 92, §9. Thus, by the time that the appellate judgment completing the Court of Appeal's remand and reversal of the Commission's approval became effective on July 30, 2014, only two of the errors found by that court remained to be addressed.

On August 25, 2014, the Commission conducted a hearing to consider the Court of Appeals' remand decision. The Commission directed the Department to prepare and issue a scheduling order to request additional briefing from the parties. The Department issued the schedule on September 4, 2014. Nine parties participated by submitting a timely opening brief addressing whether, pursuant to Oregon Laws 2014, chapter 92, section 9, the record includes substantial evidence that clearly supports (1) a conclusion that Multnomah County applied the reserves factors to Area 9D; and (2) Metro's designation of the Stafford area as urban reserves. Seven of those parties submitted response briefs. On November 13, 2014, after consideration of the briefs and oral arguments of parties and the Department's recommendation, the Commission voted to remand specific reserves to Multnomah County and Metro. The Commission's decision was implemented by the March 15, 2015 Remand Order 14-ACK-001867. The order states:

"Based on the decision of the Court of Appeals, and having considered the briefs and oral arguments of the parties following the court's decision, including the petitions for review of director's action and related oral argument, the Commission finds that the application of urban and rural reserve factors to designate areas as rural or urban reserves in Clackamas and Multnomah counties in the Reserves Submittal complies with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and other applicable rules of the Commission, except with respect to: (1) Multnomah County's explanation of why its consideration of the rural reserve factors yields a rural

[2] The legislation changed some land that Washington County designated rural reserve to an urban reserve designation and removed the rural reserve designation from some of the land, making it undesignated. The legislation changed some land that Metro designated as urban reserve in Washington County to a rural reserve designation and included some in the Metro urban growth boundary. The legislation changed some land that was not designated as a reserve by Metro or Washington County to rural reserve. The 2015 Legislature made further refinements. Or Laws 2015, ch 150.

reserve designation of all land in Rural Reserve Area 9D; and (2) Metro's explanation of why the designation of Areas 4A, 4B, 4C, and 4D as Urban Reserves is supported by substantial evidence. As above, the urban and rural reserves for Washington County were established by Oregon Laws 2014, chapter 92." Remand Order 14-ACK-01867 at 2.

The order also provided:

> "The Commission incorporates by reference those findings and conclusions of Compliance Acknowledgment Order 12-ACK-001819 concerning the application of urban and rural reserve factors to designate certain areas as either urban or rural reserves in Clackamas and Multnomah counties, except those findings and conclusions related to the designations of Rural Reserve Area 9D and Urban Reserve Areas 4A, 4B, 4C, and 4D. Accordingly, Commission remands Rural Reserve Area 9D to Multnomah County and Metro and Urban Reserve Areas 4A, 4B, 4C, and 4D to Metro and Clackamas County for further action consistent with the principles expressed in *Barker's Five, LLC v. LCDC*, 261 Or App 259, 323 P3d 368 (2014).
>
> "Before final acknowledgment, the Commission will review a resubmittal of the Metro Region urban and rural reserves designations for acknowledgement of compliance with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and all other applicable rules of the Commission." Remand Order 14-ACK-01867 at 2.

Metro, Clackamas County, and Multnomah County submitted amendments to the county comprehensive plans, the Metro Regional Framework Plan, and the Metro Urban Growth Management Functional Plan in response to Remand Order 14-ACK-001867 on July 24, 2017. These amendments designate Urban and Rural Reserves in the metropolitan area and the findings address the Commission remand of specific issues.

In response to *Barker's Five* and Remand Order 14-ACK-001867, Metro adopted supplemental findings for urban reserve areas 4A, 4B, 4C and 4D – the Stafford area in Clackamas County – and for rural reserve Area 9D in Multnomah County. Metro also adopted findings regarding the supply of urban reserves in the entire region and the region-wide balance as required by OAR 660-027-0040(10). Metro did not alter the designation of any reserve areas. A map of the reserves designations is provided in Attachment A. Metro 2017 Record at 1.

In response to *Barker's Five* and Remand Order 14-ACK-001867, Multnomah County adopted Ordinance No. 1246. That ordinance adopts supplemental findings related to urban and rural reserve designations and re-adopted its three prior ordinances relating to urban and rural reserves. Multnomah County specifically considered rural reserve Area 9D to address the *Barker's Five* court's determination that the county failed to meaningfully explain why, in light of certain dissimilarities between the northern and southern portions of that area, it designated Area 9D rural reserve. The county held hearings and allowed testimony on the record, but it did not open the record, based on its determination that the existing evidentiary record was sufficient

for purposes of responding to the specific issues on remand. Multnomah Co. 2017 Record at 21001-21003.

In response to *Barker's Five* and Remand Order 14-ACK-001867, Clackamas County adopted Ordinance No. 06-2017, that explained through supplemental findings of fact, statements of reasons, and conclusions how the urban and rural reserves designation, including the urban reserve Areas 4A, 4B, 4C and 4D, known as the Stafford area, are consistent with state law. The county held hearings and accepted testimony and evidence on the proposed ordinance including references to an intergovernmental agreement for the Stafford area that was jointly entered into by Metro, Clackamas County, West Linn, Lake Oswego and Tualatin. The county specifically found that the agreement provides evidence that the Stafford area can be served by urban level public facilities and services efficiently and cost effectively as required by state law. Clackamas Co. 2017 Record at 2.

This Compliance Acknowledgement Order is the final order approving the 2010 initial submittal as revised through the 2011 re-designation submittal, ORS 195.144 (HB 4078), and the 2017 remand submittal, which together constitute the Metro Urban and Rural Reserves Submittal.

3. The Written Record for This Proceeding

1. Order 12-ACK-001819 and Remand Order 14-ACK-001867

2. Urban and rural reserves remand submittals:

    a. Metro Ordinance No.17-1405, with exhibits
    b. Multnomah County Ordinance No. 1246, with exhibits
    c. Clackamas County Ordinance No. 06-2017, with exhibits

3. Seven objections to the remand submittal filed pursuant to OAR 660-025-0140(2):

    a. Barker's Five, LLC and individual members of the Barker family
    b. Metropolitan Land Group, LLC
    c. Springville Investors, LLC, *et al.*
    d. Carl Keseric
    e. Thomas VanderZanden
    f. Hank Skade
    g. Lanphere Construction and Development, LLC

4. Correspondence identifying material in the record responsive to objections:

    a. Metro, September 13, 2017
    b. Multnomah County, September 13, 2017
    c. Clackamas County, September 8, 2017

5. The DLCD October 26, 2017 Report with responses to objections.

6. Six exceptions to the Department's report pursuant to OAR 660-025-0160(5):

a. Barker's Five, LLC and individual members of the Barker family
b. Metropolitan Land Group, LLC
c. Springville Investors, LLC, *et al.*
d. Carl Keseric
e. Lanphere Construction and Development, LLC
f. Multnomah County

7. The DLCD November 9, 2017 Report responding to exceptions pursuant to OAR 660-025-0160(5).

C. Applicable Law

1. Metro Urban and Rural Reserves Statutory and Rule Requirements

ORS 195.137 to 195.145 provide the statutory authorization for rural reserve designation and a process for urban reserve designation that is unique to the Portland metropolitan region. Adopted in 2007 as SB 1011, these statutes also provide criteria regarding the amount of urban

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reserve land;[3] and both criteria and factors for the location of urban reserve land;[4] the location of rural reserves;[5] and the uses allowed within an urban reserve.[6]

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[3] ORS 195.145(4) provides:

> "Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296."

[4] ORS 195.145(5) provides:

> "A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:
>
> "(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
>
> "(b) Includes sufficient development capacity to support a healthy urban economy;
>
> "(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
>
> "(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
>
> "(e) Can be designed to preserve and enhance natural ecological systems; and
>
> "(f) Includes sufficient land suitable for a range of housing types."

[5] ORS 195.141 provides in part:

> "(2) Land designated as a rural reserve:
>
> "(a) Must be outside an urban growth boundary.
>
> "(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145(4) ["at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296."]
>
> "(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.
>
> "(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:
>
> "(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;
>
> "(b) Is capable of sustaining long-term agricultural operations;
>
> "(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and
>
> "(d) Is suitable to sustain long-term agricultural operations, taking into account:
>
> "(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;
>
> "(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;
>
> "(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and
>
> "(D) The sufficient of agricultural infrastructure in the area."

[6] ORS 195.145(3) provides in part:

In addition to statutory provisions governing the designation of reserves, the legislature directed the Commission to adopt rules implementing the statutes. ORS 195.141(4); ORS 195.145(6). Shortly after the effective date of SB 1011, the Commission adopted OAR chapter 660, division 27, which includes implementing measures for the counties and Metro to employ in their reserve determinations. The rules in this division include provisions

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"In carrying out subsections (1) and (2) of this section:

"(a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve."

regarding the amount of urban reserve land;[7] the location of urban reserves;[8] the location of rural reserves;[9] and planning for areas inside urban and rural reserves.[10]

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[7] OAR 660-027-0040 provides in part:

> "(2) Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20- to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OASR 660-027-0030.
> "(3) If Metro designates urban reserves under this division prior to December 31, 2009, it shall plan the reserves to accommodate population and employment growth for at least 20 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land."

[8] OAR 660-027-0050 provides:

> "Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:
> "(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
> "(2) Includes sufficient development capacity to support a healthy economy;
> "(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;
> "(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;
> "(5) Can be designed to preserve and enhance natural ecological systems;
> "(6) Includes sufficient land suitable for a range of needed housing types;
> "(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and
> "(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves."

[9] OAR 660-027-0060 provides:

> "(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.
> "(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation:
> "(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;
> "(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;

"(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and

"(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:

"(A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;

"(B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;

"(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and

"(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.

"(3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural landscape features, a county must consider those areas identified in Metro's February 2007 'Natural Landscape Features Inventory' and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:

"(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3);

"(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;

"(c) Are important fish, plant or wildlife habitat;

"(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;

"(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;

"(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses;

"(g) Provide for separation between cities; and

"(h) Provide easy access to recreation opportunities in rural areas, such as rural trails and parks.

"(4) Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation under OAR 660-027-0040(10)."

[10] OAR 660-027-0070 provides:

"(1) Urban reserves are the highest priority for inclusion in the urban growth boundary when Metro expands the UGB, as specified in Goal 14, OAR chapter 660, division 24, and in ORS 197.298.

"(2) In order to maintain opportunities for orderly and efficient development of urban uses and provision of urban services when urban reserves are added to the UGB, counties shall not amend comprehensive plan provisions or land use regulations for urban reserves designated under this division to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as urban reserves until the reserves are added to the UGB, except as specified in sections (4) through (6) of this rule.

"(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

"(4) Notwithstanding the prohibitions in sections (2) and (3) of these rules, counties may adopt or amend comprehensive plan provisions or land use regulations as they apply to lands in urban reserves, rural reserves or both, unless an exception to Goals 3, 4, 11 or 14 is required, in order to allow:

"(a) Uses that the county inventories as significant Goal 5 resources, including programs to protect inventoried resources as provided under OAR chapter 660, division 23, or inventoried cultural resources as provided under OAR chapter 660, division 16;

In addition to these statutes and rules, ORS 197.010(2)(a) provides legislative land use policy, including the following "overarching principles guiding the land use program in the State of Oregon":

> "(A) Provide a healthy environment;
> "(B) Sustain a prosperous economy;
> "(C) Ensure a desirable quality of life; and
> "(D) Equitably allocate the benefits and burdens of land use planning."

"(b) Public park uses, subject to the adoption or amendment of a park master plan as provided in OAR chapter 660, division 34;

"(c) Roads, highways and other transportation and public facilities and improvements, as provided in ORS 215.213 and 215.283, OAR 660-012-0065, and 660-033-0130 (agricultural land) or OAR chapter 660, division 6 (forest lands);

"(d) Other uses and land divisions that a county could have allowed under ORS 215.130(5) – (11) or as an outright permitted use or as a conditional use under ORS 215.213 and 215.283 or Goal 4 if the county had amended its comprehensive plan to conform to the applicable state statute or administrative rule prior to its designation of rural reserves;

"(5) Notwithstanding the prohibition in sections (2) through (4) of this rule a county may amend its comprehensive plan or land use regulations as they apply to land in an urban or rural reserve that is subject to an exception to Goals 3 or 4, or both, acknowledged prior to designation of the subject property as urban or rural reserves, in order to authorize an alteration or expansion of uses or lot or parcel sizes allowed on the land under the exception provided:

"(a) The alteration or expansion would comply with the requirements described in ORS 215.296, applied whether the land is zoned for farm use, forest use, or mixed farm and forest use;

"(b) The alteration or expansion conforms to applicable requirements for exceptions and amendments to exceptions under OAR chapter 660, division 4, and all other applicable laws;

"(c) The alteration or expansion would not expand the boundaries of the exception area unless such alteration or expansion is necessary in response to a failing on-site wastewater disposal system; and

"(d) An alteration to allow creation of smaller lots or parcels than was allowed on the land under the exception complies with the requirements of OAR chapter 660, division 29.

"(6) Notwithstanding the prohibitions in sections (2) through (5) of this rule, a county may amend its comprehensive plan or land use regulations as they apply to lands in urban reserves or rural reserves or both in order to allow establishment of a new sewer system or the extension of a sewer system provided the exception meets the requirements under OAR 660-011-0060(9)(a).

"(7) Notwithstanding the prohibition in sections (2) and (4) of this rule, a county may take an exception to a statewide land use planning goal in order to allow:

"(a) The establishment of a transportation facility in an area designated as urban reserve; or

"(b) Modifications to an unconstructed transportation facility that was authorized in an exception prior to February 13, 2008. In addition to the requirements of OAR 660-012-0070, county approval of an exception authorized in this subsection shall demonstrate that the modifications have an equal or lesser impact than the unconstructed transportation facility on lands devoted to farm or forest use, considering the impacts of the identified alternatives on: farm and forest practices; farm and forest lands, structures and facilities; the movement of farm and forest vehicles and equipment; and access to parcels created on farm and forest lands.

"(8) Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

"(9) Metro shall ensure that lands designated as urban reserves, considered alone or in conjunction with lands already inside the UGB, are ultimately planned to be developed in a manner that is consistent with the factors in OAR 660-027-0050."

ORS 197.010(2)(c) provides that the overarching principles provide "guidance" to a public body when the public body adopts or interprets goals, comprehensive plans and land use regulations implementing the plans, or administrative rules implementing a provision of statute; or interprets a law governing land use. ORS 197.010(2)(d) clarifies the legislative intent: "Use of the overarching principles in paragraph (a) of this subsection is not a legal requirement for the Legislative Assembly or other public body and is not judicially enforceable."

Pursuant to OAR 660-027-0080, the Commission reviews adopted urban and rural reserves "in the manner provided for periodic review under ORS 197.628 to 197.650." OAR 660-025-0160(7) provides that the Commission must issue an order that does one or more of the following:

> (a) Approves the submittal;
> (b) Remands the submittal to the local government, including a date for re-submittal; or
> (c) Requires specific plan or land use regulation revisions to be completed by a specific date.

2. Commission's Standard of Review

The Commission is required to adopt rules for review and approval of the designation of urban and rural reserves. ORS 197.633(2)(e)(B). The Commission reviews the Metro Urban and Rural Reserves Submittal in the manner provided for periodic review. OAR 660-027-0080(2). The joint and concurrent submittal of the local governments "shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules." OAR 660-027-0080(4). The Commission's review assures that the Metro Urban and Rural Reserves Submittal complies with the statewide goals and administrative rules, and the local governments complied with SB 1011 and division 27 by considering the factors. *Id*.

Additionally, review in the manner of periodic review is subject to ORS 197.633(3):

> "(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government's decision.
> "(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.
> "(c) For issues concerning compliance with applicable laws, is whether the local government's decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government's interpretation of the comprehensive plan or land use regulations in the manner provided in ORS 197.829. For purposes of this

paragraph, 'complies' has the meaning given the term 'compliance' in the phrase 'compliance with the goals' in ORS 197.747."

The Court of Appeals has further explained that in applying this standard of review, the Commission "must demonstrate in its opinion the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts." *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 267, 259 P3d 1021 (2011) *(McMinnville)* (quoting *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 225, 239 P3d 272 (2010) (*Woodburn*).

The Commission's rules require that Metro and the counties make findings that explain why Metro and the counties made the decisions that they did in the Metro Urban and Rural Reserves Submittal. Under OAR 660-027-0040(10), Metro and the counties are required to "adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule." Further, OAR 660-027-0040(11) requires that "if Metro designates [Foundation Agricultural Land] as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." And, OAR 660-027-0080(4) requires "[t]he joint and concurrent submittal to the Commission shall include findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with this division, the applicable statewide planning goals, and other applicable administrative rules."

The requirement for findings is not simply a technicality; its purpose is to assure that the Commission can perform its review function and that it does not substitute its judgment for that of Metro and the counties. *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002); *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 314 (2004). Where the findings submitted to satisfy the requirements of division 27 do not recite adequate facts or conclusions of law; or do not adequately identify the applicable legal standards or the relationship of the legal standards to the facts, the Commission nonetheless may affirm the submittal if the Commission identifies evidence in the record that clearly supports all or part of its decision. Or Laws 2014, ch 92, §9.

3. Procedural Rules

Pursuant to ORS 197.633(2), the Commission has adopted rules, OAR chapter 660, division 25, to govern procedures for matters reviewed in the manner of periodic review. Under OAR 660-025-0230(1)(d), the applicable version of division 25 to this review is the version filed and effective on February 14, 2012.

II. VALIDITY OF OBJECTIONS

The Department received a total of seven letters of objection to the remand submittal. Many of the objection letters included numerous specific objections. The Department analyzed the validity of each objection in the DLCD October 26, 2017 Report.

Under OAR 660-025-0140(2), in order for an objection to be valid, it must:

(a) Be in writing and filed no later than 21 days from the date the notice was mailed by the local government;
(b) Clearly identify an alleged deficiency in the work task;
(c) Suggest specific revisions that would resolve the objection; and
(d) Demonstrate that the objecting party participated at the local level orally or in writing during the local process.

The Court of Appeals has further explained that objectors before this Commission must "make an explicit and particular specification of error by the local government." *McMinnville*, 244 Or App at 268-269.

The Department determined that 28 objections to the remand submittal were valid and addressed them in the DLCD October 26, 2017 Report. The Department found that one objection to the initial submittal did not satisfy the requirements of OAR 660-025-0140(2)(b) and recommended that the Commission not consider this objection. All objections are addressed in section III, "Commission Review."

III. COMMISSION REVIEW

A. Commission's Scope of Review

OAR 660-027-0080(4) provides the Commission's scope of review as follows:

"The Commission shall review the submittal for:

"(a) Compliance with the applicable statewide planning goals. Under ORS 197.747 'compliance with the goals' means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature. To determine compliance with the Goal 2 requirement for an adequate factual base, the Commission shall consider whether the submittal is supported by substantial evidence. Under ORS 183.482(8)(c), substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding;

"(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) [i.e. a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents] and the urban and rural reserve designation standards provided in OAR 660-027-0040; and

"(c) Consideration of the factors in OAR 660-027-0050 or 660-027-0060, whichever are applicable."

Thus, the Commission primarily and specifically reviews the submittal based on four basic elements: compliance with the statewide planning goals; compliance with the "best achieves" standard of OAR 660-027-0005(2); compliance with the amount of land standard of OAR 660-027-0040; and consideration of the factors in OAR 660-027-0050 or 660-027-0060.

1. Compliance with the Statewide Planning Goals

OAR 660-027-0080(4)(a) and ORS 197.747 provide that "compliance with the goals" means "the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature." In addition, not all goals apply to the reserves decision and some goals may apply, but only in a limited fashion. *See Barker's Five,* 261 Or App at 292 (upholding the Commission determination that Goal 9 does not apply to the reserves designation).

The requirement to comply with the goals focuses on assuring that the underlying main purpose of the goal is met, even if there are minor qualitative deviations from the technical requirements of the goal or an implementing rule. *1000 Friends of Oregon v. LCDC (Lane Co.),* 305 Or 384, 397, 752 P2d 271 (1988). In determining whether any goal compliance deviation is "technical or minor" in nature under ORS 197.747, the Commission engages in a qualitative, not quantitative, analysis. *Id*.

2. Compliance with the Best Achieves Standard

Consistent with the legislative findings in ORS 195.139, the Commission established the objective of the urban and rural reserves as "a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2). In adopting division 27, the Commission intended that this "best achieves" standard would require less scrutiny for the reserves decision than the requirements for locational decisions involved in urban growth boundary expansions (to consider and apply factors to alternative candidate areas – discussed below). The standard applies to the designation "in its entirety," it does not require Metro or a county to rank alternative areas. It is a standard that Metro and the counties must demonstrate has been met, through their findings.[11]

[11] During the Commissions' consideration of the OAR chapter 660, division 27 rules, the Commissioner who chaired the rules workgroup explained the objective of the "best achieves" standard, stating, "I think it's important to recognize that the workgroup never saw that best requirement as being something that would require a detailed parcel to parcel type analysis. And there was real worry that it would even be construed that way because that was the opposite of the kind of fluid creative process we were hoping to be able to create. And that instead of being a process that would require exactitude found in like a parcel to parcel comparison that this best achieves concept is supposed to focus on the collective overall regional process. It would be looking for the best fundamental balance between he competing areas. It would not require a ranking." The Commission adopted that understanding (Transcript, LCDC January 24-25, 2008 hearing on Metro Urban and Rural Reserves Rule at 1, 4). That transcript is attached as Attachment 5 to Order 12-ACK-001819.

The standard applies to the submittal in its entirety. The Commission interprets the standard to apply in such a manner that concerns about one or more areas could result in a determination that the standard is not met (*i.e.*, the submittal in its entirety could fail to meet this standard because of problems with one or more particular designations).

In addition, there is a relationship between the "factors" that Metro and the counties must consider for urban reserves under OAR 660-027-0050 and rural reserves under OAR 660-027-0060, and the overall objective in OAR 660-027-0005(2). Metro and the counties must explain how the overall objective is met through their findings applying the urban and rural reserve factors to determine which areas to designate as urban and rural reserves.

The Court of Appeals considered at length the Commission's construction and application of the best achieves standard. *Barker's Five,* 261 Or App at 311-318. The court expressly found that the following four legal premises are individually and collectively valid:

> "*First*, the best achieves standard is a qualitative standard rather than a quantitative one.
>
> "*Second*, the standard applies to Metro and the counties' joint designation 'in its entirety' and not to the designation of individual properties or areas.
>
> "*Third*, the best achieves standard allows for a range of permissible designations.
>
> "*Fourth*, Metro and the counties must explain how the designation satisfies the best achieves standard through their findings concerning the application of the urban and rural reserve factors." *Barker's Five*, 261 Or App at 311 (italics in original.)

The discretion that Metro and the counties enjoy to achieve liveable communities, viability and vitality of agricultural and forest industries and protection of important natural landscapes by designating urban and rural reserves is legally circumscribed by those four legal premises.

3. Compliance with the Amount of Land Standard

In designating urban reserves, ORS 195.145(4) and OAR 660-027-0040(2) prescribe the amount of land that Metro may designate. OAR 660-027-0040(2) provides:

> "Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of

years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030."

To designate the appropriate amount of reserves, Metro must know for which years and for how many years it is planning. The rule involves two different planning periods: the first is the "20-year planning period for which Metro has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296" (hereafter, the "UGB-planning period"), while the second planning period is the 20 to 30-year period for which the urban reserves reserve land. The statute and rules provide Metro a substantial degree of discretion concerning both: (a) the *time period* that the urban reserves are planned to accommodate population and employment growth for; and (b) the *methods and policy considerations* that Metro uses to project future population and employment. The statute and rules also provide Metro significant discretion in determining how to apply its overall regional projections to parts of the region (counties). In *Barker's Five*, the Court of Appeals rejected without discussion a challenge to the amount of land designated as urban reserve. 261 Or App at 288.

4. Consideration of the Factors

OAR 660-027-0040(10) and (11), together with OAR 660-027-0050 (urban) and 660-027-0060 (rural), require the Commission to review the submittal to determine whether Metro and the counties considered and applied the factors for urban and rural reserves. Where the submittal includes Foundation Agricultural Land, OAR 660-027-0040(11) requires the Commission to determine whether Metro and the counties considered and applied both the urban reserve factors and the rural reserve factors. In Order 12-ACK-001819, the Commission confronted two related questions: (a) what it means for Metro and the counties to consider and apply the factors; and (b) whether the rule requires Metro and the counties to consider and apply the factors to each area, to the region as a whole, or to each county. The Court of Appeals concluded that the Commission correctly construed the legislative intent for the methodology of considering the urban and rural reserve factors. *Barker's Five*, 261 Or App at 295-301.

a. What is the Meaning of "Consider and Apply the Factors"?

The Commission finds that division 27 requires Metro and the counties to evaluate alternative areas in terms of each of the factors, and to then explain why it selected a particular area as an urban reserve or a rural reserve. For areas containing Foundation Agricultural Land that are considered as urban reserves, the rule requires Metro to do this evaluation in terms of both the urban and rural factors.

This evaluation does not require a ranking, nor does it require that the "best" suited lands be designated as either an urban or rural reserve, but it does require the county and Metro to show that they evaluated alternative areas in terms of each of the factors, *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-410, 26 P3d 151 (2001), and that their findings explain why each area's designation as an urban or rural reserve is appropriate. While the UGB amendment process requires more stringent evaluation of the factors, as in UGB

amendment proceedings, the Commission concludes "[n]o single factor is of such importance as to be determinative * * * nor are the individual factors necessarily thresholds that must be met." *Citizens Against Irresponsible Growth v. Metro*, 179 Or App at 17. In other words, as to any one area, the designating governmental body does not have to determine that the area complies with or meets every factor.[12] The designating body considers the factors together, and weighs and balances the factors as a whole.

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[12] The staff report to the Commission for the rulemaking to adopt division 27 discussed the intent for "consideration of factors" thoroughly:

> "Factors: It is important to note that the intent is for the rule to include and, where necessary, clarify the factors in SB 1011, but also to expand the list of factors (as allowed by that statute) in order to address additional concerns discussed by the workgroup (see rules 0050 and 0060 below for more detailed discussion of the particular additional factors proposed as part of these rules by the workgroup).
>
> "The workgroup discussed the term 'consideration of factors.' The proposed rules are based on the understanding that 'factors' are a special type of 'criteria' similar to the 'factors' proscribed for UGB location under Goal 14. As such, a general principle for Goal 14 factors applies here: factors are not 'independent criteria' – every parcel or area considered for urban or rural reserves would not be required to meet each and every factor. Instead, the factors are applied, weighed and balanced to select and evaluate areas for designation as urban or rural reserves. Metro and the counties must apply all the factors, not merely 'consider' them, and must use the factors to compare alternative locations for the reserves. The group decided that the requirement to 'consider' the factors in the statute is not meant to imply that any factor may be simply 'considered but then disregarded' – all the factors must be considered, <u>applied</u> together (which also implies they must be 'balanced' in the manner of Goal 14), and Metro and counties must demonstrate that they have done this.
>
> "The term 'consideration of factors' was previously adopted by LCDC in specifying the evaluation and selection of land for a UGB under Goal 14. Thus, there is precedent set by both LCDC and the courts regarding the interpretation and employment of 'factors.' As indicated above, there was considerable discussion of the term 'factors' by the workgroup, including advice from LCDC legal counsel, and the group has concluded that 'factors' under SB 1011 are intended to be employed and interpreted in the same manner as the UGB factors in Goal 14. According to legal counsel, while the courts have not been entirely consistent in their interpretation of 'factors,' some legal precedent is worth noting in order to clarify the intent of 'factors' under the proposed reserve rules.
>
> "First, the courts have indicated 'factors' are a type of 'criteria' (this is important because the workgroup discussion revealed that many planners consider 'criteria' to be something different than 'factors,' since typically a set of factors are 'considered' and 'weighed' in arriving at a decision).
>
> "Second, a Court of Appeals interpretation of the term 'factors' was paraphrased in LCDC's 2006 UGB Amendment rules, OAR 660-24-0060(3), which state that: 'The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.' Because the intent of the rules proposed by the Metro Reserves workgroup is for 'factors' to be interpreted in the same manner as UGB factors, this previous LCDC declaration about factors is important in applying the reserve factors.
>
> "Finally, some examples are provided below regarding prior legal interpretations concerning the 'consideration of factors.' Although these examples concern Goal 14 factors and the selection of land for a UGB, the factors in the proposed reserve rules also concern the selection of land and use the term 'consideration of factors.' As such, the following examples may further clarify the intent of the proposed rules regarding 'factors':

b. What Lands Does Metro or a County Apply the Factors To?

The Commission previously found that division 27 requires Metro and the counties to apply the factors to areas, not to individual properties, and not to the entire region. The Commission reasoned:

> "As stated in the history of the Commission's division 27 rulemaking and in the legislative history for Senate Bill 1011, the reserve factors derive from the Goal 14 locational factors. *See* Order 12-ACK-001819 at 27 n 16. Those factors are applied to alternative locations for expanding an urban growth boundary to decide which one(s) to select to include within the expanded UGB. *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App at 417. Similarly, under the Commission's division 21 urban reserves rules, the Goal 14 factors are applied to proposed urban reserve areas. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff'd as modified* 165 Or App 1, 994 P2d 1205 (2000). The Commission intends, and construes that the legislature intended, that in deciding which lands to designate as urban and rural reserves, Metro and the counties are to apply the factors to selected areas to decide which ones to include as urban reserves, and which areas to include as rural reserves. Furthermore, because SB 1011 and division 27 require Metro and a county to jointly decide upon urban and rural reserves, the factors are applied to alternative areas within a county to decide which ones to designate as urban or rural reserves.
>
> "OAR 660-027-0040(10) requires Metro and the counties to "adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why *areas* were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule." (Emphasis added.) The rule specifically requires Metro and the counties to apply the factors to "areas" rather than specific properties or to the region or a county as a whole. OAR 660-027-0040(11) expands the requirements of OAR 660-027-0040(10) by requiring Metro to make additional findings if it designates "Foundation Agricultural Land," as defined in OAR 660-027-0010(1), as

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> "• Even if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and addressed. *Rosemont II*, 173 Or App at 328; *Baker v. Marion County*, 120 Or App 50, 54, 852 P2d 254, *rev den* 317 Or 485 (1993).
> "• 'Locational' factors 3 through 7 of Goal 14 are not independent approval criteria. It is not required that a designated level of satisfaction for each factor be met in order to approve a UGB amendment. Rather, a local government must show that the factors were 'considered' and balanced in determining whether a UGB amendment is justified. *1000 Friends of Oregon v. Metro*, 174 Or App 406, 409-10 (2001)
> "• The goal of the consideration under factors 3 through 7 is to determine the "best" land to add to the UGB, after considering each factor. *ARLU*, slip op at 13. In carrying out such consideration, each factor must be addressed. That a potential UGB expansion site failed a "test" established by the local government for compliance with one locational factor is not a sufficient basis for excluding it from consideration under the other locational factors. *1000 Friends II*, 174 Or App at 414 15."

DLCD January 11, 2008 Report at 15-16 (footnotes omitted). Attached as Attachment 6 to Order 12-ACK-001819.

urban reserves. The findings and statement of reasons required under subsection (11) for Foundation Agricultural Lands do not alter the geographic unit that Metro and the counties must adopt findings for – the findings must still be by "area" rather than on a property-by-property or region-wide basis. What this means is that if Metro designates some portion or all of an area as an urban reserve, and that area includes Foundation Agricultural Land, then the joint findings must explain why the area was selected as an urban reserve by applying both the urban and rural factors to that area and explaining why that area is more suitable as an urban reserve than other lands within Metro's study area that are not Foundation Agricultural Lands." Order 12-ACK-001819 at 28-29.

The court reviewed and upheld the Commission's interpretation. *Barker's Five*, 261 Or App at 301-306.

c. Determination of Whether A Particular Area Should be Urban or Rural, or Undesignated

Any one area may be, and many areas could have been, designated either as an urban or a rural reserve. After considering both sets of factors under OAR 660-027-0050 and OAR 660-027-0060, many areas have characteristics such that Metro could have designated them as urban or a county designate them as rural reserve. The Commission reviews whether Metro considered the urban reserve factors in deciding to include particular areas, explained why the areas should be urban reserves using the factors listed in the statute and rules, and whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did.

In most instances, with one important exception, the Commission does not review the decision to determine whether an area would be *better* as a rural reserve than as an urban reserve, or even whether Metro was right in its designations. The question is a narrow one: whether Metro considered what the statute and rules require it to consider, and whether Metro's findings explain its reasoning, and whether there is substantial evidence in the record to support Metro's decision.

The exception is for lands that the Oregon Department of Agriculture (ODA) has identified as Foundation Agricultural Land, where the rules require Metro to engage in an additional explanation. Under OAR 660-027-0040(11), if Metro designates such land as an urban reserve, it must "* * * explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2) [the urban and rural factors], why Metro chose the Foundation Agricultural Land for designation as urban reserves *rather than* other land considered under this division." (Emphasis added.) For these lands, Metro must consider both sets of factors, and explain why it selected the lands in question instead of other lands.

The administrative rules and the applicable statutes grant substantial discretion to Metro and the counties in deciding which lands to designate as urban and rural reserves and, as long as Metro can demonstrate that it considered the factors, there is no requirement for Metro to show that an area is better suited as an urban reserve than as a rural reserve before it designates any land as urban reserves. Nor is there any requirement that Metro or the counties consider any particular lands for either designation, and there is no requirement that either Metro or the counties make any findings regarding areas they do not designate.

B. Issues on Review of Remand Submittal

The Commission considers whether:

(1) Multnomah County explained why its consideration of the rural reserve factors yields a rural reserve designation of all land in Rural Reserve Area 9D;

(2) Metro supported its explanation of the Urban Reserves designation of Areas 4A, 4B, 4C, and 4D with substantial evidence in the record; and

(3) the joint submittal explains how the Metro Urban and Rural Reserves Submittal establishes "a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."

C. Commission Evaluation

The Metro Urban and Rural Reserves Submittal involves issues related to the amount and location of the reserve areas, leading to four general issues:

1. Amount of urban reserve land;
2. Location of urban reserves;
3. Amount of rural reserve land; and
4. Location of rural reserves.

The Commission also evaluates the remand submittal against the "best achieves" standard and the statewide planning goals.

1. Amount of Urban Reserve Land

The statutory and regulatory requirements regarding the amount of land that Metro may designate as urban reserves are provided in ORS 195.145(4) and OAR 660-027-0040(2). Generally, the urban reserve is to include a sufficient quantity of land to accommodate urban growth for 20 to 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis under ORS 197.296. OAR 660-027-0040(2). Metro must first inventory the buildable land supply inside the UGB, determine the capacity of those lands (the lands already inside the UGB) to meet the region's long-term needs, and analyze what portion of those long-term needs may require additional lands beyond the current UGB. In carrying out these steps, Metro must specify the number of years for which the urban reserves are intended to provide a supply of land. OAR 660-027-0040(2).

Because under OAR 660-027-0040(2) the urban-reserve-planning period begins after the UGB-planning period ends, in order to designate the correct amount of urban reserves it is necessary to know which 20-year UGB-planning period the urban-reserve-planning period follows. In the initial submittal and re-designation submittal, Metro based the urban-reserve-planning period on the 2010-2030 UGB-planning period in the 2009 Urban Growth Report (UGR). Metro designated 30 years of urban reserves to provide for future urban expansion and

development from 2030 until 2060 – thirty years beyond the UGB-planning period. *See* Ordinance No. 10-1238A, Exhibit E; Metro 2010 Record at 22.

OAR 660-027-0040(2) requires Metro to inventory the supply of buildable lands within the current UGB. ORS 197.296(3)(a). Metro must then determine the housing capacity of that buildable land. *Id*. After doing those two things, ORS 197.296(3)(b) requires Metro to conduct an analysis of housing need by type and density range to determine the number of units and amount of land needed for each needed housing type for the next 20 years. Metro completed these three steps, for future housing needs, and also for projected need for employment lands. The Commission finds that by complying with the requirements of ORS 197.296(3), Metro satisfied the requirement for a UGB-planning period to be one onto which a urban-reserve-planning period can tack because, by completing the inventory, determination and analysis, and particularly the inventory, it demonstrated what the buildable land supply is for that UGB-planning period.

Metro designated urban reserves for a planning period that is authorized under the urban reserve statutes and rules. Metro completed its inventory, determination and analysis under ORS 197.296 for the 2009-2030 UGB-planning period, and compiled the results into the 2009-2030 UGR. Metro Council adopted the 2009-2030 UGR by Resolution 09-4094 in December 2009. Metro 2010 Record at 22. The Metro Council subsequently adopted the UGR as part of the capacity ordinance on December 16, 2012 by Ordinance No. 10-1244B. Metro demonstrated a buildable land supply in the then-most recent inventory, determination and analysis performed under ORS 197.296, and the Commission found that the 2009-2030 UGB-planning period was one onto which the urban-reserve-planning period may tack under OAR 660-027-0040(2) and ORS 195.145(4).

Metro approved an updated UGR in 2015 by Metro Ordinance No. 15-1361. Metro 2017 Record at 21. The updated UGR employed a UGB-planning period of 2015-2035 and includes population and employment forecasts to 2060. In its supplemental findings in response to the remand, Metro used forecasts extrapolated to 2065. Metro 2017 Record at 21; 1196. Metro concluded that the amount of urban reserves approved in 2010, as changed by HB 4078, combined with buildable land already inside the UGB, "will provide a sufficient amount of land for urban growth in the region until 2065." Metro 2017 Record at 23. Accordingly, Metro demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296, and the 2015-2035 UGB-planning period is one onto which the urban-reserve-planning period may tack under OAR 660-027-0040(2) and ORS 195.145(4).

For these reasons, the Commission finds that Metro has satisfied the statutory and rule requirements regarding the amount of urban reserve land.

2. Location of Urban Reserves

In OAR chapter 660, division 27, the Commission implemented the applicable statutory provisions regarding where urban reserves may be located. ORS 195.145(5) and OAR 660-027-0050 provide "factors" that Metro must consider when deciding urban reserve designations. Under OAR 660-027-0050, the "urban reserve factors" that Metro must consider in its consideration of candidate areas include whether the land in question:

(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
(2) Includes sufficient development capacity to support a healthy economy;
(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;
(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;
(5) Can be designed to preserve and enhance natural ecological systems;
(6) Includes sufficient land suitable for a range of needed housing types;
(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and
(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.

The factors are not standards or criteria which Metro must demonstrate are satisfied. *Barker's Five*, 261 Or App at 300. Rather, the factors are considerations Metro must take into account when deciding whether to designate an area as an urban reserve. As summarized by the court, in locating urban reserves, Metro "must (a) apply and evaluate each factor, (b) weigh and balance the factors—which are not independent approval criteria—as a whole, and (c) meaningfully explain why a designation as urban * * * reserve is appropriate." *Barker's Five*, 261 Or App at 301. The remand submittal demonstrates an understanding of the applicable law. Metro 2017 Record at 55-58.

The Commission previously affirmed the analysis areas Metro used for evaluating lands as urban reserves, and expressly determined that neither the statutes nor rules require a parcel-by-parcel analysis, particularly in light of the fact that the land in question normally will not be urbanized for decades. Order 12-ACK -001819 at 32. On review, the court upheld the Commission's analysis of Metro's use of areas, as set forth in the Consolidated Findings, as the appropriate scale for considering the application of the urban reserve factors. *Barker's Five*, 261 Or App at 301-306.

The location of urban reserves in Washington County are statutorily established in ORS 195.144 and are not subject to this order. The Commission's consideration of the remand submittal is limited to the location of urban reserves in Clackamas and Multnomah County.

The original findings included in the Metro Council's decision are found in the Consolidated Finding. Exhibit E to Ordinance No. 10-1238A, Metro 2010 Record at 14 and Exhibit B to Ordinance No.11-1255. Metro's findings explained how it employed the factors by explaining the background, overall conclusions, the overall process and an analysis of public involvement. The Commission approved Metro's decisions regarding the location of urban reserves in Order 12-ACK-001819. The court upheld that approval in in *Barker's Five* except for one urban reserve in Clackamas County. The court remanded Order 12-ACK-001819 with

express instruction to the Commission to "meaningfully explain, why … the designation of Stafford as urban reserves is supported by substantial evidence." 261 Or App at 364. On remand, the Commission concluded that the application of urban reserve factors to designate areas as urban reserves in Clackamas and Multnomah counties complied with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and other applicable rules of the Commission, except with respect to Metro's explanation of why the designation of Areas 4A, 4B, 4C, and 4D as Urban Reserves is supported by substantial evidence. Remand Order 14-ACK-001867. Therefore, the Commission remanded Urban Reserve Areas 4A, 4B, 4C, and 4D to Metro and Clackamas County for further action consistent with the principles expressed in *Barker's Five*.

Metro readopted its findings regarding consideration of the urban reserve factors. The factors were applied in different processes in each of the counties. Metro 2017 Record at 29–47 for Clackamas County; 73–74 for Multnomah County. Metro adopted supplemental findings to explain why the designation of Stafford as an urban reserve is supported by substantial evidence. Metro 2017 Record at 55–72.

Clackamas County urban reserve areas 4A (Stafford), 4B (Rosemont), 4C (Borland), and 4D (Norwood) are collectively referred to as "Stafford." Study areas 4A-4C consist of approximately 4,700 acres and were considered together. Metro based the designation on the area's physical characteristics, including development capacity and future serviceability. Metro found that Stafford is surrounded by existing cities and attendant urban infrastructure; thereby providing the opportunity to create a mix of housing types and densities that compliment natural features and existing adjacent development. Further, because Stafford is comprised of "conflicted" agricultural lands, its designation as an urban reserve avoids the designation of "foundation" farmland elsewhere to meet the identified urban reserves need.

Metro evaluated each factor in OAR 660-027-0050 as it relates to Stafford. Metro 2017 Record at 38-47; 60-70. In evaluating, under the first factor, whether there is urbanizable land in Stafford within sufficient proximity to existing urban infrastructure to allow for efficient use of that infrastructure, Metro determined that the area is physically surrounded by existing city boundaries, dense urban development, and available public infrastructure that facilitates the logical and efficient extension of future development and related infrastructure. Metro found that although future development of Stafford would vary in density due to slopes and natural features (as it has in adjoining municipalities), sufficient developable areas exist to create a vibrant and diverse urban area. Metro 2017 Record at 60-61. In considering the second factor, Metro finds that at 6,230 acres, the Stafford area has the potential to provide significant future development capacity that would be sufficient to "support a healthy economy". Metro 2017 Record at 62.

Metro devoted significant attention to the evaluation of the third factor regarding the cost-effective future provision of facilities and services, as the evidentiary basis for that evaluation was the basis for the court's remand. Regarding transportation facilities, Metro considered the prior contentions related to the Metro 2035 RTP forecasts and distinguished an RTP forecasts based on currently funded system improvement projects from the relevant question of whether Stafford can be efficiently and cost-effectively served with transportation

facilities within a 50-year horizon. In short, the 2035 RTP does not, and is not intended to, determine whether or not the Stafford area can be served by roads and highways in the area. Instead, when and if Stafford is proposed for urbanization, the UGMFP Title 11 planning process ensures that the area can and will be served with public facilities such as roads. At that point, the needed improvements are added to the next RTP:

> "when an area such as Stafford that is outside of the UGB is identified as a potential location for new urban development, the planning process that is required for urbanization will include identification of new and necessary transportation system improvements to serve future urban development in that area, and those improvements will then be included on the RTP project list. Adding those improvements to the RTP project list will then reduce the amount of congestion forecasted on the RTP mobility policy maps for that area." Metro 2017 Record at 64.

In 2014, Metro amended the 2035 RTP to include new project assumptions for the I-205 and I-5 system not included in the 2035 RTP; the projected traffic congestion in the Stafford area show significant improvement. Metro 2017 Record at 66. Although transportation infrastructure will be the most significant challenge for Stafford, Metro noted that that is the case for most of the region, and otherwise Stafford rated well on sewer, water, and other infrastructure. Metro 2017 Record at 42, 66-68.

Regarding the fourth factor, Metro's evaluation determined that Stafford is currently served with a well-connected system of streets, but there is also a sufficient amount of undeveloped land to afford the opportunity to design street, bicycle and pedestrian connections during Title 11 planning. Metro 2017 Record at 67-69. As to whether Stafford can be designed to preserve and enhance natural ecological systems, Metro found no significant challenges in that regard in light of the agreement between Metro and the county that concept planning for Stafford will "recognize environmental and topographic constraints and habitat areas" and that even when environmental protections are taken into account, Stafford provides sufficient development capacity. Metro 2017 Record at 69. Considering whether Stafford includes sufficient land suitable for a range of needed housing types under the sixth factor, Metro determined that the varied topography of the 6,230 acres area and existing development patterns enhance the ability to provide a diverse range of needed housing types, from a mixed use town center to medium density neighborhoods. Metro 2017 Record at 69-70. Metro identified the Wilson Creek and Tualatin River systems as the important natural features of the Stafford area, and evaluated whether the area can develop in a way that preserves those features in accordance with the seventh factor, concluding that Metro and state regulations designed to protect upland habitat, floodplains, steep slopes and riparian areas do not present significant challenges to future development in the Stafford area. Metro 2017 Record at 70. Finally, in evaluating whether Stafford can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land under the eight factor, Metro found Stafford to be an ideal urban reserve because the area is surrounded by existing urban development or small areas of conflicted agricultural land. *Ibid.*

Having evaluated the urban reserves designation factors under OAR 660-027-0050, Metro undertook the required weighing and balancing the factors in providing its explanation of why an urban reserve designation of Stafford is appropriate:

> "Based on the foregoing evaluation of the each of the urban reserve factors, the Metro Council concludes that the Stafford area earns a very high ranking under seven of the eight factors, and an average ranking on factor #3 regarding cost-effective provision of urban services. There is no dispute that extending services to the Stafford area will be expensive; however, there are significant costs and challenges associated with providing new urban services to any part of the region where new urban development is being proposed. * * * * *
>
> "The process of future urban development of Stafford is likely to occur over the course of many decades. The first step in any potential addition of a portion of Stafford into the UGB will require one of the cities to propose a concept plan for a particular expansion area, as required by Title 11 of the UGMFP. Under Title 11, that plan must include detailed descriptions and proposed locations of all public facilities, including transportation facilities, with estimates of cost and proposed methods of financing. In other words, the details regarding exactly how any portion of Stafford will be served with infrastructure, and how that infrastructure will be paid for, must be worked out at the time an area is considered for inclusion in the UGB so that a decision can be made regarding whether actual urbanization is possible and appropriate.
>
> "The 50-year growth forecast indicates that the Metro region will need to be able to accommodate between 1.7 and 1.9 million new residents by 2060. The purpose of designating urban reserve areas is to identify locations across the region that would provide the best opportunities for providing homes and jobs for those new residents within the 50 year horizon. Urban reserve designations should not, and do not, require the identification of all future sources of funding for infrastructure within the urban reserve areas today.
>
> "Based on the analysis set forth above, and the weighing and balancing of all urban reserve factors as a whole, the Metro Council concludes that Stafford is appropriately designated as an urban reserve area under the applicable statutes and rules. Given the unique location of Stafford, its proximity to existing cities, its size and ability to provide a significant amount of development capacity in the form of a wide range of needed housing types as well as mixed-use and employment land, its location in an area that consists of conflicted agricultural land where adverse impacts on farm use can be avoided, and its high ranking under nearly all of the urban reserve factors, Stafford is one of the most obvious candidates for an urban reserve designation in the entire region." Metro 2017 Record at 71-72 (citations omitted).

The Commission finds that Metro applied and evaluated each factor; weighed and balanced the factors as a whole, and provided a meaningful explanation of why it designated Areas 4A, 4B, 4C, and 4D as urban reserve. The remand submittal did not make any changes to urban reserves previously submitted to the Commission and upheld by the Court of Appeals on judicial review;

therefore, the Commission concludes that the Metro urban reserves comply with ORS 195.145(5) and OAR 660-027-0050.

3. Amount of Rural Reserve Land

Neither the statute nor the rule includes criteria, standards or factors concerning the amount of rural reserve land the counties may, should, or must designate. (Nor does the statute or rules require the counties to designate any particular land.) As the Court of Appeals recognized, "Unlike with urban reserves, the legislature did not impose a limitation on the amount of land that may be designated as rural reserve." *Barker's Five*, 261 Or App at 274. The rural reserve factors address the qualities of the land, and there is no state standard regarding how many acres of rural reserves a county may designate. The purpose statement in the rule (OAR 660-027-0005(2)) includes the following provision:

> "The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."

Since this "balance" is not implemented through prescribed criteria, the counties and Metro have considerable discretion in deciding which lands warrant the protections provided by a rural reserve designation.

4. Location of Rural Reserves

Both the statute and rules provide "factors" the counties must consider in locating rural reserves, but no standards or criteria with which the counties are required to show compliance or satisfaction.[13] Similarly, compliance or satisfaction of the factors does not compel the counties to designate any particular land for rural reserve. The "rural reserve factors" for agricultural and forest lands are whether the lands:

> "(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;
> "(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;
> "(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and
> "(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:

[13] The Court of Appeals noted that the nonexclusive list of statutory factors derived from the ODA Report that the court described at pages 267-269. *Barker's Five*, 261 Or App at 274.

"(A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;

"(B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;

"(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and

"(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable." OAR 660-027-0060(2).

The rural reserve factors for designating lands to protect important natural landscape features are whether the lands:

"(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described OAR 660-027-0040(2) or (3);
"(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;
"(c) Are important fish, plant or wildlife habitat;
"(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;
"(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;
"(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses;
"(g) Provide for separation between cities; and
"(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks." OAR 660-027-0060(3).

The findings regarding rural reserve decisions included in each county's and Metro's decisions can be found in Metro's submittal. Metro 2017 Record at 47–53 for Clackamas County; 75–78 and 83–91 (supplemental findings for Area 9D) for Multnomah County. The findings describe each rural reserve area and explain the county's findings regarding the rural reserve factors in OAR 660-027-0060.

The remand submittal supplemental findings regarding the designation of Area 9D as rural reserve are Multnomah County's response to Remand Order 14-ACK-001867. Having concluded in Order 12-ACK-001819 that the application of urban and rural reserve factors to designate areas as rural or urban reserves otherwise complied with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and other applicable rules, the Commission remanded the explanation of why the consideration of the rural reserve factors yields a rural reserve designation of all land in Rural Reserve Area 9D for further action consistent with the principles expressed in *Barker's Five.* Multnomah County summarized the *Barker's Five* principles applicable to the analysis on remand:

> "the county's explanation of its rural reserve designation of Area 9D was inadequate because it failed to acknowledged the dissimilarities between the northern and southern portions of that area and explain why, nonetheless, a rural reserve designation is suitable for all of the land in Area 9D. Simple acknowledgement and explanation would suffice: the explanation need not be elaborate; does not need to justify the designation of any particular lot or parcel; and does not need to establish that the county has chosen the designation that 'better suits' the area." Metro 2017 Record at 85.

The Commission concludes that the county properly understood the scope of the remand.

Multnomah County did not open the record, but drew the remand submittal explanation from the report prepared by county staff and its Citizen Advisory Committee (CAC Report) that it previously adopted by Resolution 09-153. Area 9D is Study Area 6 in the CAC Report, which specifically evaluated both the agricultural and forest industry factors of OAR 660-027-0060(2) and the important natural landscape features factors of OAR 660-027-0060(3) for all of Area 9D. Multnomah Co. 2017 Record at 21135-21145.

Acknowledging that the application of the reserve factors to Area 9D often yielded different results as to the land in the area that is north of Skyline Boulevard and the land that is south of Skyline, Multnomah County first explained the dissimilarities. The northern portion consists of large blocks of forest land providing high-value habitat, recreation access, and is a landscape feature important to the region, but is subject to little risk of urbanization. By contrast, the southern portion is primarily farm area containing "important" farmland that has certain farming limitations but good integrity overall due to few non-farm uses and edges compatible to farming; stream features of Abbey Creek that are mapped as important regional resources and that separate urban from rural lands; and is subject to a risk of urbanization. Common to both portions are a high rank for sense of place and the presence of important upland habitat areas, albeit of lesser regional value overall to the south.

Having identified the dissimilarities, the county next proceeded to explain that the application of the rural reserves factors yields a rural reserve designation for each portion of the area and, thereby, all of the land in Area 9D. First considering the agricultural and forest industry factors of OAR 660-027-0060(2), the county concluded that the northern portion is highly capable of sustaining forest operations and that the southern portion is highly capable of sustaining farm operations, due to the availability of large blocks of land, the clustering of farm or forest operations, the adjacent land use patterns, and the sufficiency of infrastructure to support those industries. The presence of adequate buffers between resource and non-resource uses in both portions and suitable soils for forestry in the northern portion and Class II to IV soils for farm operations in the southern portion weighed in favor of a rural reserves designation for all of Area 9d. The county determined that only the southern portion is at a particularly high risk of urbanization.

Regarding the important natural landscape features factors of OAR 660-027-0060(3), the county found that both the northern and southern portions of Area 9 D provide a sense of place and easy access to recreational opportunities; and provide areas of important fish, plant and

wildlife habitat. The northern and southern portions differed in their susceptibility to natural disasters or hazards reflecting their differing topography. None of Area 9D provides for separation between cities; however, the southern portion was deemed of importance for buffering conflicts between urban and rural uses. Similarly, the county deemed a rural reserve designation of the southern portion important to protect Rock Creek and Abbey Creek, but found such a designation not necessary for the purpose of protecting water quality in the northern portion.

The county concluded, "although application of the factors failed to yield similar results as to the northern and southern portions of Area 9D, the record reflects that application and consideration of both sets of rural reserve factors, the farm and forest protection and landscape features factors, yields a rural reserve designation for each portion of the area and, thereby, all of the land in Area 9D." Metro 2017 Record at 89. The Commission finds that Multnomah County has applied and evaluated each factor in OAR 660-027-0060(2) and (3), has weighed and balances the factors as a whole and demonstrated understanding that they are not independent approval criteria, and has meaningfully explained, in light of the dissimilarities in the northern and southern portions of Area 9D, why a rural reserve designation is appropriate for the entire area.

The court's remand also required a determination of the effect of the ultimate Area 9D designation on reserves in Multnomah County in its entirety. In short, the county found no effect, because there ultimately was no alteration to the designation of reserves in Multnomah County. Metro 2017 Record at 89-91. The remand submittal did not otherwise make any changes to rural reserves previously submitted to the Commission and upheld by the Court of Appeals on judicial review. The Commission determines that there is no effect on the designations of reserves in Multnomah County in its entirety. The Commission concludes that the rural reserves comply with ORS 195.141(3) and OAR 660-027-0060.

5. Plan and code provisions to implement reserves policy

The statute and administrative rule requirements relevant to planning and land use regulations within reserves are found in ORS 195.145(3) and OAR 660-027-0070. The Commission has determined that the counties and Metro had complied with those provisions. Order 12-ACK-001819 at 34. Nothing in the remand submittal changes that conclusion.

6. "Best Achieves"

Metro supplemented its Metro Ordinance No. 11-1255 findings under OAR 660-027-0040(10) explaining why the Metro Urban and Rural Reserves Submittal designations achieve the "best achieves" objective in OAR 660-027-0005(2) to address issues related to the regionwide supply of urban reserves and the overall balance of reserves in light of (a) the adoption of the current UGR in 2015, and (b) the Oregon Legislature's enactment of House Bill 4078. [14] Metro 2017 Record at 19-28. The findings are mindful of the four legal premises that

[14] Metro adopted findings that HB 4078 acknowledged the new balance of urban and rural reserves across the region as being in compliance with state law, and therefore a new analysis by Metro and the counties is not required. The

circumscribe the discretion Metro and the counties have under the best achieves standard. *Barker's Five*, 261 Or App at 311. Thus, the findings conclude that the simple quantitative reduction of urban reserves in Washington County by HB 4078, does not inherently raise concerns under the qualitative standard. Metro 2017 Record at 25. Metro found in part:

> "Two of the three objectives that the best achieves standard requires to be balanced are primarily achieved through rural reserve designations: (a) protection of farm and forest and (b) protection of important natural resource features. The region's ability to achieve these two objectives through rural reserve designations is not impacted by the reduction of urban reserve acreage that occurred via House Bill 4078. In fact, that legislation enhanced the region's ability to achieve those two standards by adding approximately 2,780 acres of new rural reserves in Washington County, all of which is foundation agricultural land.
>
> "The third objective that must be balanced as part of the best achieves analysis is "livable communities." This objective is primarily achieved by designating areas across the region that will be the best locations to build "great communities" through application of the urban reserve factors. As discussed in Section II of these findings, great communities are those that offer residents a range of housing types and transportation modes from which to choose. To that end, urban reserve factors (1), (3), (4) and (6) are aimed at identifying lands that can be developed in a compact, mixed-use, walkable and transit-oriented pattern, supported by efficient and cost-effective services.
>
> "The reduction of urban reserves in Washington County by 3,210 acres does not impact the region's ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by [OAR 660-027-0040(2)] that requires sufficient acreage for up to 50 years of urban growth. Meanwhile, the directive of the best achieves standard to provide livable communities is aimed at designating highest quality of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region's ability to plan and build livable communities on those 23,031 acres over the next several decades. Therefore, the balance in the designation of urban and rural reserves, in its entirety, still achieves the goals of providing livable communities, viability and vitality of farm and forest industries, and the protection of important natural landscape features that define the region." Metro Record 2017 at 27.

The Commission finds that the remand submittal demonstrates compliance with OAR 660-027-0005(2). Considering the joint designation in the entirety, Metro and the counties findings demonstrate that they have applied the urban and rural reserve factors to arrive at a reserves designation that meets the qualitative standard.

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findings were also to demonstrate that the "best achieves" standard is satisfied. Metro 2017 Record at 23-27. The Commission focuses on the latter findings.

7. Statewide Planning Goals

The Commission reviews the remand submittal findings of fact and conclusions of law that demonstrate that the adopted or amended plans, policies and other implementing measures to designate urban and rural reserves comply with the applicable statewide planning goals. OAR 660-027-0080(4). In its review for compliance with the applicable statewide planning goals, the rule provides:

> "Under ORS 197.747 "compliance with the goals" means the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature." OAR 660-027-0080(4)(a).

The remand submittal included findings related to Goals 1 to 15.[15] The Commission has reviewed those findings and concludes that the remand submittal complies with the goals. Most

[15] The remand submittal findings are:

"Goal 1 - Citizen Involvement

"The four governments developed an overall public involvement program and, pursuant to the Reserve Rule [OAR 660-027-0030(2)], submitted the program to the State Citizen Involvement Advisory Committee (CIAC) for review. The CIAC endorsed the program. The four governments implemented the program over the next two and a half years. Each county and Metro adapted the program to fit its own public involvement policies and practices, described above. In all, the four governments carried out an extraordinary process of involvement that involved workshops, open houses, public hearings, advisory committee meeting open to the public and opportunities to comment at the governments' websites. These efforts fulfill the governments' responsibilities under Goal 1.

"Goal 2 - Land Use Planning

"There are two principal requirements in Goal 2: providing an adequate factual base for planning decisions and ensuring coordination with those affected by the planning decisions. The record submitted to LCDC contains an enormous body of information, some prepared by the four governments, some prepared by their advisory committees and some prepared by citizens and organizations that participated in the many opportunities for comment. These findings make reference to some of the materials. The information in the record provides an ample basis for the urban and rural reserve designated by the four governments.

"The four governments coordinated their planning efforts with all affected general and limited purpose governments and districts and many profit and non-profit organizations in the region (and some beyond the region, such as Marion, Yamhill and Polk Counties and state agencies) and, as a result, received a great amount of comment from these governments. The governments responded in writing to these comments at several stages in the two and one-half year effort, contained in the record submitted to LCDC. See Attachment 2 to June 3, 2010, Staff Report. These findings make an additional effort to respond to comments from partner governments (cities, districts, agencies) on particular areas. These efforts to notify, receive comment, accommodate and respond to comment fulfill the governments' responsibilities under Goal 2.

"Goal 3 - Agricultural Lands

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 3. Designation of agricultural land as rural reserve protects the land from inclusion within an urban growth boundary and from redesignation as urban reserve for 50 years. Designation of agricultural land as urban reserve means the land may be added to a UGB over the next 50 years. Goal 3 will apply to the addition of urban reserves to a UGB. The designation of these urban and rural reserves is consistent with Goal 3.

"Goal 4 - Forest Lands

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 4. Designation of forest land as rural reserve protects the land from inclusion within an urban growth boundary and from redesignation as urban reserve for 50 years. Designation of forest land as urban reserve means the land may be added to a UGB over the next 50 years. Goal 4 will apply to the addition of urban reserves to a UGB. The designation of reserves is consistent with Goal 4.

"Goal 5 - Natural Resources, Scenic and Historic Areas and Open Spaces

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands inventoried and protected as Goal 5 resource lands. Designation of Goal 5 resources as rural reserve protects the land from inclusion within an urban growth boundary and from re-designation as urban reserve for 50 years. Designation of Goal 5 resources as urban reserve means the land may be added to a UGB over the next 50 years. Goal 5 will apply to the addition of urban reserves to a UGB. The designation of reserves is consistent with Goal 5.

"Goal 6 - Air, Water and Land Resources Quality

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations intended to protect air, water or land resources quality. Nor does designation of reserves invoke state or federal air or water quality regulations. The designation of reserves is consistent with Goal 6.

"Goal 7 - Areas Subject to Natural Hazards

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations intended to protect people or property from natural hazards. Nonetheless, the four governments consulted existing inventories of areas subject to flooding, landslides and earthquakes for purposes of determining their suitability for urbanization or for designation as rural reserve as important natural landscape features. This information guided the reserves designations, as indicated in the findings for particular reserves, and supported designation of some areas as rural reserves. Goal 7 will apply to future decisions to include any urban reserves in the UGB. The designation of reserves is consistent with Goal 7.

"Goal 8 - Recreational Needs

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations intended to satisfy recreational needs. The designation of reserves is consistent with Goal 8.

"Goal 9 - Economic Development

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 9. All urban and rural reserves lie outside the UGB. No land planned and zoned for rural employment was designated rural reserve. Designation of land as urban reserve helps achieve the objectives of Goal 9. Much urban reserve is suitable for industrial and other employment uses; designation of land suitable for employment as urban reserve increases the likelihood that it will become available for employment uses over time. The designation of reserves is consistent with Goal 9.

"Goal 10 - Housing

"All urban and rural reserves lie outside the UGB. No land planned and zoned to provide needed housing was designated urban or rural reserve. The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not remove or limit opportunities for housing. The designation of reserves is consistent with Goal 10.

of the Goals do not play a direct role at the point of reserves designation. *See Barker's Five*, 261 Or App at 288-292 (affirming that Goal 9 does not apply to the reserves designation). However, the findings demonstrate an understanding that the Goals will apply to subsequent decisions that are facilitated by the designation of reserves and indicate that the designations do not preempt the proper later application of the Goals.

Goal 2 plays two immediate roles in the reserves designation: adequate factual base and coordination. Below, the Commission considered objections and related exceptions asserting that the remand submittal lacked an adequate factual base and applied its standard of review:

> "To determine compliance with the Goal 2 requirement for an adequate factual base, the Commission shall consider whether the submittal is supported by substantial evidence. Under ORS 183.482(8)(c), substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding[.]" OAR 660-027-0080(4)(a).

"Goal 11 - Public Facilities and Services

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not place any limitations on the provision of rural facilities and services. The four governments assessed the feasibility of providing urban facilities and services to lands under consideration for designation as urban reserve. This assessment guided the designations and increases the likelihood that urban reserves added to the UGB can be provided with urban facilities and services efficiently and cost-effectively. The designation of reserves is consistent with Goal 11.

"Goal 12 - Transportation

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not place any limitations on the provision of rural transportation facilities or improvements. The four governments assessed the feasibility of providing urban transportation facilities to lands under consideration for designation as urban reserve, with assistance from the Oregon Department of Transportation. This assessment guided the designations and increases the likelihood that urban reserves added to the UGB can be provided with urban transportation facilities efficiently and cost-effectively. The designation of reserves is consistent with Goal 12.

"Goal 13 - Energy Conservation

"The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and has no effect on energy conservation. The designation of reserves is consistent with Goal 13.

"Goal 14 - Urbanization

"The designation of urban and rural reserves directly influences future expansion of UGBs, but does not add any land to a UGB or urbanize any land. Goal 14 will apply to future decisions to add urban reserves to the regional UGB. The designation of urban and rural reserves is consistent with Goal 14.

"Goal 15 - Willamette River Greenway

"No land subject to county regulations to protect the Willamette River Greenway was designated urban reserve. The designation of urban and rural reserves is consistent with Goal 15." Metro Record 2017 at 92-95.

The Commission also considered contentions that the remand submittal violated the coordination requirement of Goal 2. For reserves, the Commission finds that compliance with the mandate of ORS 195.143 for a "coordinated and concurrent process" for reserves and the OAR 660-027-0080(2) requirements for submitting reserves "jointly and concurrently" demonstrates compliance with the Goal 2 requirement as to coordination between Metro and the counties.

The Commission finds the remand submittal complies with the Goals.

IV. CONSIDERATION OF OBJECTIONS

The Department analyzed the valid objections submitted under OAR 660-025-0140(2) and, in the reports issued pursuant to OAR 660-025-0140(6), provided the Commission a recommendation to reject each objection. *See* DLCD October 26, 2017 Report at 15-34. Several objectors also filed written exceptions to the DLCD October 26, 2017 Report pursuant to OAR 660-025-0160(4). The Department reviewed and responded to the exceptions. *See* DLCD November 9, 2017 Report at 2-5. After considering the objections, recommendations, exceptions, responses and the oral arguments presented at the public hearings, the Commission rejects each objection for the reasons set forth below.

A. Barker's Five, LLC *et al.*

Barker's Five, LLC and the Barker family (Barker's) own property in the southern portion of Area 9D in Multnomah County. Barker's raise seven objections to the rural reserve designation of the southern portion of Area 9D. Barker's August 14, 2017 objection. Barker's renew those objections in their exceptions. Barker's November 6, 2017 exception. The proposed remedy is for the Commission to remand Multnomah County's and Metro's decision so the property can be designated urban reserve. The overall theme to the objections and exceptions is that Multnomah County was required for various reasons to open the record on remand and that by not doing so, the remand submittal lacks an adequate factual base to support a rural reserves designation for Area 9D. The Commission reviewed the remand submittal in section III.C.4 above and determined that it complied with Remand Order 14-ACK-001867 and applicable law. Nothing in the Barker's August 14, 2017 objection or November 6, 2017 exception alter that determination and the Commission rejects them, as discussed individually below.

1. Objection 1 – Factual Base

Barker's contend Multnomah County's decision to not reopen the record resulted in an inadequate factual basis for its decision in violation of Goal 2, "Land Use Planning." Barker's August 14, 2017 objection at 2. The objection reasons that, because the evidence in the county record is more than seven years old, it does not include information regarding the development that has occurred near Area 9D since the initial submittal, and that this development and other changes would result in different conclusions regarding whether farm use of lands in Area 9D is sustainable. Barker's assert that Goal 2 requires decisions that rely on "relatively current" evidence.

The Court of Appeals found that Multnomah County failed to meaningfully explain why, in light of certain dissimilarities between the northern and southern portions of the area, the county's consideration of the rural reserve factors yields a rural reserve designation of all land in Area 9D. *Barker's Five*, 261 Or App at 436. For the designation of rural reserves, a county must (1) apply and evaluate each rural reserve factor, (2) weigh and balance the factors – which are not independent criteria – as a whole, and (3) meaningfully explain why a rural reserve designation for the entire area is appropriate. *Barker's Five*, 261 Or App at 301. The Goal 2 requirement for an adequate factual base requires that a legislative land use decision be supported by substantial evidence. ORS 197.633(3)(a).

Barker's are correct that consideration of the rural reserves factors under OAR 660-027-0060(2)(a) and (3)(a) required Multnomah County to evaluate whether the area under consideration is potentially subject to urbanization. The Multnomah County findings adopted in response to the remand indicate that the county did consider that the southern part of Area 9D was adjacent to urban land use ("this southern portion *is* subject to a risk of urbanization"; "This area is within an area potentially subject to urbanization based on analysis of key urban services"). Multnomah Co. 2017 Record at 21129, 21131. Although some of the adjacent development that Barker's describe in the North Bethany area may have been built after the county's urban and rural reserves record was established, the North Bethany area was planned for urban development at that time and the county reasonably assumed that it would develop. Multnomah Co. 2010 Record at 3014. Thus, because the county was able to consider the urbanization plans for North Bethany in its application and evaluation of the rural reserve factors and subsequent balancing of the factors, the objection does not establish that the county record was inadequate for that undertaking on remand. Opening the record for evidence of "the substantial urbanization that has occurred in the area known as North Bethany, which is directly adjacent to * * * the lower portion of Area 9D" may have been important had the county concluded that the southern portion of Area 9D was not potentially subject to urbanization under OAR 660-027-0060(2)(a) and (3)(a), as such evidence might illuminate the reasonableness of such a county determination.[16] However, the Commission finds that the objection does not establish the absence of an adequate factual base for the remand submittal. The objection does not cite a procedural requirement that the record be opened to address the remand and the Commission is aware of no such requirement. [17] For the foregoing reasons, the Commission rejects this objection.

[16] In contending that the county decision lacked an adequate factual base, Barker's exception states "Where factors are present that would support either an urban reserve or rural reserve Multnomah County is required to demonstrate a balancing, or consideration, of pertinent factors in order to determine the proper designation of reserves." Barker's November 6, 2017 exception at 1-2. The Commission finds that argument to be founded on an inaccurate understanding of the applicable law. Neither the Commission's rules nor the statutory scheme require the county to consider both an urban and rural reserve designation for Area 9D. *Barker's Five*, 261 Or App at 308-309. Likewise, neither the Commission's rules nor the statutory scheme require the designation of particular land as urban or rural reserve or a determination of relative suitability for either designation. *Id.* at 310.

[17] The Commission does not understand the objection to the county's decision to not re-open the record to assert a procedural issue under for review under ORS 197.633(3)(b), only an evidentiary issue under ORS 197.633(3)(a).

2. Objection 2 – Amount of Urban Reserves

Barker's contend that, by not utilizing the most recent assessment of the capacity inside the Metro UGB and need for additional urban land, Multnomah County violated OAR 660-027-0040(2).[18] Barker's August 14, 2017 objection at 2. The Barker's exception asserts that OAR 660-027-0040(2) "specifies that reserves are calculated using 'the most recent inventory, determination and analysis performed under ORS 197.296.'" Barker's November 6, 2017 exception at 4. The argument demonstrates a misunderstanding of the scope of the Commission's rule, which specifically applies to the designation of *urban reserves.* On remand, Multnomah County was considering the *rural reserve* designation of Area 9D.

As discussed under Section III.C.1 above, Metro has adopted a new urban growth report, assessing urban land capacity and need under ORS 197.296 in November 2015. The Commission's rule assigns Metro, and not Multnomah County, the task of using the most recent UGR to plan urban reserves to accommodate an additional 20-30 years of estimated urban population and employment growth. OAR 660-027-0040(2). That scheme reflects a distinction between urban and rural reserves. For rural reserves, which Multnomah County was considering on remand, there is no parallel amount of land standard. *See* Section III.C.3 above.

Multnomah County did not err by not re-opening the record to add the most recent UGR in its application, evaluation, weighing, and balancing of the rural reserve factors to lands in Area 9D. Metro designates urban reserves and it therefore bears the burden of demonstrating compliance with OAR 660-027-0040(2). Determination of the need under the rule is a region-wide – not county-specific – exercise. The Court of Appeals upheld the Commission's approval of the adopted region-wide need for urban reserves. *Barker's Five*, 261 Or App at 288, 363. The Commission rejects this objection because Multnomah County is not required to consider compliance with the amount of urban reserves under OAR 660-027-0040(2) in the designation of rural reserves.

3. Objection 3 – Effect of HB 4078

Barker's contend Multnomah County failed to meaningfully consider the impact of HB 4078, the bill establishing reserves in Washington County, on regional reserves or allow evidence on the impact of the bill on Multnomah County reserves. Barker's August 14, 2017 objection at 3. The objection alleges that this results in violation of Goal 1, "Citizen Involvement," and Goal 2, "Land Use Planning." However, neither the Barker's objection nor

[18] OAR 660-027-0040(2) provides:

> "Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land, based on the estimated land supply necessary for urban population and employment growth in the Metro area for that number of years. The 20 to 30-year supply of land specified in this rule shall consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro in accordance with OAR 660-027-0030."

their exception establishes that the Commission required Multnomah County to consider HB 4078 in Remand Order 14-ACK-001867 and the Commission finds no basis to sustain this objection.

Barker's contend that the county violated Goal 1 by refusing to allow or consider any evidence on the impact of HB 4078. Statewide Planning Goal 1 is to "develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process." OAR 660-015-0000(1). The submittal does not amend or affect Multnomah County's citizen involvement program. Under that circumstance, Multnomah County's submittal is in violation of Goal 1 only if the submittal includes provisions that are inconsistent with Multnomah County's citizen involvement program. *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176, 196-197 *aff'd Homebuilders Assn. of Metropolitan Portland,* 184 Or App at 669. Barker's do not attempt to establish that the submittal includes provisions that are inconsistent with Multnomah County's citizen involvement program. The Commission concludes that the objection has not established that the submittal fails to comply with Goal 1.

The objection states that Multnomah County should have opened the record "in order to determine whether there is sufficient buildable land region wide, given the loss of net urban reserves as a result of HB 4078." Barker's August 14, 2017 objection at 3. As discussed above, determining "whether there is sufficient buildable land region wide," relates to OAR 660-027-0040(2), a responsibility assigned to Metro.[19] The Commission rejects this objection because it provided no basis to remand the remand submittal.

4. Objection 4 – Intraregional Coordination

Barker's contend that Multnomah County's lack of coordination with Metro resulted in the governments having substantially different records and it reiterates Objection 3 by again asserting that the county's decision not to open the record prevented meaningful participation in the process, and that these failures led to violation of Goals 1 and 2. Barker's August 14, 2017 objection at 3.

This objection assumes, because Metro chose to open the urban and rural reserves record during its consideration of an appropriate response to the remand and Multnomah County did not, that the two local governments failed to coordinate, as required in Goal 2.[20] The Commission finds that local governments may select different procedures for their response to a remand as long as the option they select complies with relevant statutes, goals, and rules. Goal 2 requires an adequate factual base, not that separate units of local government must coordinate on precisely the same record.

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[19] Multnomah County adopted Ordinance No. 1246, and section 4 incorporated Metro Ordinance No. 17-1397 by reference. Multnomah Co. 2017 Record at 21003. The Metro ordinance includes findings related to the effect of HB 4078.

[20] Goal 2 requires: "Each plan and related implementation measure shall be coordinated with the plans of affected governmental units." ORS 197.015(5) provides, "A plan is 'coordinated' when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible."

The Commission has construed the Goal 2 coordination requirement generally to be satisfied where the local government has engaged in an exchange of information regarding an affected governmental unit's concerns, put forth a reasonable effort to accommodate those concerns and legitimate interests as much as possible, and made findings responding to legitimate concerns. However, specific to urban and rural reserves, the Commission finds that Goal 2 coordination is demonstrated through compliance with ORS 195.143. As discussed by the court:

> "The designation of urban and rural reserves requires coordination and agreement between Metro and the counties. To that end, ORS 195.143(1) provides that Metro and a county 'must consider simultaneously the designation and establishment' of rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145(1)(b). * * * the direction 'to consider the establishment of rural reserves and urban reserves simultaneously' ensures 'coordination of the planning of both types of reserves and consideration of the relationship between them.'" *Barker's Five,* 261 Or App at 275.

The remand submittal is coordinated for Goal 2 purposes because it complies with the joint and concurrent submittal requirement of OAR 660-027-0080(4). Metro Ordinance No. 17-1405, Exhibit B includes the supplement findings of fact, statements of reasons and conclusions, and conclusions of law that Multnomah County made in Ordinance No. 1246. Metro 2017 Record at 83-91. The Commission finds that the remand submittal is coordinated for purposes of Goal 2. The objection provides no basis for the Commission to remand the submittal and the Commission rejects this objection.

5. Objection 5 – Inadequate Findings

Barker's contend that, because Multnomah County's findings regarding Area 9D are substantially the same as those made previously, the remand submittal is not responsive to the remand. Barker's August 14, 2017 objection at 4.

The objection asserts that the Commission remanded Area 9D for further findings under ORS 195.141 and 195.145 and OAR chapter 660, division 27. Barker's August 14, 2017 objection at 4. To be precise, the remand order actually stated said that the Commission, "remands Rural Reserve Area 9D to Multnomah County * * * for further action consistent with the principles expressed in *Barker's Five, LLC v. LCDC*, 261 Or App 259, 323 P3d 368 (2014)." Order 14-ACK-001867 at 3. The "further action consistent with the principles" of the court decision are summarized in the conclusion of the court's decision:

> "LCDC's order is unlawful in substance to the extent that it concluded that Multnomah County's 'consideration' of the factors pertaining to the rural reserve designation of Area 9D was legally sufficient. On remand, LCDC must determine the effect of that error on the designations of reserves in Multnomah County in its entirety." *Barker's Five,* 261 Or App at 364.

That court also stated, "the county was obligated to meaningfully explain why its consideration of the factors yielded a rural reserve designation of all of the land in Area 9D" and "Such an explanation need not be elaborate but should acknowledge the dissimilarities and explain why,

nonetheless, the county opted for the reserves designation that it did." *Barkers Five*, 261 Or App at 346.

In response to the remand, Multnomah County adopted findings that explain the dissimilarities between the northern and southern portions of Area 9D and why the county continues to designate the southern portion rural reserves. Multnomah Co. 2017 Record at 21129-21133. These findings rely on evidence in the existing record that the Commission concluded was substantial evidence. Order 12-ACK-001819 at 121. The Commission considered and approved Multnomah County's response in the Remand Submittal above in Section III.C.4. The objection provides no basis for remand; therefore the Commission rejects it.

6. Objections 6 and 7 – Appropriate Designation

The Barker's state two objections that mirror one another and, therefore, are treated together here. The first of these alleges that the record reflects a rural reserve designation is not appropriate for Barker's property and surrounding properties, and that there is an inadequate factual basis for that designation. The second is that the record reflects that an urban reserve designation is appropriate for the property and surrounding properties and that there is an inadequate factual basis for a designation that is not urban reserve. Barker's August 14, 2017 objection at 5.

The objection that a rural reserve designation is not appropriate, purports to articulate a standard for rural designation from *Barker's Five.* The Commission finds that the standard is in OAR 660-027-0060(2) and (3) and that Multnomah County properly identified that standard. The Barker's exception states "Where factors are present that would support either an urban reserve or rural reserve Multnomah County is required to demonstrate a balancing, or consideration, of pertinent factors in order to determine the proper designation of reserves." Barker's November 6, 2017 exception at 1-2. However, neither the Commission's rules nor the statutory scheme required Multnomah County to consider both an urban and rural reserve designation for Area 9D. *Barker's Five*, 261 Or App at 308-309. These arguments are essentially updates of those the objectors advanced prior to the Commission's approval of reserves in Order 12-ACK-001819 and in the Court of Appeals decision. The court agreed that "if the factors are properly considered and applied, the statutes and rules do not require a demonstration 'that an area is better suited as an urban reserve than as a rural reserve…'" before land is designated one or the other. *Barker's Five*, 261 Or App at 310. The Commission's remand required the county to explain why its consideration of the factors yielded a *rural reserve* designation for all of the land in Area 9D, since the characteristics of the southern portion of the area is different from those in the north. The county completed this explanation and an explanation of why it chose to designate all of Area 9D, including the southern portion of the area, which contains the objector's property, rural reserve. Multnomah Co. 2017 Record at 21127-21133. The county was not required to study individual parcels or groups of properties, but rather entire areas. That objectors suggest that the county should have made a different designation does not provide a basis for remand, because the Commission reviews what was submitted and does not otherwise engage in a possible designation analysis. The Commission rejects this objection.

B. Metropolitan Land Group

Metropolitan Land Group ("MLG") owns land within Area 9B, an area designated rural reserve by Multnomah County. MLG essentially objects to the rural reserve designation on its property and raises six objection suggesting that the remand submittal does not comply with the "best achieves" standard. MLG August 14, 2017 objection. The proposed remedy is for the Commission to remand Multnomah County's and Metro's remand submittal.

1. Objection 1 – Consideration of Differences

The first objection asserts that Multnomah County should have explained why, in readopting the reserves designations for MLG's property, it applied a rural reserve designation to land that MLG contends markedly differs in physical characteristics from those in the rest of the area. MLG August 14, 2017 objection at 1. This objection quotes from the court's remand of Area 9D and the instructions to the county to meaningfully explain why, in light of dissimilarities between the northern and southern portions the area, the county's consideration of the rural reserve factors yields a rural reserve designation of all land in area.

Objector MLG's property is in Multnomah County rural reserve Area 9B, which had been Study Area 7. The objector asserts that its property was "a component of the larger 9D study area," but does not direct the Commission to evidence in the record supporting that contention. During its initial consideration of reserves designations, Multnomah County identified study areas with the numerals; in the northwest hills, candidate areas received designations 5 through 9. Multnomah Co. 2010 Record at 1105-1106. In the county's ordinance adopting the rural reserves, the numbering scheme changed to match a region-wide system, but the boundaries of the areas did not. The rural reserves in the northwest hills ultimately received designations 9A–9D and 9F. Multnomah Co. 2010 Record at 9674. Study Area 7, including MLG's property, is a part of rural reserve Area 9B and was never a part of what became Area 9D.

Neither the *Barker's Five* decision nor Remand Order 14-ACK-001867 instructed Multnomah County to explain why the entirety of Area 9B received a rural reserves designation, or, indeed, to reconsider the area at all, and the county did not elect to do so. The court previously considered and rejected MLG's substantial evidence challenge to Area 9B. *Barker's Five*, 261 Or App at 363. Finally, the county is not required to analyze individual properties regarding suitability for reserves designation. *Barker's Five*, 261 Or App at 346. For these reasons, the Commission rejects this objection.

2. Objections 2–7 – "Best Achieves"

In these six objections, MLG identifies the "best achieves" standard in OAR 660-027-0005(2) as the administrative rule that the remand submittal allegedly violates under OAR 660-025-0140(2). MLG argues that Metro's conclusion that the "best achieves" standard is met is not supported by an adequate factual base, a violation of Goal 2. MLG advances six interrelated contentions under that theme:

1. "The Decision Fails to Demonstrate that it 'Best Achieves' the Required Planning Objectives"
2. "The Decision Must Account for the Overall Reserves Changes Under HB 4078"
3. "The Decisions' Urban Reserve Designations Will Not Meet the Area's Employment and Population Needs"
4. "Reliance on the 2014 Urban Growth Report is Misplaced Due to Changed Circumstances"
5. "The Decision Does Not Account for the Disincorporation of Damascus"
6. "Future Urbanization of Stafford Is Unlikely Due to Cities' Control of the Urbanization Process"

MLG August 14, 2017 objection at 2–5. Those objections contend generally that the remand submittal lacks an adequate factual base because of changes in circumstances that have occurred since 2011.

The Commission begins with MLG's concern that reliance on the 2014 UGR is misplaced due to changed circumstances. While MLG agrees that the 2014 UGR "is a useful forecasting tool and reliance on its conclusions is warranted in many circumstances" the objection is that Metro must account for subsequent changes, using West Hayden Island and Damascus as examples. MLG August 14, 2017 objection at 3. The Commission disagrees. Metro may use its acknowledged 2014 UGR to establish the UGB-planning period's buildable land supply. OAR 660-027-0040(2). Metro also testified to the Commission that the 2014 UGR did discount buildable capacity in Damascus by 40,000 houses and less employment; the Commission finds that is reflected in the 2014 UGR.[21] The Commission rejects MLG's objection that the remand submittal does not account for the disincorporation of Damascus, because the 2014 UGR addresses that eventuality. Furthermore, any quantitative capacity change for areas already within the Metro urban growth boundary, does not necessarily require consideration when striking the qualitative balance between the long-term trade-offs of further geographic expansion of the Portland Metro urban area and the conservation of farm, forest, and natural features that surround the metro area.

Regarding MLG's objection that the remand submittal must account for the overall reserves changes under HB 4078, Metro's findings state:

> "Some parties have argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 inherently caused a shift in the 'balance' of urban reserves that runs afoul of the best achieves standard. However, under the above-stated first premise of the Court of Appeals, that is incorrect. The court held that the best achieves standard does not require quantitative balancing of the specific amount of urban reserve acreage in one county or another. Thus, the reduction of urban reserves in Washington County by 3,210 acres does not inherently raise concerns under this standard.
>
> "* * *

[21] Under the heading "What about Damascus?" is the statement "the UGR's final analysis reflects the likelihood that the City of Damascus will disincorporate and that Happy Valley will annex portions of the area." 2014 UGR at 22.

> "The reduction of urban reserves in Washington County by 3,210 acres does not impact the region's ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by [OAR 660-027-0040(2)] that requires sufficient acreage for up to 50 years of urban growth. Meanwhile, the directive of the best achieves standard to provide livable communities is aimed at designating highest *quality* of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region's ability to plan and build livable communities on those 23,031 acres over the next several decades. Therefore, the balance in the designation of urban and rural reserves, in its entirety, still achieves the goals of providing livable communities, viability and vitality of farm and forest industries, and the protection of important natural landscape features that define the region." Metro 2017 Record at 25, 27.

The Commission finds that the quantitative changes to reserves designations in Washington County resulting from the enactment of ORS 195.144 do not *require* corresponding urban reserves designation changes in other counties. The Commission formerly found that the local governments have considerable discretion in determining the amount and location of reserves. Order 12-ACK-001819 at 105 states:

> "OAR 660-027-0005(2) does not require any set amount of urban, rural or undesignated land, and leaves substantial discretion to Metro and the counties to evaluate and determine the amount of urban and rural land that 'in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.'"

The Court of Appeals agreed, stating:

> "LCDC's construction of the best achieves standard is consistent with appellate decisions addressing the concept of discretion in a variety of contexts. Those cases demonstrate that the essence of discretion requires the decision-maker – as opposed to a reviewing agency or court – to resolve evidentiary conflicts and draw inferences consistent with the record and to ultimately weigh and apply the various factors in reaching its ultimate decision." *Barker's Five,* 261 Or App at 316.

The court concluded that the Commission's "interpretation of the best achieves standard to permit a range of permissible designations by Metro and the counties is plausible and is not inconsistent with the division 27 rules, their context, or other sources of law." *Id.* at 317.

Regarding the Stafford area urban reserves, Clackamas County, Lake Oswego, Tualatin, and West Linn entered into an intergovernmental agreement to address issues and concerns raised by the cities regarding the designation of the Stafford area as an urban reserve. Clackamas Co. 2017 Record at 83–87. The agreement covers governance of the area once included in the UGB, provision of public facilities and services, completion of a concept plan for urbanization, and other issues of mutual concern. The Commission finds that the record contains evidence that planning will commence to ready the Stafford area for urbanization during the reserves planning period of 40 to 50 years.

Finally, returning to the overarching theme of the MLG objections it is that Metro inadequately analyzed substantive changes related to the amount of urban reserves as well as the capacity of lands within the regional UGB to accommodate future urbanization. If the best achieves standard was a quantitative standard, MLG's objection might be of more moment. However, contentions that the submittal lacks an adequate factual base and analysis based on quantitative changes relative to rural reserves are not a basis for remand.

The Commission, upheld by the court, considers the "best achieves" standard to be qualitative.[22] The OAR 660-027-0005(2) standard requires Metro to balance the long-term trade-offs between the further geographic expansion of the Portland Metro area and the conservation of farm, forest, and natural features that surround the metro area. The objection does not establish that Metro did not consider the balance of protecting farm, forest and natural landscapes at the same time as creating livable communities. Metro and the counties have discretion within a range of permissible designations guided by their consideration of the urban and rural reserve factors, including the consideration of the rural reserve factors previously done leading to the designation as rural reserve for Area 9B. The local governments have not made any changes to those individual areas since the Commission found that the "best achieves" standard had been satisfied.

MLG submitted an exception to the analysis of its objections contends that the DLCD October 26, 2017 Report only addresses its objections in the context of the "best achieves" a balance of urban and rural reserves standard,[23] and did not address the quantitative "amount of land" standard.[24] MLG November 6, 2017 at 1–3. The Commission has reviewed the MLG August 14, 2017, none of the objections identified OAR 660-027-0040(2), the "amount of land" standard. However, the objections did cite OAR 660-027-0005(2), the "best achieves" standard. Identification of the "relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated" is required by OAR 660-025-0140(2)(b).

[22] The Commission discussed the "best achieves" standard in sections III.A.2 and II.C.6, above.

[23] OAR 660-027-0005(2) provides, in part: "The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."

[24] OAR 660-027-0040(2) provides, in part: "(2) Urban reserves designated under this division shall be planned to accommodate estimated urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296.

MLG contends that it is clear from the attachments to the exception that its reference to "applicable reserves administrative rules" pertained to OAR 660-027-0040(2). The objector must make an explicit and particular specification of error by the local government. *McMinnville,* 244 Or App at 268-269. The Commission finds that a general reference to "applicable reserves administrative rules" in attachments to an objection do not suffice, when a valid objection requires clear identification of the administrative rule the submittal has violated. OAR 660-025-0140(2)(b). Without referring to the attachments at all in the context of an objection, the Commission is not left to divine that it has some import beyond establishing that the objector participated at the local level as required by OAR 660-025-0140. The Commission rejects the exception.

The Commission notes that it reviewed the remand submittal under the amount of land standard, OAR 660-027-0040(2), in section III.C.1, above and found the Metro had satisfied the statutory and rule requirements regarding the amount of urban reserve land. For the foregoing reasons, the Commission rejects these objections.

C. Springville Investors, LLC, *et al.*

Springville Investors, LLC, Katherine Blumenkron, David Blumenkron, Burnham Farms, LLC, and Bob Zahler (Springville) own property in Multnomah County Area 9B, an area designated rural reserve by Multnomah County during the original designation process and in response to the LCDC remand. Springville's submittal includes five objections to the county's decision. Springville August 14, 2017 objection. The submittal does not present a proposed remedy, but the Commission can reasonably infer that Springville requests the Commission at least remand the rural reserves designation for Area 9B for further consideration by Multnomah County and Metro, and presumably re-designation to urban reserve.

1. Objection 1 – U.S. Constitution

This is a group of objections that contend that Multnomah County and Metro violated the Springville owners (1) equal protection rights by treating their property differently than other similarly situated landowners; (2) procedural due process rights; and (3) substantive due process rights. Springville August 14, 2017 objection at 3–8.

OAR 660-025-0140(2)(b) provides that, to be valid, an objection must "clearly identify an alleged deficiency in the work task or adopted comprehensive plan amendment sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated." This group of objections is based on alleged violation of the United States Constitution do not raise any statute, goal, or administrative rule violation.

Order 12-ACK-001819 addressed an equal protection objection, but noted:

> "The Commission has some question whether state and federal constitutional objections even fall within its scope of review under OAR 660-027-0080(4) and ORS 197.633(3)(c). Objectors assert that because the Court of Appeals review under ORS 197.651(10)(b) requires reverse or remand if this order is unconstitutional requires the Commission to consider objections regarding the

> constitutionality of the Metro Urban and Rural Reserves Submittal. To the extent that such objections are properly before this Commission, they are considered here." Order 12-ACK-001819 at 49, footnote 41.

The order concluded:

> "These objections and exceptions fail to establish that the re-designation submittal is noncompliant with the goals or applicable administrative rules, or that the county failed to consider the factors for designation of lands as rural reserves under OAR 660-027-0060. The Commission rejects the objections."

In its exception to the DLCD October 26, 2017 Report, Springville raised ORS 197.633(3)(b)[25] as a basis for the Commission to consider its federal constitutional claims. Springville November 6, 2017 exception at 1. Springville has not established that the contentions that Metro and Multnomah County violated the objectors' constitutionally-protected rights to Due Process and Equal Protection under the Fourteenth Amendment to the United States Constitution are within the authority of this Commission to address. In ORS chapter 197, where the legislature intends to authorize review for constitutional matters it has done so expressly. *Cf.* ORS 197.651(10)(a) and (b) (distinguishing between review for procedural violations and constitutionality). The Commission rejects the objection because it does not provide a basis for a determination that the remand submittal violated a statute, goal, or administrative rule.

2. Objections 2 and 3 – Application of Factors

In these objections, Springville contends Multnomah County and Metro failed to properly analyze Area 9B under ORS chapter 195 and OAR chapter 660, division 27 because Area 9B was improperly considered only in conjunction with Areas 9A and 9C (Objection 2) and because the decision was based on political considerations rather than an impartial application of the factors (Objection 3). Springville August 14, 2017 objection at 8–11.

The Commission considered objections to the rural reserves designation of Area 9B during its initial review of the urban and rural reserves submittal. The approval order stated:

> "[W]here evidence in the record could reasonably support a finding that an area qualify as either urban or rural reserve, the statute and rule provide Metro and the counties substantial discretion in their determination…. The Commission finds that Multnomah County considered the required factors, based on substantial

[25] ORS 197.633(3): "The rules adopted by the commission under this section may include, but are not limited to, provisions concerning standing, requirements to raise issues before local government as a precondition to commission review and other provisions concerning the scope and standard for commission review to simplify or speed the review. The commission shall confine its review of evidence to the local record. The commission's standard of review:
"* * *
"(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding."

evidence in the record, to support the designation of Area 9B as rural reserve." Order 12-ACK-001819 at 122.

The Court of Appeals upheld Commission's decision on this reserve area. The court also rejected contentions that the Multnomah County rural reserves designation process was affected by "impermissible political or financial influence." *Barker's Five*, 261 Or App at 347 n 49. Remand Order 14-ACK-001867 did not instruct Multnomah County to reassess the rural reserve designation of Area 9B, and the county declined objector's request to do so. The objector has cited no requirement for the county to do so. For the foregoing reasons, the Commission rejects these objections.

3. Objection 4 – Response to Remand

This objection presents a superfluity of allegations leading to the charge that Multnomah County was non-responsive to the commission's remand. Springville August 14, 2017 objection at 11. The individual allegations contend the county failed to:

a. Reconsider the evidentiary record
b. Reapply the reserves factors
c. Consider additional factual and legal changes
d. Determine the effect of the error that is the reason for the remand on the designation of reserves in the entirety of the county

Springville merely asserts that the county made errors and does not identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated as required by OAR 660-025-0140(2)(b). However, regarding sub-objections a and b, the submittal establishes that the county did reconsider the evidentiary record and reapply the reserves factors. Multnomah County 2017 Record at 21127-21133.

Regarding a need to reopen of the record (sub-objection c), the Commission has considered and rejected objections to Multnomah County's decision not to take additional evidence on remand. *See* Barker's Objection 1 in section IV.A.1. The objection does not cite a requirement that the record be opened to address the remand and the Commission is aware of no such requirement.

Finally, Multnomah County did determine the effect of the error subject to the remand on the designation of reserves in the entirety of the county. Multnomah Co. 2017 Record at 21133. The county found that correction of the error does not result in any change to any reserve designation and that, because the county did not change its method of analysis or analytical approach to consideration of the factors, there is no effect on the designations of reserves in the county in its entirety. The county concluded that the error had no effect on the designations of reserves in the county in its entirety because the county could correct the error in a manner "specific and internal" to Area 9D. The county concluded there is "no effect on any other material aspect of the designation of reserves" and that the error was only a failure to explain circumstances specific to Area 9D. The county has provided an explanation without affecting other aspects of the reserves designations of reserves in the county. The Commission finds the

remand submittal responsive to *Barker's Five* and 14-ACK-001867; therefore, the Commission rejects this objection.

4. Objection 5 – ORS 197.040

In this objection, Springville contends that the Commission must apply ORS 197.040 in review of the urban and rural reserves decision. Springville August 14, 2017 objection at 12. The objection cites several paragraphs from the statute alleged to apply.[26] The objection asserts that a reasonable application of ORS 197.040 would lead to a conclusion that Area 9B should be designated urban reserves.

A similar objection was made at the time of the commission's initial reserves review, and the Commission found:

> "The Commission rejects the … objections … on the grounds that ORS 197.040 applies in rulemaking context and does not modify the scope of review set forth in ORS 197.633(3). When the Commission undertakes rulemaking to carry out its statutory authority and 'in designing its administrative requirements,' ORS 197.040(1)(b) guides the Commission's process consistent with the limitation of ORS 197.040(3). Review of the Metro Urban and Rural Reserves Submittal in the manner of periodic review is not subject to ORS 197.040." Order 12-ACK-001819 at 44.

The Commission rejects this objection.

D. Keseric

Carl Keseric submitted an objection and an exception relating to Multnomah County's rural reserve designation to property within Area 9B. Keseric August 11, 2017 objection; Keseric November 3, 2017 exception. The objection asserts that the remand submittal is non-responsive to the Commission's remand order because the county did not explain why the entirety of Area 9B received a rural reserves designation. The exception requests that the Commission remand the submittal for the county to replace the Area 9B rural reserve designation with an "undesignated" status. November 3, 2017 objection at 3.

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[26] ORS 197.040 provides in part:

> "(1) The Land Conservation and Development Commission shall:
> "* * *
> "(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:
> "* * *
> "(C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
> "(D) Assess the likely degree of economic impact on identified property and economic interests; and
> "(E) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact."

This objection quotes from the Court of Appeal's remand of Area 9D and the instructions to the county to meaningfully explain why, in light of dissimilarities between the northern and southern portions the area, the county's consideration of the rural reserve factors yields a rural reserve designation of all land in area. However, neither the *Barker's Five* decision nor Remand Order 14-ACK-001867 instructed Multnomah County to explain why the entirety of Area 9B received a rural reserves designation, or, indeed, to reconsider the area at all, and the county did not elect to do so. As noted in response to MLG objection 1, the court previously considered and rejected a substantial evidence challenge to Area 9B. *Barker's Five*, 261 Or App at 363. Finally, the county is not required to analyze individual properties regarding suitability for reserves designation. *Barker's Five,* 261 Or App at 346. For these reasons, the Commission rejects this objection.

E. VanderZanden

Thomas J. VanderZanden submitted a letter objecting to Multnomah County's designation of a portion of Area 9B as rural reserve. VanderZanden August 9, 2017 objection. The objection does not specifically articulate what goal, statute, or rule is alleged to have been violated or explicitly suggest a remedy. The basis of the objection is that the county made a "politically driven" decision. Nevertheless, the Commission can reasonably infer that the objector contends the county did not apply the factors for designation of reserves based on the evidence and the remedy is to remove the rural reserves designation.

The Commission considered objections to the rural reserves designation of Area 9B during its initial review of the urban and rural reserves submittal. The approval order stated:

> "[W]here evidence in the record could reasonably support a finding that an area qualify as either urban or rural reserve, the statute and rule provide Metro and the counties substantial discretion in their determination…. The Commission finds that Multnomah County considered the required factors, based on substantial evidence in the record, to support the designation of Area 9B as rural reserve." Order 12-ACK-001819 at 122.

This finding is still in effect, as the Commission re-adopted it in the remand order. The remand order did not instruct the county to reassess the rural reserve designation of Area 9B, and the county did not elect to do so. Mr. VanderZanden cited no requirement for the county to do so. In addition, the county was not required to analyze individual properties regarding suitability for reserves designation. For the foregoing reasons, the Commission rejects this objection.

F. Skade

Hank Skade submitted a letter that includes six objections to the rural reserves designation of Area 9B. Skade August 14, 2017 objection. Mr. Skade owns property in Area 9B. The objection states that an appropriate remedy would be for the Commission to remand to the remand submittal to designate a portion of Area 9B as urban reserve.

1. Objection 1 – ORS 197.040

This objection contends that the Commission has a duty to apply ORS 197.040. Skade August 14, 2017 objection at 1. On consideration of the applicability of ORS 197.040 to the reserves designation process previously, the Commission found:

> "The Commission rejects the … objections … on the grounds that ORS 197.040 applies in rulemaking context and does not modify the scope of review set forth in ORS 197.633(3). When the Commission undertakes rulemaking to carry out its statutory authority and 'in designing its administrative requirements,' ORS 197.040(1)(b) guides the Commission's process consistent with the limitation of ORS 197.040(3). Review of the Metro Urban and Rural Reserves Submittal in the manner of periodic review is not subject to ORS 197.040." Order 12-ACK-001819 at 44.

The Commission rejects this objection because ORS 197.040 does not apply to this process.

2. Objection 2 – Factual Base

This objection by Mr. Skade contends Multnomah County erred by refusing to admit or consider any new evidence or adopt further findings concerning Area 9B. Skade August 14, 2017 objection at 2. The objection does not explain an alleged deficiency resulting from the county's process.

Although the objection does not expressly contain the elements required by OAR 660-025-0140(2) – specifically, it does not clearly identify an alleged deficiency in the adopted plan amendment sufficiently to identify the relevant section of the statute, goal, or administrative rule the submittal is alleged to have violated – the Commission understands this objection to raise a Goal 2 violation concern related to the adequacy of the factual basis for the remand submittal. The objection reasons that if Multnomah County had opened the record it would have been compelled to reassess its prior Area 9B rural reserves designation. Neither *Barker's Five* or Remand Order 14-ACK-001867 required Multnomah County to revisit the Area 9B rural reserves designation. The objection does not otherwise cite a procedural requirement that the record be opened to address the remand and the Commission is aware of no such requirement. The Commission rejects this objection.

3. Objection 3 – Factual and Legal Flaws

This objection contends that Multnomah County's decision to designate the disputed part of Area 9B as rural reserve is factually and legally flawed. Skade August 14, 2017 objection at 2. Mr. Skade cites evidence from the record supporting the contention that the area should not have been designated rural reserves. The objection cites the factors and criteria under ORS chapter 195 and OAR chapter 660, division 27 as the regulations with which the county failed to comply.

The Commission has previously considered objections to the rural reserves designation of Area 9B and found that the reserves designation was within the discretion afforded the county under the regulatory scheme. The approval order stated:

> "[W]here evidence in the record could reasonably support a finding that an area qualify as either urban or rural reserve, the statute and rule provide Metro and the counties substantial discretion in their determination…. The Commission finds that Multnomah County considered the required factors, based on substantial evidence in the record, to support the designation of Area 9B as rural reserve." Order 12-ACK-001819 at 122.

The Commission incorporated by reference those findings and conclusions concerning the application of rural reserves for the Multnomah County reserves with the exception of Area 9D. Remand Order 14-ACK-001867. The Commission rejects this objection.

4. Objections 4–6 – Constitutional Issues

These objections are an amalgam of objections 1 through 3, contending the decision by Metro and Multnomah County to designate the disputed portion of Area 9B as rural reserve and make the remand decision on the existing record was driven by politics, rather than being based on the applicable factors and criteria. Skade August 14, 2017 objection at 4. These objections contend these actions violate the objector's equal protection and due process rights under the United States Constitution.

This Commission considered and rejected similar objections from Springville, above. In short, the court rejected contentions that the Multnomah County rural reserves designation process was affected by "impermissible political or financial influence." *Barker's Five*, 261 Or App at 347 n 49. Regarding contentions that Metro and Multnomah County violated the objector's constitutionally-protected rights to Due Process and Equal Protection under the Fourteenth Amendment to the United States Constitution, the Commission concludes that the objection does not establish that such concerns provide a basis for the Commission to determine that the Remand Submittal violated a statute, goal, or administrative rule within the authority of this Commission to address. Thus, the Commission rejects these objections.

G. <u>Lanphere Construction and Development, LLC</u>

Lanphere Construction and Development LLC (Lanphere) owns property in Clackamas County Area 5I (Ladd Hill), south of Wilsonville and west of the Interstate 5. Lanphere raised three objections, all variations on the theme that the county erred by relying on the "safe harbor" provision of OAR 660-027-0060(4)[27] to justify the rural reserve designation of the objector's property. Lanphere August 9, 2017 objection. The proposed remedy is for the Commission to

[27] OAR 660-027-0060(4): "Notwithstanding requirements for applying factors in OAR 660-027-0040(9) and section (2) of this rule, a county may deem that Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves under section (2) without further explanation under OAR 660-027-0040(10)."

remand the county's rural reserves decision for Area 5I to consider evidence and reconsider whether to designate the area rural reserves.

1. Objection 1 – Safe Harbor as Sole Reason for Designation

Lanphere objects to its land being designated rural reserve solely because of its inclusion with a large rural reserve area. The objector contends Clackamas County failed to consider site-specific evidence regarding the objector's land and apply the factors in ORS 195.141(3) and OAR 660-027-0060 to the evidence. Lanphere August 9, 2017 objection at 1-3. The proposed remedy is for the Commission to remand Clackamas County Ord No. 06-2017 back to the county for further consideration.

This objection relies on the methodology that the Court of Appeals announced it would employ to resolve challenges by landowners contending that their "land" was improperly designated as a reserve solely because of its inclusion in an "area" that was similarly designated. *Barker's Five,* 261 Or App at 305-306. Under the court's test, for rural reserve Area 5I, the Commission must determine that Clackamas County adequately considered the factors in designating Area 5I a rural reserve. [28] The record demonstrates that, other than the Tonquin Geological Area of Area 5I which the county designated as an important natural landscape under OAR 660-027-0060(3), the rest of Area 5I is comprised of Important or Foundational Agricultural Land and is within three miles of the Metro UGB. Metro 2010 Record at 39. Because of those qualities, Clackamas County utilized OAR 660-027-0060(4) to designate Rural Reserve Area 5I. The Commission concludes that OAR 660-027-0060(4) only required Clackamas County to consider whether Area 5I is Foundation Agricultural Lands or Important Agricultural Lands and within three miles of a UGB. Therefore, the county has explained why the totality of the land in Area 5I, including the Lanphere property, is appropriately designated rural reserve.

The Commission disagrees with the contention that Clackamas County had to apply the factors to Lanphere's specific property as opposed to Area 5I. The counties are not to apply the reserve factors to individual properties. *Barker's Five,* 261 Or App at 303. However, during Clackamas County's proceeding on remand, Lanphere availed itself of the opening of the record to challenged the inclusion of its property within Area 5I. The Commission understands the *Barker's Five* decision to hold that Clackamas County is obligated to explain why its consideration of the rural reserves factors yields as to the totality of the designated land, a result that includes that property. 261 Or App at 305-306. In simple terms, the Commission finds that the county has done so because its findings are that *all* of the land south of the Willamette River contains the Foundation Agricultural Land. 2010 Record at 39. This is not an instance where the county's consideration of the factors yields different results as was the case with Rural Reserve 9D. *See Barker's Five,* 261 Or App at 338-347.

[28] Lanphere's property is in Clackamas County rural reserve Area 5I, which was not the subject of an objection during the Commission's initial review of urban and rural reserves. Consequently, neither Order 12-ACK-001819 nor the Court of Appeals opinion specifically addresses this area. The remand order did not instruct the county to explain why the entirety of Area 5I received a rural reserves designation, or, indeed, to reconsider the area at all.

Lanphere objects that the county did not undertake a legally sufficient consideration of the evidence it provided during the county's remand proceedings. Because Remand Order 14-ACK-001867 specifically directed the county what to consider on remand, the county did not make additional findings related to Area 5I. Under that circumstance, the Commission may identify evidence in the record that clearly supports the rural reserve designation of Area 5I. Or Laws 2014, ch 92, §9.

In designating Rural Reserve Area 5I, the county found that with regards to the lands that include the Lanphere property, those Foundation Agricultural Land "contains a mixture of hay, nursery, viticulture, orchards, horse farms, and small woodlots." Metro 2010 Record at 39. Lanphere objects that it submitted evidence showing that its land does not contain any of those uses. The Lanphere evidence is at Clackamas County 2017 Record 515-646. The Commission finds that the evidence in the record nevertheless clearly supports the rural reserves designation of Area 5I, including the Lanphere property. First, the record shows that all of Area 5I is located within three miles of the Metro Urban Growth Boundary. Metro 2010 Record at 39; OAR 660-027-0060(2)(a). Second, as Foundation Agricultural Land, these lands by definition "have attributes necessary to sustain current agricultural operations." Metro 2010 Record at 39; OAR 660-027-0060(2)(b). Third, the record shows that the Lanphere property contains high-value farmland. Clackamas Co. 2017 Record at 540. That is a designation based on the Commission's rules at OAR 660-033-0020(8) that considers soil type and irrigation. The Commission finds that such soils are suitable to sustain long-term agricultural operations under OAR 660-027-0060(2)(c). In considering the factors regarding suitability of an area to sustain long-term agricultural operations, OAR 660-027-0060(2)(d)(A)-(D), the record shows that the area is Foundation Agricultural Land. That the Lanphere property itself does not contain the agricultural uses is a little consequence weight, because the Commission finds the record shows that many of the identified uses -- plant nursery, pasture, cropland, forest land -- occur in the immediate vicinity. Clackamas Co. 2017 Record at 640. Although the objection states that the Lanphere property is "developed in a manner radically different from the rest of Area 5I," the record indicates the nature of that development approval is consistent with a rural reserves designation. In 2005, the county approved a conditional use permit for a commercial use in conjunction with farm uses. Clackamas Co. 2017 Record 540. The "agricultural marketing and service center" authorized in conjunction with farm uses on the site resulted in much of the substantial improvements on the site that objector now points to as being out of character with agricultural uses in the area. The record shows that the Lanphere property itself is approved to contribute to the agricultural infrastructure in the area. OAR 660-027-0060(2)(d)(D). On the other hand, to construe the 2005 CUP approval and the resulting development as now indicating that the land is committed to non-rural uses, would not be a reasonable. Because the Commission concludes that the record clearly supports the designation of Rural Reserve Area 5I under the factors, the objection is rejected.

2. Objections 2 and 3 – Safe Harbor inconsistent with ORS 195.141(3)

These objections contend that Clackamas County improperly interpreted and applied the safe harbor provisions in OAR 660-027-0060(4) to justify the rural reserve designation for Lanphere's property. Lanphere August 9, 2017 objection at 3. The basis of these objections rests on the assertions that the safe harbor provision should not be read so broadly as to relieve the county of any analysis of "lands" within an "area," and that the safe harbor cannot replace the

analysis of "factors" required by ORS 195.141(3).[29] The objection contends the report that identifies Foundation Agricultural Lands or Important Agricultural Lands was not subject to a land use hearings process and does not contain "supporting evidence or any findings that cite to the legal standards upon which the conclusions are based."

The safe harbor in OAR 660-027-0060(4) clearly authorizes the county to designate areas identified as Foundation or Important Agricultural Lands as rural reserve without further explanation. County findings, undisputed by Lanphere, establish that Area 5I is all Foundation or Important Agricultural Lands except for one portion that does not include the objector's property. Metro 2010 Record at 39. As the Court of Appeals recognized, the statutory rural reserve factors derived from the ODA report. *Barker's Five*, 261 Or App at 270, 274-275. In promulgating OAR 660-027-0060, the Commission incorporated the rural reserve factors from ORS 195.141(3). Thus, because the statutory and regulatory factors for designating rural reserves derive from the ODA report that identifies and maps agricultural sub-regions into three types of agricultural land categories – Foundational, Important, and Conflicted – the safe harbor provision merely recognizes that "Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB qualify for designation as rural reserves" is consistent with the rural reserve factors derived from the analysis identifying them.

In addition, the county was not required to analyze individual properties regarding suitability for reserves designation. *See also* subsection B.4.b. For the foregoing reasons, the Commission rejects these objections.

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[29] ORS 195.141(3): "When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

"(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

"(b) Is capable of sustaining long-term agricultural operations;

"(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

"(d) Is suitable to sustain long-term agricultural operations, taking into account:

"(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

"(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

"(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

"(D) The sufficiency of agricultural infrastructure in the area."

V. ORDER

Based on the foregoing, the Commission finds that the Metro Urban and Rural Reserves Submittal designating urban and rural reserves in the Portland metro area under ORS 195.137 to 195.145 and OAR chapter 660, division 27 complies with ORS 195.141 and 195.145, OAR chapter 660, division 27, the applicable statewide planning goals, and all other applicable rules of the Commission.

All rulings made on objections and motions during the Commission hearings are hereby affirmed. Any objections or motions not ruled upon during the Commission hearings are hereby overruled.

THEREFORE, IT IS ORDERED THAT:

1. The designation of Rural Reserves by Multnomah County Ordinance No. 1246 is approved.
2. The designation of Rural Reserves by Clackamas County Ordinance No. 06-2017 is approved.
3. The designation of Urban Reserves by Metro Ordinance No. 17-1397 is approved.
4. The Regional Framework Plan amendments (Exhibit B) and Urban Growth Management Framework Plan Title 5 repeal (Exhibit C) and Title 11 amendment (Exhibit D) by Metro Ordinance No. 10-1238A are approved.

DATED THIS 16 DAY OF MARCH 2018.

FOR THE COMMISSION:

Jim Rue, Director
Oregon Department of Land Conservation and Development

NOTE: You may be entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 21 days from the service of this final order. Judicial review is pursuant to the provision of ORS 197.651.

Copies of all documents referenced in this order are available for review at the Department's office in Salem.