

**DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
REPORT ON METRO
URBAN GROWTH BOUNDARY**

DLCD Order #001934

May 2, 2023

I. DECISION

For the reasons explained in this report, the Department of the Land Conservation and Development (DLCD or department) concludes that the submittal from Metro, Metro Ordinance 23-1488, containing an urban growth boundary (UGB) amendment and supporting comprehensive plan amendments, 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 director's review of work submitted "in the manner provided for periodic review." The director of DLCD has 120 days from the date of submittal 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 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 UGB amendment. On March 15, 2023, Clackamas County submitted a letter objecting to Metro's final decision.

Regarding required local government notice of a final decision under ORS 197.626(1)(a) for an amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary, OAR 660-025-0140 provides:

“(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 at the local level orally or in writing during 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 notice was mailed by the local government;

“(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 task submittal is alleged to have violated;

“(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.

“(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)

Metro submitted notice of the adopted urban growth boundary amendment to the department on February 15, 2023. Clackamas County’s objection was submitted 28 days after Metro submitted its notice to the department. In the objection, Clackamas County states that it “has no record of having received notice from Metro with respect to the adoption of the Metro Ordinance 23-1488. Counsel for Clackamas County received a copy of the notice from Metro yesterday afternoon and filed this objection as soon as practicable.” Clackamas County Objection, pg. 2.

OAR 660-025-0140 provides that an objection must be filed within 21 days from the date the notice was sent by the local government. As part of its submittal of the record, Metro submitted a copy of the notice that it asserts that it mailed to all parties to the proceedings before Metro. The contents of the notice comply with the content requirements of OAR 660-025-0140(1)(a) through (c). Record, pg. 2.

Metro also submitted a notice list of persons whom it asserts received a copy of the notice it mailed to all parties. Notice List, pg. 1. The list includes “Clackamas County Board of County Commissioners, 2051 Kaen Road, Oregon City, OR, 97045.” This address matches the address provided on the Clackamas County Board of Commissioners comment letter submitted to Metro

on November 2, 2022. Record, pg. 848. Metro does not provide any evidence that it mailed the notice by registered or certified mail.

OAR 660-025-0140(1) requires that the local government must “notify,” persons who participated at the local level. While presumably notification would be by mail, the rule does not specify that method of providing notice. Therefore, it does not require notice by registered or certified mail. The statute upon which OAR 660-025-0140(1) is authorized, ORS 197.633, grants broad authority to the commission to adopt rules regarding submittals of urban growth boundary amendments that the director or commission reviews, and does not specify any particular requirements for notification of participants.¹ In reviewing other statutes within ORS chapter 197 that describe notification methods, several of these statutes require notice to be “mailed” and others require “registered or certified” mail.² This review indicates that there is no generalized requirement to mail notices via any particular method, but statutes do distinguish between notices provided by mail vs. notices provided by registered or certified mail.

Unlike the statute establishing deadlines for seeking review of a land use decision before the Land Use Board of Appeals, OAR 660-025-0140(2)(a) does not provide exceptions to the 21-day deadline for filing objections. *Cf.* ORS 197.830(3)-(5) (tolling deadlines under certain circumstances until actual notice or the date the person knew or should have known of a decision). The County’s statement that it “filed this objection as soon as practicable” does not make that filing timely under OAR 660-025-0140(2)(a).

Based upon the language of relevant statutes and rules and the information provided as part of the record by Metro, the department determines that the Clackamas County objection does not satisfy OAR 660-025-0140(2)(a).

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

The Clackamas County objection replies to this criterion by referencing letters submitted to Metro in the record and reiterates the objections stated in those letters. Clackamas County Objection, pg. 2.

To summarize Clackamas County’s objections.

- The County believes Metro is using a “punitive” approach in removing UGB lands from Clackamas County in exchange for new UGB additions in Washington County.

¹ ORS 197.633(3) provides, in part:

“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.”

² For example, ORS 197.375(1) (a) provides, in part “An appeal must be filed with the local government within 14 days of mailing of the notice of the decision” while in contrast, ORS 197.651(5) provides, in part, “Copies of the petition must be served by registered or certified mail[.]”

- The incremental approach taken by Metro does not reflect a long-term vision for the region.
- The current Metro UGB system is antiquated, flawed, is biased against Clackamas County, and needs to be comprehensively updated.
- Metro should not take action until there have been studies to identify key employment and industrial land in Clackamas County, including land currently outside of the UGB in “reserve” areas, particularly in relation to the semiconductor issue.
- Metro should develop tangible commitments to provide critical infrastructure for east Clackamas County, such as the Sunrise Corridor transportation facility.
- Metro must increase engagement with public and elected officials in the process, and take the time needed to do this right.
- Changes to Metro’s processes should come through updates to the 2040 Growth Concept, not through the UGB exchange process.
- Commit to support for a future expansion of the UGB in Clackamas County for industrial and residential development.

Of note in this list - Clackamas County does not raise any specific issues regarding the actual criteria in statute, rule, or statewide planning goal that the department must reference to determine if Metro’s decision complies with those requirements. OAR 660-025-0140(2) states that an objector must “[c]learly 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 task submittal is alleged to have violated.” The county’s objection, and the letters that it sent to Metro as reference, do not refer to any statute, rule, or statewide planning goal provision directly. In reviewing objections, the director 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, 259 P3d 1021 (2011). The county has not done so.

Nevertheless, for purposes of discussion, the department undertakes the following consideration of whether it can reasonably identify any connection between a relevant section of the objection and the statute, goal, or administrative rule the county alleges Metro’s decision to have violated.

In Exhibit D of its adopting ordinance, No. 23-1488, Metro correctly identifies the relevant statutes, goals, and administrative rules that apply to the UGB land exchange. Those are:

- The UGB exchange administrative rules found in OAR 660-024-0070;
- ORS 197.298, which provides priorities for land to be included in the UGB;
- The four Goal 14 “location factors” ; and
- Other relevant statewide planning goals.

Record, pg. 16-23.

In reviewing the objections stated in Clackamas County’s letters to Metro, summarized above, the department cannot discern any relevant references to these provisions of law, rule, and statewide planning goal. Specifically:

- The allegation that Metro’s process of exchanging lands in Clackamas County for lands in Washington County is “punitive” to Clackamas County does not have any connection to the relevant UGB exchange provisions in OAR 660-024-0070;

- Nothing in OAR 660-024-0070 references use of an “incremental” approach to a UGB exchange compared to an unidentified alternative process;
- Metro is under no general requirement to “comprehensive update” a “flawed” UGB process if there is no provided connection to a provision of statute, rule, or goal that provides evidence of such flaws, and the county does not provide any such evidence;
- Since Metro’s adopted UGB exchange is related to residential lands, claims about deficiencies regarding employment lands are irrelevant to Metro’s decision;
- The county’s assertion that Metro should do a better job of planning for public facilities in Clackamas County, presumably to serve the areas being removed from the UGB, is irrelevant to the decision. Goal 14, Boundary Location factor 2 relates to public facilities to be provided in areas *added* to a UGB, not to those removed.³ OAR 660-024-0070(2) provides the necessary determinations that Metro must make regarding lands to be removed from the UGB.⁴ In reviewing the five criteria provided in section (2), the department cannot tie the county’s assertion of Metro’s alleged deficiency to any of the criteria. Specifically, the county does not tie the allegation to any particular statewide planning goals or rules, the allegation is irrelevant to the sufficiency of a 20-year land supply, the allegation does not involve existing public facilities agreements, the allegation is irrelevant to an issue of whether removal of land from the UGB precludes efficient provision of urban services elsewhere within the UGB, and the allegation is irrelevant to the issue of appropriate rural land use designations on the land removed from the UGB. While the county may have a concern about its work to provide urban services to the areas proposed for removal from the UGB, the county has not shown a connection to any of the criteria Metro must address in either OAR 660-024-0070 or the Boundary Location factors of Goal 14;
- Metro’s alleged failure to communicate with public or elected officials is not substantiated with any additional facts or findings; therefore the county has shown no connection between the submittal and any of the relevant approval criteria;
- Metro is under no identified obligation in statute, rule, or statewide planning goal to update its 2040 Growth Concept instead of using the UGB exchange process; and

³ Goal 14, Boundary Location factor 2, to evaluate lands to be added to a UGB, requires a local government to consider “[o]rderly and economic provision of public facilities and services.”

⁴ OAR 660-024-0070(2) provides:

“A local government may remove land from a UGB following the procedures and requirements of ORS 197.764. Alternatively, a local government may remove land from the UGB following the procedures and requirements of 197.610 to 197.650, provided it determines:

“(a) The removal of land would not violate applicable statewide planning goals and rules;

“(b) The UGB would provide a 20-year supply of land for estimated needs after the land is removed, or would provide roughly the same supply of buildable land as prior to the removal, taking into consideration land added to the UGB at the same time;

“(c) Public facilities agreements adopted under ORS 195.020 do not intend to provide for urban services on the subject land unless the public facilities provider agrees to removal of the land from the UGB and concurrent modification of the agreement;

“(d) Removal of the land does not preclude the efficient provision of urban services to any other buildable land that remains inside the UGB; and

“(e) The land removed from the UGB is planned and zoned for rural use consistent with all applicable laws.”

- Commitment to support for future expansion of the UGB in Clackamas County for industrial and residential development is not a relevant provision of statute, rule, or goal regarding Metro's adopted UGB exchange decision.

Based upon an analysis of the county's objections and review of the Metro adopted submittal, the department determines that the Clackamas County objection does not satisfy OAR 660-025-0140(2)(b).

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

The Clackamas County objection includes specific revisions that would resolve the objection. The county's letters to Metro propose studies of employment and residential land in Clackamas County, develop tangible commitments to provide critical infrastructure for east Clackamas County, increase engagement with public and elected officials in the process, and update the 2040 Growth Concept. The department determines that the Clackamas County objection satisfies OAR 660-025-0140(2)(c).

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

Clackamas County has demonstrated that it participated at the local level orally or in writing during the local process. Both Metro's record and the county's objection contain copies of letters submitted to Metro during its deliberations on this matter.

5. CONCLUSION

The department has determined that Clackamas County's objection to Metro's decision is not a valid objection for two reasons, either of which would independently render the objection invalid. First, the county did not file its objection with the department's Salem office no later than 21 days from the date Metro mailed the notice. Second, the objection 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 the objection as invalid and will not address the objection further in making this decision.

III. DESCRIPTION AND OVERVIEW OF UGB EXCHANGE SUBMITTAL

Metro assesses the capacity of the urban growth boundary at least every six years to determine if the Portland Metro Region has capacity for housing and employment for the next 20 years. In 2018, Metro adopted its Urban Growth Report and expanded the Metro UGB by approximately 2,100 acres. LCDC approved Metro's UGB decision, and the Oregon Court of Appeals upheld the LCDC decision. Metro's next statutorily required comprehensive review of the UGB is scheduled to occur in 2024. Record, pg. 13.

In 2021, the City of Tigard submitted a proposal to Metro seeking to add approximately 490 acres of land known as River Terrace 2.0 to the UGB through Metro's mid-cycle amendment

process under Metro Code 3.07.1427. As the name indicates, this code provision allows cities to apply for a UGB amendment “mid-cycle” to address land need. Tigard’s proposal is consistent with Title 11 of the Metro Urban Growth Management Functional Plan and offers a full range of housing opportunities to meet the diverse needs of the people of Tigard. Record, pg. 13-14.

However, Metro has not updated its 20-year regional capacity calculations after the 2018 UGB expansion and did not do so as part of this UGB amendment process. Instead, Metro decided to pursue an exchange of equivalent amounts of land into and out of the Metro UGB, as is allowed by OAR 660-024-0070 (discussed below). The Metro Council directed Metro staff to prepare a proposed approach for identifying properties inside the existing UGB that were appropriate to be removed from the UGB because they are not proposed for future development at this time. Record, pg. 14.

Metro staff consulted with relevant local jurisdictions and special districts to determine such areas for removal from the UGB. Metro staff looked at specific subareas and ended up considering only lands for removal which did not have likely development readiness within the next 20 years. Metro also considered factors that included the amount of time a subarea had been within the UGB, parcelization, whether the area was added to the UGB for a special purpose, and the existence of environmental features. With further direction from the Metro Council and Metro Policy Advisory Committee, Metro staff identified options for lands to be removed from the UGB. Record, pg. 14.

Regarding lands to be added to the UGB, Metro staff evaluated other areas in the region designated as urban reserves for possible addition to the UGB based upon their relative suitability under the Goal 14 Boundary Location factors and the related Metro code (discussed below). Record, pg. 14-15.

After reviewing options, the Metro Council adopted an ordinance adding approximately 490 acres to the UGB (with 346 buildable acres) in the Tigard River Terrace 2.0 area and removing approximately 571 acres (351 buildable acres) in two subareas in Clackamas County: one in the Damascus area, and one in the Oregon City area. The Metro Council took this action on January 19, 2023, and Metro transmitted its decision to the department on February 15, 2023. Record, pg. 4.

Metro placed conditions of approval upon its UGB exchange for the City of Tigard. Tigard must complete comprehensive planning of the River Terrace 2.0 area within four years after the date of the ordinance. The city must plan for at least 3,000 homes in River Terrace 2.0, while planning for complete communities and adequate public facilities. Record, pg. 10-11.

IV. DIRECTOR’S REVIEW

A. JURISDICTION

The director, and if appealed or referred by the director, the commission, has exclusive jurisdiction to review certain UGB amendments pursuant to ORS 197.626, OAR 660-024-0080, and OAR 660-025-0040(2)(b). ORS 197.626 provides, in pertinent part:

“A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided by periodic review for a work task under ORS 197.633 * * *:

“(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary[.]”

The submittal expands the Metro UGB by adding approximately 490 acres, more than 100 acres. Metro Ordinance 23-1488, pg. 3-4. While the submittal also removes 571 acres from the Metro UGB, the decision to add more than 100 acres, under the specific language of ORS 197.626(1), controls jurisdiction regardless of any compensating land removed from the UGB as part of an exchange.⁵

B. SCOPE OF REVIEW

Where the director reviews a UGB amendment submittal under ORS 197.626, she does so “in the manner provided for review of a periodic review task.” ORS 197.626(1). That review is to determine whether the decision amending the UGB and any related matters, comply with the applicable statewide planning goals, their implementing rules, and applicable state statutes. OAR 660-025-0175(1)(a). The director confines the review of evidence to the Metro record. ORS 197.633(3).

C. STANDARD OF REVIEW

The director reviews the submittals in the manner provided for periodic review. ORS 197.626(1)(a). 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.

⁵ In addition, ORS 197.825(2) provides:

“The jurisdiction of the [Land Use Board of Appeals]:

“* * *

“(c) Does not include a local government decision that is:

“(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS * * * 197.626 * * *, unless the Director of the Department of Land Conservation and Development, in the director’s sole discretion, transfers the matter to the board[.]”

The director did not transfer this matter to the Land Use Board of Appeals.

“(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 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 to the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.747.”

Thus, the director considers whether the submittal is consistent with the applicable statutes, goals, administrative rules, Metro’s regional framework plan, the Metro functional plan, and is supported by substantial evidence. OAR 660-025-0160(2)(a) and (c). The UGB submittal is a legislative decision. *Homebuilders Ass’n. of Metropolitan Portland v. Metro*, 184 Or App 663, 57 P3d 204 (2002). 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, 855 P2d 608 (1993). Where the evidence in the record is conflicting, if a reasonable person could reach the decisions that Metro made in view of all the evidence in the record, the choice between conflicting evidence belongs to Metro. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), aff’d 133 Or App 258, 890 P2d 455 (1995); *Barkers Five, LLC v. LCDC*, 261 Or App 259, 349, 323 P3d 368 (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, 639 P2d 90 (1981). Where substantial evidence in the record supports Metro’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, 854 P2d 1010 (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, 38 P3d 956 (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 at 268.

D. APPLICABLE LAW

ORS 197.298 governs the priority of any lands to be added to the Metro UGB. First priority for additions to the UGB are lands in Metro’s urban reserve. Next priority are lands designated as lands identified as “exception” or “nonresource” land. Next priority are lands designated as “marginal” lands, only applicable to designated lands in Washington County. Lowest priority are lands designated for agriculture or forest uses, and within this category lands with higher agricultural or forest capabilities as measured by soil type or cubic foot site class. Limited exceptions to this priority methodology are authorized in ORS 197.298(3).

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.

Goal 14 establishes requirements for amending UGBs, determining land need within UGBs, and establishing the boundary location for UGBs. The commission adopted OAR chapter 660, division 24 to provide guidance and requirements for completing the land need and location determinations under Goal 14.

OAR 660-024-0070 establishes rules for UGB adjustments, local government actions that both add and remove land from a UGB. The rule provides the primary law applicable to the Metro submittal:

“(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB. The requirements of section (2) of this rule apply when removing land from the UGB. The requirements of Goal 14 and this division apply when land is added to the UGB, including land added in exchange for land removed. The requirements of ORS 197.296 may also apply when land is added to a UGB, as specified in that statute. If a local government exchanges land inside the UGB for land outside the UGB, the applicable local government must adopt appropriate rural zoning designations for the land removed from the UGB prior to or at the time of adoption of the UGB amendment and must apply applicable location and priority provisions of OAR 660-024-0060 through 660-020-0067.

“(2) A local government may remove land from a UGB following the procedures and requirements of ORS 197.764. Alternatively, a local government may remove land from the UGB following the procedures and requirements of 197.610 to 197.650, provided it determines:”

“(a) The removal of land would not violate applicable statewide planning goals and rules;

“(b) The UGB would provide a 20-year supply of land for estimated needs after the land is removed, or would provide roughly the same supply of buildable land as prior to the removal, taking into consideration land added to the UGB at the same time;

“(c) Public facilities agreements adopted under ORS 195.020 do not intend to provide for urban services on the subject land unless the public facilities provider agrees to removal of the land from the UGB and concurrent modification of the agreement;

“(d) Removal of the land does not preclude the efficient provision of urban services to any other buildable land that remains inside the UGB; and

“(e) The land removed from the UGB is planned and zoned for rural use consistent with all applicable laws.

“(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

“(a) The amount of buildable land added to the UGB to meet:

“(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed, or

“(B) The amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed, and

“(b) The local government must apply comprehensive plan designations and, if applicable, urban zoning to the land added to the UGB, such that the land added is designated:

“(A) For the same residential uses and at the same housing density as the land removed from the UGB, or

“(B) For the same employment uses as allowed on the land removed from the UGB, or

“(C) If the land exchange is intended to provide for a particular industrial use that requires specific site characteristics, only land zoned for commercial or industrial use may be removed, and the land added must be zoned for the particular industrial use and meet other applicable requirements of ORS 197A.320(6).”

In addition to state statute, planning goals, and administrative rules, the director reviews Metro provisions for compliance with applicable Metro Regional Framework Plan standards related to housing and the urban growth boundary. Title 11 of the Urban Growth Management Functional Plan, Planning For New Urban Areas, requires local governments to prepare concept plans for new urban areas with housing prior to inclusion into the UGB and specifies the contents of the

concept plans. Title 14, Urban Growth Boundary, prescribes criteria and procedures for amendments to the UGB that will achieve stated objectives: creation of a clear transition from rural to urban development, provision of an adequate supply of urban land to accommodate long-term population and employment, and development in a compact urban form.

E. DIRECTOR EVALUATION

The director reviews the UGB amendment submittal to determine whether Metro Ordinance No. 23-1488 complies 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 197.747 provides:

“compliance 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 Metro submittal includes Exhibit D, Findings of Fact and Conclusions of Law, that presents Metro’s determination of compliance with all relevant statewide planning goals. Record at 13-24. The director has reviewed those findings and concludes that the UGB amendment 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 regional framework 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). Previously, the commission has stated the coordination requirement as follows:

“the coordination requirement is satisfied where Metro 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.” LCDC Order 05-WKTASK-001637 at 10.

Metro detailed its coordination efforts with local governments and state agencies in its findings. Record at 22-23. The director concludes that Metro satisfied the coordination requirement through the Metro Technical Advisory Committee, the Metro Policy Advisory Committee, and direct information exchanges with the affected local governments: Clackamas County, Happy Valley, Gresham, Oregon City, Tigard, and Washington County. Metro also coordinated with other groups of stakeholders with interest in the process, including affected neighborhood associations and business groups.

UGB Exchange Provisions

As stated earlier, the director reviewed Metro’s decision based upon the rules set forth in OAR 660-024-0070. That rule governs the exchange of land within a UGB for lands outside the current UGB and implements the relevant provisions of state statutes and Goal 14, Urbanization.

Goal 14 – Land Need:

When amending a UGB, a local government must first determine land need, defined as either a “[d]emonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments, or for cities applying the simplified process under ORS chapter 197A, a 14-year forecast,” or, a “[d]emonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection.” Additionally, “[p]rior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.”

OAR 660-024-0070(3) allows a local government adjusting or exchanging land in and out of the UGB to use an existing adopted 20-year land needs analysis rather than creating or revising a new needs analysis for the purpose of the exchange.⁶ Metro’s existing residential land need determination dates from 2018 and was approved by the commission and upheld by the Oregon Court of Appeals. The land that Metro is adding to its UGB in the vicinity of Tigard is 490 acres in size, with 346 acres of buildable land. The land that Metro is removing from its UGB in Clackamas County is 571 acres in size, with 351 acres of buildable land. The remainder of the

⁶ OAR 660-024-0070(3) provides:

“Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

“(a) The amount of buildable land added to the UGB to meet:

“(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed, or

“(B) The amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed, and

“(b) The local government must apply comprehensive plan designations and, if applicable, urban zoning to the land added to the UGB, such that the land added is designated:

“(A) For the same residential uses and at the same housing density as the land removed from the UGB, or

“(B) For the same employment uses as allowed on the land removed from the UGB, or

“(C) If the land exchange is intended to provide for a particular industrial use that requires specific site characteristics, only land zoned for commercial or industrial use may be removed, and the land added must be zoned for the particular industrial use and meet other applicable requirements of ORS 197A.320(6).”

land in both the area added and the area removed is either needed for public facilities associated with residential land or is not developable due to physical constraints. Record, pg. 16-17.

Goal 14 Boundary Location Analysis

After establishing a land need, Goal 14 requires a local government to

“evaluat[e] alternative boundary locations consistent with ORS 197A.320 or, for the Metropolitan Service District, ORS 197.298, and with consideration of the following factors:

“(1) Efficient accommodation of identified land needs;

“(2) Orderly and economic provision of public facilities and services;

“(3) Comparative environmental, energy, economic and social consequences; and

“(4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.”

OAR 660-024-0070(1) provides, in part, that “[t]he requirements of Goal 14 and this division (and ORS 197.298) apply when land is added to the UGB, including land added in exchange for land removed.”

Metro prepared a comprehensive Goal 14 alternative boundary location analysis required to justify its decision. First, applying the “priorities” for inclusion of land in the UGB found in ORS 197.298, Metro determined that it could accommodate the need for residential land within an area designated as urban reserve, which is the highest priority for consideration under that statute.⁷ Record, pg. 18. Next, Metro evaluated 29 existing urban reserve areas under the four location factors found in Goal 14. Record, pg. 24-520. In weighing and balancing these factors, Metro found that the Tigard River Terrace 2.0 area provided the best choice for UGB expansion. Record, pg. 18-19. Metro further evaluated the subareas based on the non-redundant locational factors in the Metro Code, and similarly found the Tigard River Terrace 2.0 area provided the best choice for UGB expansion. Record, pg. 19-21.

Additional OAR 660-024-0070 Requirements

OAR 660-024-0070(2) provides additional requirements for UGB amendments that remove land from a UGB.

⁷ ORS 197.298 provides, in part:

“(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary of Metro except under the following priorities:

“(a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.”

OAR 660-024-0070(2)(a) requires that a local government find “[t]he removal of land would not violate applicable statewide planning goals and rules.” Metro found that its amendment was consistent with all relevant statewide planning goals. Record, pg. 22-23.

OAR 660-024-0070(2)(b) requires a finding that “[t]he UGB would provide a 20-year supply of land for estimated needs after the land is removed, or would provide roughly the same supply of buildable land as prior to the removal, taking into consideration land added to the UGB at the same time.” Metro found that the land added provided 346 acres of developable residential land, while the land removed provided 351 acres of developable land, which means that the amendment does not impact Metro’s adopted 2018 residential land need analysis. Record, pg. 17.

OAR 660-024-0070(2)(c) requires a finding that “[p]ublic facilities agreements adopted under ORS 195.020 do not intend to provide for urban services on the subject land unless the public facilities provider agrees to removal of the land from the UGB and concurrent modification of the agreement.” Similarly, OAR 660-024-0070(2)(d) requires a finding that “[r]emoval of the land does not preclude the efficient provision of urban services to any other buildable land that remains inside the UGB. Metro analyzed the areas for removal in east Clackamas County and near Oregon City and found no plans or agreements to provide urban services to these areas, nor any issues to providing urban services to land within the UGB that would occur if these areas were removed from the UGB. Record, pg. 956-958.

OAR 660-024-0070(2)(e) requires that “[t]he land removed from the UGB is planned and zoned for rural use consistent with all applicable laws.” Metro determined that land to be removed from the UGB still retained the existing rural residential land use designations and zoning in the Clackamas County Comprehensive Plan and Land Use Development Ordinance as existed prior to their previous inclusion in the UGB, and thus these areas were properly planned and zoned for rural uses. Record, pg. 17.

V. CONCLUSION

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

THEREFORE, IT IS ORDERED THAT:

Metro Ordinance No. 23-1488, adding approximately 490 acres to the Metro Urban Growth Boundary and subtracting approximately 571 acres from the Metro Urban Growth Boundary, is approved.

DATED THIS 2nd DAY OF MAY, 2023.



Brenda Bateman, Ph.D.

Director, Department of Land Conservation and Development