

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
APPROVAL OF EUGENE
URBAN RESERVE DESIGNATION**

DLCD Order # 001938

August 18, 2023

I. DECISION

For the reasons explained in this order, the Department of the Land Conservation and Development (DLCD or department) concludes that the submittal from the City of Eugene (city) and Lane County (county) complies with the requirements of the applicable statewide planning goals, statutes, and administrative rules. The submittal is approved.

II. REVIEW PROCEDURES AND CRITERIA

A. PROCEDURAL CONSIDERATIONS

Oregon Revised Statutes (ORS) 197.626 to 197.650 and Oregon Administrative Rule (OAR) 660-025-0175 authorize the DLCD Director’s (director) review of work submitted “in the manner provided for [periodic review].” The city and county submitted notice of their respective ordinances establishing urban reserves for the city to the department on April 21, 2023, simultaneously mailing notice of the decisions to all participants during the local decision-making process.¹ The director of DLCD has “not later than 120 days of the date the department received the task submittal from the local government” to make a decision (OAR 660-025-0150(1) and (3)). The director may approve the submittal, remand it, or refer the matter to the Land Conservation and Development Commission (LCDC or commission). The director elected to make a decision to approve the submittal in this case.

OAR 660-025-0150(5) provides: “If the department received one or more valid objections to the work task or plan amendment, the director must either issue an order * * * or refer the work task or plan amendment to the commission for review.” The department received one objection.

B. VALIDITY OF OBJECTIONS

The department received one objection to the city and county’s adoption of urban reserves. On May 11, 2023, Donald Long mailed a letter to the department objecting to the city and county’s submittal.

¹ The Eugene City Council approved Ordinance No. 20686 and the Lane County Board of Commissioners approved County Ordinance No. PA 1388; these ordinances establish urban reserves for the City of Eugene and adopt amendments to the Eugene-Springfield Metropolitan Area General Plan, the Lane County Rural Comprehensive Plan, the Envision Eugene Comprehensive Plan, and the Eugene-Springfield Metropolitan Area Public Facilities and Services Plan.

Regarding required local government notice of a final decision under ORS 197.626(1)(c) for an establishment or amendment of an urban reserve² by a local government that adds more than 50 acres to an area within an urban reserve, OAR 660-025-0140 provides in part:

“(1) After the local government makes a final decision on a work task or comprehensive plan amendment listed in ORS 197.626(1) and OAR 660-025-0175, the local government must notify the department and persons who participated at the local level orally or in writing during the local process or who requested notice in writing. The local government notice must contain the following information:

“(a) Where a person can review a copy of the local government's final decision, and how a person may obtain a copy of the final decision;

“(b) The requirements listed in section (2) of this rule for filing a valid objection to the work task or comprehensive plan amendment listed in OAR 660-025-0175; and

“(c) That objectors must give a copy of the objection to the local government.

“(2) Persons who participated orally or in writing in the local process leading to the final decision may object to the local government's work task submittal. To be valid, objections must:

“(a) Be in writing and filed with the department's Salem office no later than 21 days from the date the local government sent the notice;

“(b) Clearly identify an alleged deficiency in the work task sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated;

“(c) Suggest specific revisions that would resolve the objection; and

“(d) Demonstrate that the objecting party participated orally or in writing in the local process leading to the final decision.

“(3) Objections that do not meet the requirements of section (2) of this rule will not be considered by the director or commission.”

1. OAR 660-025-0140(2)(a)

² ORS 195.137(2) defines “Urban Reserve” to mean “lands outside of an urban growth boundary [UGB] that will provide for [f]uture expansion over a long-term period; and [t]he cost-effective provision of public facilities and services within the area when the lands are included within the [UGB].” *See also* OAR 660-021-0010(1). The city and county ordinances proposed to amend the Eugene-Springfield Metropolitan Area General Plan to define land identified as “Eugene Urban Reserves” as: “land expected to, eventually, be added to Eugene’s urban growth boundary to meet Eugene’s projected need for housing, employment and/or public uses when the land already within Eugene’s urban growth boundary must be supplemented. Land identified as Eugene urban reserves remains unincorporated land under the jurisdiction of Lane County.” City Ordinance Exhibit A-1, at 2; County Ordinance Exhibit A-2, at 2.

The city and county submitted notice of their respective ordinances establishing urban reserves for the city to the department on April 21, 2023, simultaneously mailing notice of the decision to all participants during the local decision-making process. Mr. Long mailed his letter objecting to the city and county decisions on May 11, 2023, 20 days after the city and county mailed the notice of the decision. However, the department did not receive Mr. Long's objection until May 15, 2023, which is 24 days after the city and county mailed the notice of the decision.

OAR 660-025-0140(2)(a), unlike other statutes and rules, does not state that an objection must be "mailed" by the 21-day deadline, it provides that the objection must be "filed" with the department's Salem office within that time period. In turn, OAR 660-025-0020(1) defines "Filed" to mean that "the required documents have been *received by the DLCD at its Salem, Oregon, office.*" (Emphasis added). Since Mr. Long's objection was not received by DLCD within 21 days of the date the city and county notified him of the submittal, the department determines it is not a timely submittal of an objection under OAR 660-025-0140(2)(a).

2. ORS 660-025-0140(2)(b)

In his objection, Mr. Long summarizes his objections as included, but not limited to, facts that his property has been in his family for many generations and is the subject of a long-term lease agreement with groups including the Native American Church. He asserts the inclusion of his property in the urban reserve infringes on his and his lessees' property rights and rights to freedom of expression.

While all actions of the director in carrying out the requirements set forth in the Oregon Revised Statutes, Statewide Planning Goals, and Oregon Administrative Rules are implicitly required to adhere to requirements of the United States and Oregon Constitutions, Mr. Long does not provide any specific evidence or argument as to why the action of the city and county to include his property in its urban reserve interferes with his or his lessees' rights to freedom of expression or his or his lessees' property rights. As a result, his objection does not "[c]learly identify" the source of the alleged violation of his constitutional rights such that the director can analyze the issue and respond. OAR 660-025-0140(2)(b).

Based upon the above analysis of Mr. Long's objection and review of the city and county's adopted submittal, the department determines that Mr. Long's objection does not satisfy OAR 660-025-0140(2)(b).

3. OAR 660-025-0140(2)(c)

Mr. Long requests that his property not be included in the urban reserve. His statement satisfies this criterion.

4. OAR 660-025-0140(2)(d)

Mr. Long states that he has participated in the local process and that his letters of objection are in the record. His statement satisfies this criterion.

5. CONCLUSION

The department has determined that Mr. Long's objection to the city and county's decision is not a valid objection for two reasons, either of which would independently render the objection invalid. First, Mr. Long did not file his objection with the department's Salem office no later than 21 days from the date the city and county mailed the notice.

Second, Mr. Long did not clearly identify an alleged deficiency in the submittal sufficiently to identify the relevant section of the final decision and the statute, goal, or administrative rule the submittal is alleged to have violated.

Therefore, the department rejects Mr. Long's objection as invalid and will not address the objection further in making this decision.

III. DESCRIPTION AND OVERVIEW OF URBAN RESERVE SUBMITTAL

In 2017, the city and the county cooperatively established a new UGB for the city to identify the land needed to meet the city's needs for employment, park, school, and residential land through 2032. When the city and county adopted the 2032 UGB, they committed to a continuation of their planning for the city's growth, including the possible establishment of urban reserves that would provide more ease and certainty when additional UGB expansions are needed.

The city chose to adopt an urban reserve that accommodates a 27-year need for additional land beyond the 20-year UGB designed to accommodate growth until 2032. Thus, the urban reserve is planned to accommodate city growth until 2059. The city determined that it would need approximately 5,900 acres of urban land to meet its urbanization needs to 2059. Record at 215.³ The city then analyzed a large study area around its current UGB and, through a process consistent with the requirements in state law and administrative rules, selected parcels totaling 10,018 acres of land, 5,901 of which is developable, to place into the urban reserve designation. Record at 215. The city coordinated with the county (which also adopted the urban reserves), and by entering into urban reserve intergovernmental agreements with service providers within the urban reserve area.

IV. DIRECTOR'S REVIEW

A. JURISDICTION

The director, and if appealed or referred by the director, the commission, has exclusive jurisdiction to review certain urban reserve designations pursuant to ORS 197.626, OAR 660-021-0070, and OAR 660-025-0040(2)(c). ORS 197.626 provides, in pertinent part:

“(1) A local government shall submit for review and [LCDC] shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633 [rules pertaining to periodic review] * * *:

³ Unless noted, citations to the record are to the city's record.

“* * *

“(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its [UGB.]”

The city and county submittal establishes an urban reserve for the city consisting of 10,018 acres, with 5,901 developable acres. Record at 215.

B. SCOPE OF REVIEW

Where the director reviews an urban reserve submittal under ORS 197.626, she does so “in the manner provided for [periodic review.]” ORS 197.626(1). That review is to determine whether the decision adopting the urban reserve and any related matters comply with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0175(1)(c). The director confines the review of evidence to the records provided by the city and county. ORS 197.633(3).

C. STANDARD OF REVIEW

The director reviews the submittals in the manner provided for periodic review. ORS 197.626(1)(c). Review in the manner of periodic review is subject to the standard of review provided in 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, * * * 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 to the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.627.”

Thus, the director considers whether the submittal is consistent with the applicable statutes, goals, administrative rules, the city’s comprehensive plan, the Eugene-Springfield Metropolitan Area General Plan, the Lane County Rural Comprehensive Plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The urban reserve submittal is a legislative decision. The Goal 2 requirement for an adequate factual base requires that a legislative land use decision be supported by substantial evidence. *DLCD v. Douglas County*, 37 Or LUBA 129, 132 (1999). 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. *Dodd v. Hood River County*, 317 Or 172, 179 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decisions that the city made in view of all the evidence in the record, the choice between conflicting evidence belongs to the city. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd*, 133 Or App 258 (1995); *Barkers Five, LLC v. LCDC*, 261 Or App 259, 349 (2014). Because the submittal embodies both basic findings of fact and inferences drawn from those facts, substantial evidence review involves two related inquiries: “(1) whether the basic fact or facts are supported by substantial evidence, and (2) whether there is a basis in reason connecting the inference to the facts from which it is derived.” *City of Roseburg v. Roseburg City Firefighters*, 292 Or 266, 271 (1981). Where substantial evidence in the record supports the city’s adopted findings concerning compliance with the goals and the commission’s administrative rules, the Commission nevertheless must determine whether the findings lead to a correct conclusion under the goals and rules. *Oregonians in Action v. LCDC*, 121 Or App 497, 504 (1993).

There is no statute, statewide planning goal or administrative rule that generally requires that legislative land use decisions be supported by findings. *Port of St. Helens v. City of Scappoose*, 58 Or LUBA 122, 132 (2008). However, there are instances where the applicable statutes, rules or ordinances require findings to show compliance with applicable criteria. In addition, where a statute, rule or ordinance requires a local government to consider certain things in making a decision or to base its decision on an analysis, “there must be enough in the way of findings or accessible material in the record of the legislative act to show that applicable criteria were applied and that required considerations were indeed considered.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6 (2002). Such findings serve the additional purpose of assuring that the director does not substitute her judgment for that of the local government. *Id.*; *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 314 (2004).

Finally, the director also considers the objections and exceptions. In reviewing objections, the Commission only need consider those that “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 268 (2011).

D. APPLICABLE LAW

ORS 195.145(1)(a) authorizes local governments to cooperatively designate lands outside UGBs as urban reserves subject to ORS 197.610 to 197.626. LCDC has adopted rules in OAR chapter 660, division 21 to govern designation of urban reserves.

OAR 660-021-0020 authorizes cities and counties to cooperatively designate urban reserves. OAR 660-021-0030(1) allows cities to designate urban reserves constituting at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the UGB.

OAR 660-021-0030(2) requires inclusion of land within an urban reserve to be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, agricultural and forest lands. The rule implements this requirement with a “priority” analysis, requiring addition of land not designated for agriculture

or forestry as first priority (with non-high value agricultural or forest land that is completely surrounded by such land being included in this category). Next in priority are “marginal” lands, then lower quality agricultural and forest land, and last higher quality agricultural and forest land. Lower priority land can be included if higher priority land is unsuitable because future urban services cannot be provided due to topographical or other physical constraints, or maximum efficiency of land uses requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

OAR 660-021-0040 sets forth planning requirements for urban reserve areas to preserve them for efficient future urban uses. OAR 660-021-0040(2) requires county land use regulations that limit subdivisions to lots of at least ten acres and require clustering of new development, pre-platting of lots, and waivers of remonstrance against future annexation by a city. OAR 660-021-0040(3) prohibits rezones to higher density or intensity uses in an urban reserve. OAR 660-021-0040(4) requires continued zoning of agricultural and forest lands for resource use while they are in an urban reserve. OAR 660-021-0040(6) prohibits premature provision of urban services to urban reserve areas, while encouraging continued planning for provision of such urban services in the future.

OAR 660-021-0050 requires the city, county and any special districts to enter into an agreement governing land use regulation and provision of services within the urban reserve area.

Goal 2 establishes a land use planning process and policy framework as a basis for all decisions and actions related to use of land. Goal 2 also requires an adequate factual base for such decisions and actions.

In addition to state statute, planning goals, and administrative rules, the director reviews the city’s adopted urban reserve for compliance with applicable parts of the Eugene-Springfield Metropolitan Area General Plan, the Lane County Rural Comprehensive Plan, the Envision Eugene Comprehensive Plan, and the Eugene-Springfield Metropolitan Area Public Facilities and Services Plan.

E. DIRECTOR EVALUATION

The director reviews the urban reserve amendment submittal to determine whether Eugene Ordinance No. 20686 and Lane County Ordinance No. PA 1388 comply with the applicable statewide planning goals, statutes, and administrative rules, identified in Section IV.D. ORS 197.633(3)(c). In reviewing for compliance with the applicable statewide planning goals, ORS 197.627 provides:

“[C]ompliance with the goals’ means the comprehensive plan and regulations, on the whole, conform with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.”

The city submittal includes Exhibit F, Findings in Support of the Establishment of Urban Reserves for the City of Eugene, that presents the city’s determination of compliance with all

relevant statewide planning goals.⁴ Record at 134-159. The director has reviewed those findings and concludes that the urban reserve submittal complies on the whole with the goals. Additionally, the director makes the following focused conclusions.

Coordination

Goal 2 provides “[e]ach plan and related implementation measure shall be coordinated with the plans of affected governmental units.” As used in Goal 2, a comprehensive plan is “coordinated” once “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.” ORS 197.015(5).

The city detailed its coordination efforts with state agencies, the county, local governments, and special districts in its findings. Record at 135-137. In addition to working with other governmental entities, the city engaged in a comprehensive public process involving interest groups, community members and affected property owners. Record at 161-174. The director concludes that the city satisfied the coordination requirement through direct information exchanges with the county, neighboring cities, urban service providers, and rural special district service providers.

Urban Reserve OAR chapter 660, division 21 Provisions

As stated earlier, the director reviewed the city and county’s decision based upon the rules set forth in OAR chapter 660, division 21. That rule governs the establishment of urban reserves as authorized by ORS 195.145 for cities outside of Metro.

OAR 660-021-0030(1) allows cities to designate urban reserves constituting at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the UGB. The city started with an adopted 20-year land frame from 2012 to 2032 from its last UGB review, adopted in 2017. The city used the 2019 Portland State University population forecast and an employment growth forecast developed by the Oregon Department of Employment to determine overall population and employment growth. Record at 693-699. The city then added land needed for parks and public uses and facilities. Record at 699-701. The city chose to plan for an additional 27-year planning horizon to establish an urban reserve. Record at 693. The city adopted the methodology described in a technical memo prepared for the city to determine the land need based upon population and employment forecasts. Record at 722-751. Based upon the forecasts and the methodology, the city determined that it needed to plan for approximately 5,900 acres of developable land within the adopted urban reserve. Record at 702.

To implement the requirements of OAR 660-021-0030(2) to (4), the city first delineated its study area for potential urban reserve designation. Record at 175-178. To find enough land for consideration as an urban reserve, the city had to analyze lands far beyond the minimum ¼ mile distance from the existing UGB as required by OAR 660-021-0010(7) definition of “Nearby Land.” Record at 175-176. After starting with an expansive study area, the city then mapped

⁴ The findings set forth in Exhibit F were provided in support of the county’s ordinance but were not made part of that ordinance. County Record at 2.

lands that were constrained and not available for future urban development because of natural resource, natural hazards, or an existing land use (for example, the Eugene Airport). Record at 179-185.

Next, the city used the locational factors of Goal 14 to determine which developable lands within the study area were “suitable” for inclusion in the urban reserve. Record at 194-197. Detailed analysis of each subarea using the Goal 14 locational factors is found in the Record at 218-654. The city fully weighed and balanced the candidate urban reserve lands based upon all four Goal 14 locational criteria.

Finally, the city analyzed the lands found suitable against the priorities for protection of farm and forest land found in OAR 660-021-0030(3). Record at 198-217. First priority land under OAR 660-021-0030 consists of “exception,” and “nonresource,” lands, along with resource lands, other than high-value farmlands, completely surrounded by other first priority land. The city determined that such lands provided 785 of the needed 5,900 developable urban reserve acres. Record at 203. Second priority lands under OAR 660-021-0030(3) consist of “marginal” lands. These lands provided another 407 developable acres. Record at 206. Then the city looked at the remaining lands, designated for agriculture and forestry, and classified those lands into less valuable and more valuable resource land. Adding just the less valuable resource land, the city was still short approximately 400 acres of the 5,900 needed urban reserve acres. Record at 210-211. The remaining acres added to the urban reserve consisted of higher value farmland, however the city chose parcels that had the least impact upon remaining high value farmland not brought into the urban reserve. Record at 213-216.

OAR 660-021-0040(2) sets forth requirements for land use regulation of urban reserve areas to preserve options for future urbanization of these areas. The county has adopted amendments to its rural comprehensive plan that satisfy all of the requirements for urban reserve planning. Record at 128-133.

OAR 660-021-0050 sets forth requirements for the adoption of urban reserve agreements among cities, counties and special districts serving or projected to serve the designated urban reserves. The record includes copies of intergovernmental agreements between the city, county, and all relevant special districts serving the designated urban reserves. Record at 124-127.

V. CONCLUSION

Based on the director’s review, and with the determination that no party filed a valid objection to the city and county’s submittal, the director approves the city and county’s submittal.

THEREFORE, IT IS ORDERED THAT:

Eugene Ordinance No. 20686 and Lane County Ordinance No. PA 1388, creating an urban reserve are approved.

DATED THIS 17th DAY OF AUGUST, 2023.

Brenda D Bateman

Brenda Bateman, Ph.D., Director
Department of Land Conservation and Development