BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

RESIDENTS OF ROSEMONT and
DAVID T. ADAMS,
Petitioners,

and

WEST LINN-WILSONVILLE SCHOOL DISTRICT 3JT,
and CITY OF TUALATIN,
Intervenors-petitioner,

vs.

METRO,
Respondent,

and

ROSEMONT PROPERTY OWNERS ASSOC., OLIVE
KUHL, JUDY EISELIUS, LARRY PETERSEN and
HOMEBUILDERS ASSOCIATION OF
METROPOLITAN PORTLAND,
Intervenors-Respondent.

LUBA No. 99-009

CITY OF LAKE OSWEGO, CITY OF WEST LINN and
LAKE OSWEGO SCHOOL DISTRICT NO. 7J,
Petitioners,

and

WEST LINN-WILSONVILLE SCHOOL DISTRICT 3JT,
CITY OF TUALATIN and CLACKAMAS COUNTY,
Intervenors-Petitioner,

vs.

METRO,
Respondent,

and

ROSEMONT PROPERTY OWNERS ASSOC., OLIVE KUHL, JUDY EISELIUS, LARRY PETERSEN and HOMEBUILDERS ASSOCIATION OF METROPOLITAN PORTLAND,
Intervenors-Respondent.

LUBA No. 99-010

FINAL OPINION
AND ORDER

Appeal from Metro.

Christine M. Cook, Portland, filed the petition for review and argued on behalf of petitioners in LUBA No. 99-009.

Jeffrey G. Condit, Portland, filed the petition for review and argued on behalf of petitioners in LUBA No. 99-010. With him on the brief was Miller, Nash, Wiener, Hager and Carlsen.

Brenda L. Braden, Tualatin, filed the petition for review on behalf of intervenor-petitioner City of Tualatin.

Lawrence S. Shaw, Portland, filed the response brief on behalf of respondent.

David B. Smith, Tigard, filed the response brief and argued on behalf of intervenors-respondent Rosemont Property Owners Association, Olive Kuhl and July Eiselius.

BASSHAM, Board Chair; BRIGGS, Board Member; HOLSTUN, Board Member, participated in the decision.

REMANDED 06/16/2000

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

Opinion by Bassham.

NATURE OF THE DECISION

Petitioners appeal Metro's decision amending the Metro Urban Growth Boundary (UGB) to include 830 acres of land in the Stafford area of Clackamas County.

MOTIONS TO INTERVENE

West Linn-Wilsonville School District 3JT and the City of Tualatin move to intervene on the side of petitioner in LUBA Nos. 99-009 and 99-010. Clackamas County moves to intervene on the side of petitioners in LUBA No. 99-010. Rosemont Property Owners Assoc., Olive Kuhl, Judy Eiselius, Larry Petersen, and the Homebuilders Association of Metropolitan Portland (intervenors) move to intervene on the side of respondent in LUBA Nos. 99-009 and 99-010. There is no opposition to any of these motions, and they are allowed.

FACTS

On March 6, 1997, Metro designated 18,579 acres of land as urban reserves pursuant to OAR chapter 660, division 21, including lands in the Stafford area of Clackamas County. That area included five urban reserve study areas (URSAs) numbered 30, 31, 32, 33 and 34.[1] On February 25, 1999, LUBA remanded Metro's decision in *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999) (*Parklane I*), *aff'd* 165 Or App 1, 994 P2d 1205 (2000) (*Parklane II*).

In 1998, Metro began proceedings to consider expanding its UGB in order to comply with a state mandate to provide a 20-year supply of residential land within the UGB. ORS 197.296. Pursuant to ORS 197.299, Metro was required to add to the UGB half of the amount of land needed to comply with ORS 197.296 by December 1998. Metro planning

[1]After Metro's urban reserve decision was adopted, the "urban reserve study areas" became "urban reserve areas." However, for consistency and to reduce the number of acronyms we will continue in this opinion to refer to "urban reserve study areas" or URSAs.

staff conducted various analyses that narrowed potential expansion sites to 26 URSAs, and then conducted further analyses that ranked those 26 URSAs as candidates for urbanization.

On December 3, 1998, while the decision appealed in *Parklane I* was before LUBA, the Metro Council considered proposals to expand the UGB to include all of URSAs 31, 32, 33 and 34. The Council voted to remove more than half of the land in those URSAs from consideration, and approved an expansion of the UGB to include 830 acres of land in URSAs 31, 32 and 33, hereafter the "expansion area" or the "Rosemont area." Proponents of including the Rosemont area in the UGB had developed a concept plan, the Rosemont Village Concept Plan (RVCP), proposing development in accordance with the requirements of Metro's 2040 Growth Concept. The 830-acre expansion area includes approximately 762 acres of land zoned for exclusive farm use (EFU), with the remainder consisting of exception lands, *i.e.*, lands for which an exception to Statewide Planning Goal 3 (Agricultural Lands) had previously been taken. The soils on the EFU-zoned lands are predominantly Class III and IV soils.

On December 17, 1998, the Council adopted Ordinance No. 98-782C, approving the challenged UGB expansion.[2] These appeals followed.

INTRODUCTION

A. Applicable Law

As explained in addressing the second assignment of error (cities) below, the challenged decision finds that the proposed UGB amendment complies with the provisions of Metro Code (MC) 3.01.015 and 3.01.020, which Metro adopted to implement Statewide Planning Goals 2 (Land Use Planning) and 14 (Urbanization). Metro's findings take the

[2]The record of Metro's decision is organized into two separately-paginated multi-volume parts, Background Documents (BD) and Supplemental Record (SR). The challenged decision, Ordinance No. 98-782C and its exhibits, are located at BD 471 to BD 570. Petitioners filed a joint appendix (Jt App) to their petitions for review that includes the challenged decision. We follow the parties in citing to the copy of the decision in the joint appendix rather than to the copy of the decision in the record.

position that because Metro's code is acknowledged to comply with all goals and rules, Goals 2 and 14 do not apply directly to the challenged decision. Nonetheless, Metro adopted alternative findings that attempt to demonstrate compliance with Goals 2 and 14, and various administrative rules that implement those goals.

For the reasons expressed below in addressing the second assignment of error (cities), we agree with petitioners that the challenged UGB amendment is subject to review for compliance with applicable goals and administrative rules, specifically Goals 2 and 14. Accordingly, where resolving an assignment of error turns on state law rather than analogous provisions of Metro's code, we follow petitioners in referring to state law.

B. Findings

The parties also appear to disagree on whether Metro's demonstration that the proposed UGB amendment complies with applicable law must be tested pursuant to the findings that Metro adopted, or whether, for purposes of our review, Metro can also rely on arguments in the response briefs and citation to the record.

We understand petitioners to contend that, while the challenged legislative decision is not subject to any express requirement that it be supported by findings, Metro has elected to do so, and it is bound by that choice. Petitioners note that in *Redland/Viola/Fischer's Mill CPO v. Clackamas County*, 27 Or LUBA 560, 564 (1994), we stated that:

> "[F]or this Board to perform its review function, it is generally necessary either (1) that a challenged legislative land use decision be supported by findings demonstrating compliance with applicable legal standards, or (2) that respondents provide in their briefs argument and citations to facts in the record adequate to demonstrate that the challenged legislative decision complies with applicable legal standards."

If petitioners are suggesting that the two options described in *Redland/Viola/Fischer's Mill CPO* are mutually exclusive, we reject that suggestion. We see no reason why a local government cannot adopt findings intended to demonstrate that a legislative decision

complies with applicable standards, and also respond to specific challenges to those findings by relying on argument in its brief and citation to facts in the record.

FIRST ASSIGNMENT OF ERROR (RESIDENTS)

THIRD ASSIGNMENT OF ERROR (CITIES)

Petitioners[3] argue that Metro violated Goal 2, Goal 14, factors 1 and 2, and MC 3.01.015(e), 3.01.020(b)(1) and 3.0.020(b)(2), and made a decision without an adequate factual base, in determining that a need exists to expand the UGB to include the Rosemont area.

A. Population

In order to establish the need to expand the UGB to accommodate long-range population growth, the challenged decision relies on population figures contained in (1) a 1997 Urban Growth Report (UGR), adopted by Resolution No. 97-2559B; (2) a draft addendum to the UGR entitled the Urban Growth Report Addendum; and (3) a document entitled Urban Growth Boundary Assessment of Need dated October 1998. Petitioners argue that Metro erred in relying on the population estimates in the UGR and its updates instead of population projections and UGB capacity estimates contained in Metro's acknowledged Urban Growth Management (UGM) Functional Plan. According to petitioners, Metro's failure to base its determination of need on population and UGB capacity figures in the UGM Functional Plan violates the Goal 2 consistency requirement and Goal 14, factors 1 and 2.[4]

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[3]Petitioners in LUBA No. 99-009 and petitioners in LUBA No. 99-010 filed two separate petitions for review. However, each petition for review adopts and incorporates by reference all of the assignments of error in the other. Accordingly, we refer to the proponents of any argument in either petition for review as "petitioners" without further differentiation.

[4]Goal 2 requires in relevant part that:

> "City, county, state and federal agency and special district plans and actions related to land use shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS Chapter 268."

Goal 14 provides in relevant part:

See Concerned Citizens v. Jackson County, 33 Or LUBA 70, 108 (1997); *City of La Grande v. Union County*, 25 Or LUBA 52, 56-59 (1993) (determination of need under Goal 14, factors 1 and 2, must be consistent with population projections and assumptions in the acknowledged comprehensive plan). Petitioners argue that in order to rely on the population figures in the UGR and its updates, Metro must amend the population projections in its UGM Functional Plan. *City of La Grande v. Union County*, 25 Or LUBA at 57.

In *Parklane II*, the Court of Appeals addressed an argument that Metro violated the Goal 2 consistency requirement by determining "need" for purposes of establishing urban reserves based on a draft form of the UGR, rather than on the population and capacity figures in the UGM Functional Plan. The court held that:

> "The objective of [Goal 2] is to make the planning process and planning documents the '*basis* for all decisions and actions related to use of land.' (Emphasis added.) The draft [UGR] is not a plan or a planning document of the kind that Goal 2 contemplates. It is an informal study that, by its own terms, is not related to the designation of urban reserves and, by its own terms, is not even a 'final' document for the purposes at which it is directed. Under Goal 2, the computation of need must be based upon the functional plan and/or Metro's other applicable planning documents. Metro may, of course, amend those documents in the manner prescribed by law, if it chooses,

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"Establishment and change of the boundaries shall be based upon considerations of the following factors:

"(1) Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;

"(2) Need for housing, employment opportunities, and livability;

"(3) Orderly and economic provision for public facilities and services;

"(4) Maximum efficiency of land uses within and on the fringe of the existing urban area;

"(5) Environmental, energy, economic and social consequences;

"(6) Retention of agricultural land as defined, with Class I being the highest priority for retention and Class VI the lowest priority; and,

"(7) Compatibility of the proposed urban uses with nearby agricultural activities."

but it cannot simply subordinate them to an informal study that is concerned with a remotely related matter." 165 Or App at 22.

Metro and intervenors (together, respondents)[5] argue that the Court of Appeals' holding in *Parklane II* does not control the present case on this issue, because the version of the UGR at issue there was a draft, informal study that was not intended to supply population or UGB capacity figures for purposes of establishing urban reserves. By contrast, respondents argue, the UGR and its updates *are* planning documents of the kind that Goal 2 contemplates. Respondents point out that Metro adopted the UGR by resolution, and that the UGR is intended to supply population and UGB capacity figures for purposes of amending the UGB, as required by ORS 197.296. Respondents contend there is no reason to require Metro to incorporate the UGR and its updates into the UGM Functional Plan before relying on those documents.

We agree with petitioners that Metro erred in relying upon the population and UGB capacity estimates in the UGR and its updates without amending the UGM Functional Plan to make it consistent with the UGR and its updates. Respondents are correct that the above-quoted passage from *Parklane II* relies in part on the fact that the version of the UGR at issue in that case was a draft, informal study concerned only tangentially with urban reserves. However, those factual differences do not undermine the central legal basis for the court's holding: that Metro's planning documents developed pursuant to the Goal 2-mandated planning process must be the basis for Metro's land use decisions. Respondents do not contend that the UGR was adopted pursuant to the Goal 2-mandated planning process, or that it is the equivalent of the UGM Functional Plan. Even if the UGR was a planning document of the type contemplated by Goal 2, respondents concede that Metro also relied on the updates to the UGR, even though the Metro Council has not adopted those updates in any

[5]Metro's response brief incorporates a number of arguments set forth in intervenors' brief. In addressing such combined arguments, for ease of reference we refer to the parties together as "respondents."

form. Perhaps more importantly, the fact that the purpose of the UGR is to provide data to help determine whether there is a need under Goal 14, factor 1 and 2 to amend the UGB brings the present decision squarely within the holdings of *Concerned Citizens* and *City of La Grande v. Union County*. The UGR is essentially an update of the population and UGB capacity estimates in the UGM Functional Plan; both sets of figures are intended to perform the same function in determining whether the UGB is adequate. Amendments to the UGB based on a demonstration of need under Goal 14, factors 1 and 2, must be consistent with the population projections and assumptions in Metro's acknowledged planning documents, including the UGM Functional Plan. If Metro wants to use different projections and assumptions than those contained in its acknowledged planning documents, it must first amend those acknowledged planning documents. *Parklane II*, 165 Or App at 22; *Concerned Citizens*, 33 Or LUBA at 108; *City of La Grande v. Union County*, 25 Or LUBA at 57.

This subassignment of error is sustained.

B. 2040 Growth Concept

Petitioners argue that Metro erred in determining need for the UGB expansion to the extent it considered the suitability of the Rosemont area for master planning pursuant to the 2040 Growth Concept.[6] Petitioners cite to Jt App 9, 10 and 25 as examples of findings asserting that including the Rosemont area in the UGB is necessary because it presents the best opportunity in the region to develop a community in accordance with the 2040 Growth Concept.

Petitioners explain that, pursuant to MC 3.01.020(b)(1)(E) and 3.07.1120, *all* areas included in legislative UGB amendments must have completed urban reserve conceptual plans that demonstrate compliance with 2040 Growth Concept requirements. Thus, petitioners argue, all expansion areas proposed for legislative amendments, large or small,

[6]The 2040 Growth Concept is an integrated set of goals and objectives for the Metro region, designed to achieve a desired, and generally denser, urban form by the year 2040. *See Parklane I*, 35 Or LUBA at 536.

must go through a pre-planning process and develop a conceptual plan demonstrating compliance with the 2040 Growth Concept. Given that all such expansion areas must be master-planned pursuant to the 2040 Growth Concept, petitioners contend, no *particular* UGB amendment can be justified based on a regional or subregional need for a 2040 Growth Concept development.

It is not apparent to us that Metro in fact determined a Goal 14, factor 1 and 2 need based on the suitability of the Rosemont area for master planning pursuant to the 2040 Growth Concept. Although there is language in the challenged decision suggesting that view, the point of that language, it seems to us, is that suitability for 2040 Growth Concept master planning is relevant to Metro's demonstration of "need" because compliance with the 2040 Growth Concept provides opportunities for affordable housing. *E.g.* Jt App 10 ("the Rosemont Village concept plan serves a particular need in this area of the region for the opportunity to plan and develop * * * a 2040 concept community complete with opportunities for affordable housing * * *"). As discussed below, a subregional need for affordable housing is Metro's primary rationale for the challenged UGB expansion. We do not understand the findings to take the position that there is a Goal 14, factor 1 or 2 "need" for land subject to 2040 Growth Concept master planning. With that understanding, petitioners' arguments under this subassignment do not provide a basis for reversal or remand.

This subassignment of error is denied.

C. Affordable Housing

Metro's findings rely upon an identified "affordable housing" imbalance in the subregion including the cities of Lake Oswego and West Linn to justify the addition of the Rosemont area to the UGB. Petitioners challenge that conclusion, contending, first, that nothing in Metro's code authorizes Metro to justify a UGB expansion based on *any* subregional need. Alternatively, petitioners argue that the evidence Metro relies upon to

determine a subregional need for affordable housing does not, in fact, support such a determination. Finally, petitioners argue that Metro erred in justifying the UGB expansion on a need for affordable housing without actually requiring the development of affordable housing in the Rosemont area.

1. Subregional Need

Petitioners contend that Metro has no authority to expand the UGB based upon subregional, as opposed to regional, need. Further, petitioners argue, defining a subregional need is inconsistent with Goal 14, because a need defined with respect to a particular locality predetermines where to expand the UGB, rendering compliance with Goal 14, factors 3-7, the locational factors, an empty formality.

In *1000 Friends of Oregon v. Metro Service Dist.*, 18 Or LUBA 311, 324 (1989), we rejected a similar argument that, as a matter of law, Goal 14 prohibits Metro from identifying a subregional need as a basis for amending the Metro UGB. We now reject petitioners' iteration of that argument. We also agree with respondents that, to the extent Metro requires specific authority to use an identified subregional need such as an affordable housing imbalance as the basis for a UGB amendment, that authority exists in ORS 197.298(3), which allows local governments to include lower priority lands within the UGB where higher priority lands are unable to accommodate "[s]pecific types of identified land needs." See n 21, below. *Cf. Parklane I*, 35 Or LUBA at 663 (the anticipated inability of a jurisdiction to provide affordable housing may constitute a "specific type of identified land need" for purposes of the urban reserve rule at OAR 660-021-0030(4)(a)).

This subassignment of error is denied.

2. Evidence Identifying a Subregional Need for Affordable Housing

Petitioners argue, in the alternative, that Metro's determination that a need exists for affordable housing in Lake Oswego and West Linn is not supported by an adequate factual base. Petitioners explain that Metro relied on reports submitted by Leland Consulting and

ECONorthwest to substantiate a subregional need for affordable housing in the Lake Oswego/West Linn area. The gist of both reports, petitioners explain, is that Lake Oswego and West Linn are predominantly bedroom communities characterized by expensive homes and low-wage jobs, and that most of the people who work in and around the Rosemont area cannot afford a typical single family home in Lake Oswego or West Linn. Jt App 26. Metro relied upon the two reports to identify a need for additional land in order to provide dwellings more affordable to workers employed in the area, such as smaller single-family homes, condominiums and apartments. *Id.* Metro ultimately concluded that the Rosemont Village Concept Plan, which emphasizes smaller homes, condominiums and apartments, is an appropriate vehicle to meet the identified need.

Petitioners argue that the two reports are insufficient to identify a need for affordable housing. Petitioners point out that one study uses a six-mile radius to study affordability in the area, while the other uses a three-mile radius. Further, petitioners contend that there is no logical relationship between the housing needs of persons employed at the further limits of either radius to housing prices in Lake Oswego and West Linn.

Respondents argue, and we agree, that Metro's identification of a subregional need for affordable housing is supported by an adequate factual base. Petitioners do not explain why any difference between a three or six mile study area brings the two studies into conflict or otherwise undermines the data or conclusions drawn from those studies. The point of petitioners' other arguments is unclear. Petitioners may be arguing that the studies improperly considered the housing needs of people employed as much as six miles from the Rosemont area, and thus outside the city limits of either Lake Oswego or West Linn, because there is no logical connection between such persons' wages and ability to afford a house in either community. However, it seems appropriate for purposes of identifying an affordable housing imbalance to consider whether a community can supply housing at a price that is appropriate for the wage level of jobs in a defined area. In conducting such a study, we see

no reason why it must be limited to considering jobs within the corporate bounds of the community. Petitioners have not demonstrated that Metro's findings identifying an affordable housing imbalance are not supported by an adequate factual base.

This subassignment of error is denied.

3. Requiring Affordable Housing

Finally, petitioners contend that, to the extent Metro relies on need for a particular kind of development to justify expansion of the UGB, Metro's decision must determine that the needed development will be built. *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 383, *aff'd* 130 Or App 406, 882 P2d 1130 (1994) (a UGB expansion justified on the need for commercial and industrial land must limit the land to those uses). Petitioners argue that Metro failed to impose conditions to ensure that affordable housing to meet the identified need is actually built. According to petitioners, the decision fails to require that the housing types and proportions thereof proposed in the RVCP are actually built. More importantly, petitioners argue, Metro erroneously assumes that simply because the RVCP proposes a large proportion of high-density dwellings, such as small detached houses, condominiums and apartments, such dwellings will in fact be affordable to the population of low-wage workers that Metro analyzed to establish the need. Petitioners contend that high-density housing is not necessarily less expensive than low-density housing. Further, petitioners argue that the majority of the proposed dwellings will be affordable only to families with annual incomes that greatly exceed median wages in the metropolitan area.

Respondents argue that the challenged decision adopts the RVCP as the master plan for the expansion area, and that the RVCP requires that Lake Oswego and Clackamas County adopt comprehensive plan and zoning ordinance amendments, including design standards, consistent with the RVCP. Respondents note that the RVCP, consistent with the 2040 Growth Concept, allocates a significant number of acres for high-density residential development. Respondents contend that such requirements are sufficient to ensure that the

type and proportion of high-density dwellings proposed in the RVCP will actually be built. Further, respondents argue that Metro did not err in assuming that such high-density dwellings will help redress the identified need for affordable housing.

We agree with respondents that the decision's adoption of the RVCP as the master plan for the Rosemont area suffices to assure that housing types and proportions similar to those proposed therein will actually be built. With respect to whether the proposed dwellings in the RVCP will be affordable to those employed in the subregion, Metro's findings state:

> "[O]f the dwelling unit types affordable to households within the 6-mile employment radius—generally condominiums, apartments, townhouses and other small-lot types—Lake Oswego and West Linn collectively provide a total of only 294 existing units. Two-bedroom single-family homes, affordable to 20% of households in this analysis, make up a total of 606 units, resulting in unmet demand of 563 units of the housing type. Only 5% of the households in this analysis could afford 3- or 4-bedroom homes in Lake Oswego or West Linn.
>
> "Rosemont Village, by contrast, provides the opportunity for (111) 2-bedroom single-family homes, (1217) 2- and 3- bedroom townhouse/small-lot units, and (2,365) 1-, 2-, and 3-bedroom condominiums and apartments affordable to households with employment in the 6-mile vicinity. The opportunity for provision of such affordable units represent an 83% share of the total number of dwelling units planned in Rosemont Village. These units have the potential for addressing the housing needs of literally thousands of households with one or more members who work in the 6-mile radius areas." Jt App 33.

It is difficult to discern from Metro's findings or the evidence to which we are directed what proportion of housing contemplated by the RVCP will be affordable to what percentage of persons working within the defined radius.[7] However, as we understand those findings and that evidence, Metro defines the problem with affordable housing in the Lake Oswego and West Linn communities as a matter of the absence or underrepresentation of certain housing *types* in those communities, not as a matter of housing prices *per se*. We

[7]Record SR 5123 contains a table analyzing housing affordability for employees within a six-mile radius of the Rosemont area. That table appears to indicate that 83 percent of the proposed dwelling units will be affordable to those employees.

understand Metro to conclude that the RVCP will meet the defined need, because the large majority of the housing types proposed in the RVCP consists of the ones most affordable to persons working in the area. Petitioners do not identify any obligation on Metro's part to ensure that any particular proportion of the contemplated dwelling units are affordable to persons earning the median wage. Nor have petitioners identified any means for Metro to do so, other than to require, as Metro has done, that the RVCP provide a significant number of the housing types that Metro has determined are the least represented in the subregion and the most affordable to persons working in the area.

This subassignment of error is denied.

The first assignment of error (Residents) and third assignment of error (cities) are sustained, in part.

SECOND ASSIGNMENT OF ERROR (RESIDENTS)

Petitioners argue that Metro violated Goal 14, factor 4, and MC 3.01.020(b)(4), and made a decision without an adequate factual base, in determining that the challenged UGB expansion would achieve the maximum efficiency of land uses within and on the fringe of the existing urban area.[8]

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[8]MC 3.01.020(b)(4) provides:

> "Factor 4: Maximum efficiency of land uses within and on the fringe of the existing urban area. An evaluation of this factor shall be based on at least the following:
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> "(A) The subject area can be developed with features of an efficient urban growth form including residential and employment densities capable of supporting transit service; residential and employment development patterns capable of encouraging pedestrian, bicycle, and transit use; and the ability to provide for a mix of land uses to meet the needs of residents and employees. If it can be shown that the above factors of compact form can be accommodated more readily in one area than others, the area shall be more favorably considered.
>
> "(B) The proposed UGB amendment will facilitate achieving an efficient urban growth form on adjacent urban land, consistent with local comprehensive plan policies and regional functional plans, by assisting with achieving residential and employment densities capable of supporting transit service; supporting the evolution of residential and employment development patterns capable of encouraging pedestrian, bicycle,

Petitioners explain that MC 3.01.020(b)(4)(A) requires Metro to consider the efficiency of land uses contemplated for the area proposed to be included in the UGB, while MC 3.01.020(b)(4)(B) requires consideration of whether the proposed UGB amendment will facilitate achieving an efficient urban growth form on *adjacent urban land*. However, petitioners argue that Metro's findings with respect to MC 3.01.020(b)(4) address only the first inquiry and not the second. The closest Metro comes to addressing that inquiry, petitioners argue, is a finding that urbanizing the Rosemont area "has no adverse consequence to the reasonably anticipated development of land within the existing UGB." Jt App 66. However, petitioners argue that the quoted finding falls short of addressing whether the UGB amendment "will facilitate achieving an efficient urban growth form on adjacent urban land," as MC 3.01.020(b)(4)(B) requires.

Further, petitioners argue, MC 3.01.020(b)(4) implements Goal 14, factor 4, which requires "the encouragement of development within urban areas before the conversion of urbanizable areas." *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA at 390. Petitioners argue that there is no evidence in the record that urbanizing the Rosemont area will encourage development within the urban area.

Intervenors argue that Metro's findings adequately address MC 3.01.020(b)(4)(B), citing to findings that urbanizing the Rosemont area "itself enables maximizing the efficiency of land uses in the area because it is a highly efficient use of land," and that "[t]he compact urban form envisioned for Rosemont Village in its concept plan is consistent with the comprehensive plans of Lake Oswego and West Linn[.]" Jt App 66, 67. Intervenors also argue that Metro adopted the RVCP as findings, including a statement that

> "providing services to the concept plan area enables the amortization of costs of upgrading needed infrastructure to accommodate existing populations, as well as projected populations within the existing UGB. * * * All of these

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and transit use; and improving the likelihood of realizing a mix of land uses to meet the needs of residents and employees."

> added efficiencies make it clear the concept plan area will maximize the efficiency of the provision of urban services * * * to the land within the existing UGB." SR 4916.

Petitioners do not explain why the above-quoted findings are insufficient to demonstrate compliance with MC 3.01.020(b)(4)(B) and Goal 14, factor 4. Without a focused challenge to those findings, petitioners' arguments under this assignment do not provide a basis for reversal or remand.

The second assignments of error (Residents) is denied.

THIRD ASSIGNMENT OF ERROR (RESIDENTS)

Petitioners argue that Metro violated Goal 14, factor 5, and MC 3.01.020(b)(5), and made a decision without an adequate factual basis, in determining that the long-term environmental, energy, economic and social (ESEE) consequences of the challenged UGB expansion would not be significantly more adverse than expanding the UGB in other areas.[9]

Petitioners contend that Metro failed to consider several adverse ESEE consequences pointed out by opponents. Further, petitioners argue that Metro's ESEE analysis fails to analyze any other potential expansion areas under MC 3.01.020(b)(5), and simply concludes

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[9]MC 3.01.020(b)(5) provides:

> "Factor 5: Environmental, energy, economic and social consequences. An evaluation of this factor shall be based upon consideration of at least the following:
>
> "(A) If the subject property contains any resources or hazards subject to special protection identified in the local comprehensive plan and implemented by appropriate land use regulations, findings shall address how urbanization is likely to occur in a manner consistent with these regulations.
>
> "(B) Complementary and adverse economic impacts shall be identified through review of a regional economic opportunity analysis, if one has been completed. If there is no regional economic opportunity analysis, one may be completed for the subject land.
>
> "(C) The long-term environmental, energy, economic, and social consequences resulting from the use at the proposed site. Adverse impacts shall not be significantly more adverse than would typically result from the needed lands being located in other areas requiring an amendment of the UGB."

that "[a]ny adverse consequence that may result from urbanization of Rosemont Village will result to any other area zoned EFU or even any other area for which an exception has been taken." Jt App 15. In addition, the findings conclude that

> "there is nothing to establish that the adverse impacts which may result from the development of Rosemont Village are any more adverse than consequences that would typically result from urbanization of the Rosemont Village concept plan in some other location. The adverse consequences of growth from a project of the size and intensity of Rosemont Village are similar throughout the region. It is hereby determined, however, that the consequences from Rosemont Village are less adverse than in other candidate areas and actually produce a net positive analysis on its ESEE consequences." Jt App 70.

Intervenors argue, and we agree, that Metro's findings address at least some of the adverse ESEE consequences raised by opponents. SR 68-70. Petitioners do not specifically challenge those findings, or explain what other issues Metro should have addressed.

However, we agree with petitioners that Metro's findings fail to demonstrate compliance with MC 3.01.020(b)(5). MC 3.01.020(b)(5) requires a comparison of the ESEE consequences between the proposed expansion area and other potential expansion areas. Metro's findings do not identify or actually consider other potential expansion areas in the subregion to determine whether the ESEE consequences of developing the Rosemont area are not, in fact, significantly more adverse than developing those other expansion areas. Metro's findings simply assume that similar types of development will cause similar types of adverse ESEE consequences no matter where they are located. That assumption obviates the analysis that MC 3.01.020(b)(5) appears to require. Until Metro actually examines other potential expansion areas in the subregion, it is in no position to conclude that the ESEE consequences of urbanizing the Rosemont area are not significantly more adverse than for other potential expansion areas.

The third assignment of error (Residents) is sustained, in part.

FOURTH ASSIGNMENT OF ERROR (RESIDENTS)

Goal 14, factor 6 requires that Metro consider the retention of agricultural land, with

Class I soils being the highest priority for retention and Class VI being the lowest priority. Petitioners argue that Metro violated Goal 14, factor 6, and MC 3.01.020(b)(6), and made a decision without an adequate factual basis, in determining that the challenged UGB expansion is consistent with retention of high priority agricultural land, as determined by soil class.[10]

Petitioners explain that the approved 830-acre expansion area includes approximately

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[10]MC 3.01.020(b)(6) provides:

> "Factor 6: Retention of agricultural land. This factor shall be addressed through the following:
>
> "(A) Prior to the designation of urban reserves, the following hierarchy shall be used for identifying priority sites for urban expansion to meet a demonstrated need for urban land:
>
> "(i) Expansion on rural lands excepted from statewide planning Goals 3 and 4 in adopted and acknowledged county comprehensive plans. Small amounts of rural resource land adjacent to or surrounded by those 'exception lands' may be included with them to improve the efficiency of the boundary amendment. The smallest amount of resource land necessary to achieve improved efficiency shall be included;
>
> "(ii) If there is not enough land as described in (i) above to meet demonstrated need, secondary or equivalent lands, as defined by the state, should be considered;
>
> "(iii) If there is not enough land as described in either (i) or (ii) above, to meet demonstrated need, secondary agricultural resource lands, as defined by the state should be considered;
>
> "(iv) If there is not enough land as described in either (i), (ii) or (iii) above, to meet demonstrated need, primary forest resource lands, as defined by the state, should be considered;
>
> "(v) If there is not enough land as described in either (i), (ii), (iii) or (iv) above, to meet demonstrated need, primary agricultural lands, as defined by the state, may be considered.
>
> "(B) After urban reserves are designated and adopted, consideration of factor 6 shall be considered satisfied if the proposed amendment is wholly within an area designated as an urban reserve.
>
> "(C) After urban reserves are designated and adopted, a proposed amendment for land not wholly within an urban reserve must also demonstrate that the need cannot be satisfied within urban reserves."

762 acres zoned EFU. The EFU lands consist predominantly of Class III and IV soils. According to petitioners, Metro's findings with respect to Goal 14, factor 6 and MC 3.01.020(b)(6) rely principally on the fact that (1) the Rosemont area is wholly within areas designated as urban reserves, pursuant to MC 3.01.020(b)(6)(B), and (2) the EFU land in the Rosemont area is "completely surrounded" by exception land for purposes of the priorities at ORS 197.298. However, petitioners argue, Metro cannot rely on either basis, because LUBA's decision in *Parklane I* invalidated the urban reserve designations and rejected Metro's similar determination that the Stafford area urban reserve areas were "completely surrounded" by exception areas, for purposes of the urban reserve rule. Accordingly, petitioners argue, Metro cannot rely on MC 3.01.020(b)(6)(B) and its findings must, therefore, address the provisions of MC 3.01.020(b)(6)(A).

Metro's findings with respect to Goal 14, factor 6 and MC 3.01.020(b)(6)(A) state:

> "* * * Rosemont Village is either composed of exception land or EFU zoned land that is completely surrounded by exception land. This EFU zoned land within Rosemont Village is not properly considered high value farm land as that term is defined in ORS 215.710. *See* 1991 Clackamas County Urban Fringe study; Miles' Agricultural analyses of [URSA] 31; December 3, 1998 DLCD letter. Accordingly, under ORS 197.298, Rosemont Village is appropriately considered the highest priority for inclusion under either the urban reserve prong or the second priority exception and completely surrounded prong. It is considered the legal and policy equivalent of exception land. DLCD in its December 3, 1998 letter makes it clear that Rosemont Village is composed of lower quality agricultural [land] meriting inclusion in the UGB ahead of other areas on agricultural factors.
>
> The Clackamas County Farm Bureau has twice written to the Metro Council asking that it include the Rosemont Village concept plan area within the UGB to protect truly good farming elsewhere. The Clackamas County Farm Bureau has made it clear it has looked at the issue and attests that there is no real farming going on [in] the Rosemont Village concept plan area." Jt App 71.

Petitioners argue that these findings fail to respond to the requirements of both Goal 14, factor 6 and MC 3.01.020(b)(6)(A), because the findings fail to evaluate and assign priority to pertinent agricultural lands in the subregion according to soil capability classes.

Further, petitioners argue that, because Goal 14, factor 6 requires consideration of agricultural capability as measured by soil capability classes rather than current farming activities, Metro's findings improperly focus on actual farming activities within the Rosemont area rather than on agricultural capability. Finally, petitioners contend that Metro's findings do not attempt to comply with the hierarchy contained in MC 3.01.020(b)(6)(A).

Intervenors concede that Metro cannot rely upon the urban reserve designation to satisfy Goal 14, factor 6 or MC 3.01.020(b)(6)(B), but argue that Metro properly assigns high priority to the EFU-zoned land in the Rosemont area based on MC 3.01.020(b)(6)(A). Intervenors argue, first, that Metro properly assigned the EFU lands the highest priority under MC 3.01.020(b)(6)(A)(i), because those lands consist of "[s]mall amounts of rural resource land" adjacent to exception lands included within the UGB, that can also be included in order "to improve the efficiency of the boundary amendment." With respect to soil classes, intervenors cite to evidence in the record that discusses the soil classes of EFU land within the Rosemont area and of EFU land to the south of the Rosemont area. Based on that evidence, intervenors contend, Metro properly concluded that the agricultural land within the Rosemont area had higher priority for inclusion within the UGB over other potential agricultural lands.

We agree with petitioners that Metro's findings do not demonstrate compliance with Goal 14, factor 6 and MC 3.01.020(b)(6). To the extent those findings rely on a determination that the EFU lands in the Rosemont area are "completely surrounded" by exception lands, as provided in ORS 197.298, we reject that determination for the reasons explained in the eighth assignment of error (cities) below. We also reject intervenors' argument that the Rosemont area EFU lands are properly assigned high priority pursuant to MC 3.01.020(b)(6)(A)(i). Metro made no attempt to justify inclusion of the Rosemont area

EFU lands under that provision.[11]

We agree with petitioners that agricultural capability, not current farming activities, is the focus of Goal 14, factor 6. *Parklane I*, 35 Or LUBA at 579. Metro erred to the extent it failed to consider the agricultural capability of resource land, as measured by soil capability classes, in determining whether and which agricultural lands should be included in the expansion area. It may be, as intervenors argue, that the EFU land in the Rosemont area, considered as a whole, has lower capability soils than adjacent EFU-zoned land to the south. However, the relative priority among EFU-zoned lands in the area does not assist intervenors, given Metro's failure to apply the hierarchy at MC 3.01.020(b)(6)(A). Until it applies that hierarchy, Metro is in no position to determine what priority the agricultural land in the Rosemont area possesses.[12]

The fourth assignment of error (Residents) is sustained.

FIRST ASSIGNMENT OF ERROR (CITIES)

Petitioners argue that the challenged decision must be remanded because it is based on much of the same reasoning, conclusions and evidence that was repudiated in *Parklane I* and *II*. For example, petitioners argue that Metro's justification for the UGB expansion rests in large part on the designation of the Rosemont area as urban reserves and on the designation of part of that area as "First Tier" lands assigned highest priority for inclusion.

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[11]Intervenors argue that inclusion of 762 acres of EFU land as part of a 830-acre expansion is consistent with MC 3.01.020(b)(6)(A)(i), because those 762 acres of EFU land is a "small amount" compared to the 1,919 total acres of exception lands in URSAs 31, 32, 33 and 34. However, MC 3.01.020(b)(6)(A)(i) appears to set forth a *de minimus* exception to the priority scheme that allows only "[t]he smallest amount of resource land necessary to achieve improved efficiency" to be included. Metro failed to apply any part of MC 3.01.020(b)(6)(A), much less make a determination that the 762 acres of EFU land are the "smallest amount of resource land necessary to achieve improved efficiency." In addition, the comparison or proportionality that MC 3.01.020(b)(6)(A)(i) requires appears to be with respect to the exception lands included in the UGB, not the total number of exception lands elsewhere in the subregion.

[12]MC 3.01.020(b)(6)(A) parallels in many respects and may be intended to implement the priority scheme set forth in ORS 197.298(1). *See* n 21 and discussion of ORS 197.298 in the text below addressing and sustaining the eighth assignment of error (cities). If so, some of the reasons for sustaining petitioners' eighth assignment of error may be germane to Metro's consideration of MC 3.01.020(b)(6)(A) on remand.

However, petitioners note, *Parklane I* and *II* had the effect of rejecting *in toto* Metro's designation of urban reserves and adoption of the First Tier concept. Because the decision challenged in this case relies so heavily on Metro's urban reserve decision, petitioners contend, it is impossible to determine whether the UGB expansion can be justified based on alternative grounds not addressed and rejected in LUBA's and the Court of Appeals' review of that decision.

Respondents contend, and we agree, that Metro's reliance on its remanded urban reserve decision does not warrant summary remand of the present decision for reconsideration in light of *Parklane I* and *II*. At most crucial junctures in the challenged decision, Metro adopts alternative findings that are not based on the urban reserve or First Tier designations set forth in the remanded urban reserve decision. As will become evident in our discussion, *Parklane I* and *II* are sometimes controlling with respect to challenges to Metro's alternative findings based on legal standards that are identical or similar to standards addressed in those cases. However, some of Metro's alternative findings address standards that had no counterpart in the urban reserve decision. We conclude that Metro's reliance on the remanded urban reserve decision does not provide a basis for summary remand of the decision before us.

The first assignment of error (cities) is denied.

SECOND ASSIGNMENT OF ERROR (CITIES)

Petitioners argue that Metro erred in concluding that Goal 2, Goal 14 and several administrative rules do not apply directly to the challenged UGB expansion.

Petitioners argue, and neither Metro nor intervenors dispute, that a decision to amend Metro's UGB is a decision to amend a comprehensive plan provision. *League of Women Voters v. Metro. Service Dist.*, 99 Or App 333, 335-36, 781 P2d 1256 (1989). Generally, the Goals apply directly to comprehensive plan amendments. ORS 197.175(2)(a); 197.835(6); *Opus Development Corp. v. City of Eugene*, 141 Or App 249, 254, 918 P2d 116 (1996). In

addition, petitioners note that MC 3.01.012(e) expressly requires an urban reserve plan that is used as the basis for any major or legislative UGB amendment to demonstrate compliance with Goals 2 and 14.[13] Consequently, petitioners argue, the challenged UGB amendment is reviewable for compliance with Goals 2 and 14.

In the challenged decision, Metro concludes that:

> "These findings * * * establish the Rosemont Village plan amendment's compliance with applicable acknowledged Metro code standards. The Metro standards are acknowledged to be in compliance with applicable Goals and administrative rules regarding urban growth boundary amendments including Goal 2, Goal 14 and OAR 660-004-0020; [660-004-]0022 and 660-014-0040. Accordingly, Metro need not apply these standards directly to any UGB amendment. However, in the alternative and in an abundance of caution, these Goal and [rule] standards, together with the standards at ORS 197.732, are applied herein as part of this alternatives analysis. * * *" Jt App 9.

The decision does not explain the basis for its conclusion that the goals do not directly apply to the challenged UGB amendment. However, respondents contend that Metro's conclusion is consistent with the holding in *League of Women Voters*, which we discuss below. Respondents also argue that it is consistent with MC 3.01.020(a), which provides that "[c]ompliance with [MC 3.01.020] shall constitute compliance with ORS 197.298 [and] statewide planning Goals 2 and 14."

The parties' dispute over whether Metro was required to find compliance with Goals 2 and 14 and associated rules as well as with MC 3.01.020 is somewhat academic, given that MC 3.01.020 implements those goals and, indeed, replicates the relevant terms of both goals. Thus, Metro's findings directed at pertinent code provisions address the terms and substance of Goals 2 and 14. No party argues that, in this context, Metro can interpret code provisions implementing the goals in ways inconsistent with those goals. ORS 197.829(1)(d); *see also*

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[13]MC 3.01.012(e) provides in relevant part:

> "A conceptual land use plan and concept map which demonstrates compliance with Goal 2 and Goal 14 and [MC] 3.01.020 or [MC] 3.01.030 * * * shall be required for all major amendment applications and legislative amendments of the [UGB]. * * *"

Parklane II, 164 Or App at 23 n 7 (in designating urban reserves, the urban reserve rule at OAR 660-021-0030 is the controlling law, and Metro cannot apply its acknowledged legislation inconsistently with the rule); *Leathers v. Marion County*, 144 Or App 123, 130-31, 925 P2d 148 (1996) (questions pertaining to the need for or sufficiency of statewide goal exceptions are governed by state law, and an application of local acknowledged legislation inconsistent with such state law cannot be saved because it purports to be an interpretation of local legislation). The issue is also somewhat academic for the additional reason that Metro in fact addressed compliance with the goals.

Nonetheless, the issue must be resolved, not only because Metro's finding on that point is assigned as error, but because doing so clarifies the appropriate framework for resolving several assignments of error, and because on remand disputes not presently before us may arise that turn on whether the goals apply directly to the decision on remand.

Respondents cite to *League of Women Voters* for the proposition that Metro UGB amendments pursuant to code provisions acknowledged to comply with goals such as Goal 14 need only demonstrate compliance with the code, not the goals.[14] In that case, Metro approved a minor adjustment to the UGB pursuant to acknowledged code provisions that allowed such adjustments upon compliance with criteria that implemented Goal 14, factors 3 through 7, the locational factors. The code provisions, as designed, did not address or require compliance with Goal 14, factors 1 and 2, the need factors. In acknowledging that the code provisions complied with Goal 14, the Land Conservation and Development Commission (LCDC) had agreed with Metro that the need factors could not be meaningfully applied in the context of minor adjustments to the regional UGB. Nonetheless, the petitioners argued that Metro must apply factors 1 and 2 directly. The Court of Appeals disagreed, stating that under those "unique circumstances," the minor amendment "cannot be reviewed meaningfully for goal compliance independently of the acknowledged provisions, so the amendment must be deemed to share the presumptive goal compliance of the ordinance that controls it." *League of Women Voters*, 99 Or App at 338; *see also Foland v. Jackson County*, 311 Or 167, 179, 807 P2d 801 (1991) (characterizing *League of Women Voters*' holding as "an amendment may not be declared invalid for non-compliance with state-wide goals if holding the amendment invalid also declares invalid, in all but name, an acknowledged provision in the plan."); *Fogarty v. City of Gresham*, 34 Or LUBA 309, 325 (1998) (that criteria under which the city adopts a plan amendment are acknowledged as complying with the goals does not obviate the requirement that the amendment itself comply with the goals, at least where such goal compliance review does not necessarily challenge the

[14]The proposition cited relies more heavily on LUBA's opinion in *League of Women Voters v. Metro Service Dist.*, 17 Or LUBA 949 (1989), than on the Court of Appeals' opinion. The court affirmed LUBA's decision on arguably narrower grounds than those expressed in LUBA's opinion. To the extent the reasoning in LUBA's decision goes further than the Court of Appeals' decision on this point, we choose to rely on the latter as the appropriate statement of the applicable law.

validity of the acknowledged criteria).

The present case is distinguishable. The challenged UGB amendment is a legislative UGB amendment subject to criteria that implement each of the requirements of Goals 2 and 14. Unlike *League of Women Voters*, respondents do not argue or cite to any supporting legislative history that indicates an intent on the part of LCDC or Metro to exempt this particular type of UGB amendment from particular statewide planning goal requirements. Nor is there any evidence of intent to purposefully vary a code requirement from what would otherwise be required under the relevant goal. Accordingly, the present circumstance is not one where the amendment cannot be reviewed meaningfully for goal compliance independently of the acknowledged code provisions. Stated differently, respondents have not identified any acknowledged code provision that would be invalidated, in all but name, by a determination that the challenged amendment does not comply with applicable statewide goals.

It is true that MC 3.01.020(a) can be read to imply that a decision demonstrating compliance with the standards at MC 3.01.020 is not subject to review for compliance with the statute and Goals 2 and 14. However, MC 3.01.020(a) can be read more narrowly to indicate that findings addressing compliance with MC 3.01.020 also serve to address compliance with the statute and Goals 2 and 14, *i.e.*, that no separate findings of compliance with the statute or goals are necessary. In any case, MC 3.01.012(e) specifically requires a demonstration of compliance with Goals 2 and 14 when approving an urban reserve concept plan such as the RVCP as part of a legislative UGB amendment under MC 3.01.020. Accordingly, we conclude that the challenged decision is subject to review for compliance with Goals 2 and 14.

The second assignment of error (cities) is sustained.

FOURTH ASSIGNMENT OF ERROR (CITIES)

ASSIGNMENT OF ERROR (CITY OF TUALATIN)

Petitioners[15] contend that Metro failed to adequately coordinate its decision with affected local governments, as required by Goal 2, ORS 268.385(1) and ORS 195.025.

In addressing a similar issue in *Parklane II*, the Court of Appeals quoted with approval LUBA's opinion in *DLCD v. Douglas County*, 33 Or LUBA 216, 221-22 (1997), which restated the Goal 2 coordination requirement as follows:

> "Goal 2 requires, in part, that comprehensive plans be 'coordinated' with the plans of affected governmental units. Comprehensive plans are "'coordinated" when the needs of all levels of government have been considered and accommodated as much as possible.' ORS 197.015(5); *Brown v. Coos County*, 31 Or LUBA 142, 145 (1996). Comprehensive plan coordination is a two step process, which requires:
>
> > "'1. The makers of the [comprehensive] plan engaged in an exchange of information between the planning jurisdiction and affected governmental units, or at least invited such an exchange.
> >
> > "'2. The jurisdiction used the information to balance the needs of all governmental units * * * in the plan formulation or revision."' *Brown*, 31 Or LUBA at 146, *quoting Rajneesh v. Wasco County*, 13 Or LUBA 202, 210 (1985).
>
> "A local government is not required to 'accede to every request that may be made by a state agency.' *Brown*, 31 Or LUBA at 146. It must, however, 'adopt findings responding to legitimate concerns.' *Id.*, *quoting Waugh v. Coos County*, 26 Or LUBA 300, 314 (1993)." (Footnote omitted.)

Petitioners contend that Metro violated the coordination requirement by (1) applying a different, erroneous coordination standard than that prescribed in *Parklane II*, and (2) failing to provide local governments an adequate opportunity to comment on the version of the RVCP ultimately adopted.

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[15]Intervenor-petitioner the City of Tualatin submitted a petition for review that, as its sole assignment of error, incorporates by reference the cities' fourth assignment of error. References to "petitioners" in our discussion of these assignments includes intervenor-petitioner.

A. Coordination Standard

As a preliminary point, petitioners argue that compliance with the coordination requirement is particularly important in the present context, where the local government making the decision—Metro—is not the local government that must pay for and provide the infrastructure and services that will be required as a result of the decision:

> "The objections and concerns of the local governments that are required to implement and pay for Metro's decision deserve the highest degree of responsiveness and deference during the coordination process, particularly when those concerns are shared by *every* local government service provider in the Stafford subregion." Cities' Petition for Review 17 (emphasis in original).

According to petitioners, Metro considered the cities' Goal 2 coordination concerns to be challenges to Metro's authority, as the body responsible for regional coordination under ORS 195.025, to require the cities to implement Metro's land use decisions. Petitioners cite in particular to a portion of Metro's findings:

> "* * * The arguments regarding coordination presented by the Cities of Lake Oswego, West Linn, Tualatin and Clackamas County are no more than attempts to assume Metro's coordination and responsibility. In essence, the Cities in Clackamas County take the position they need not make their decisions consistent with statewide planning goals or with any respect towards Metro's authority as a coordinating body. Of course, both the counties and cities must exercise their planning responsibilities in accordance with the statewide planning goals. Moreover, they are required to follow regional directives of the regional governing body in the exercise of its coordination function. Moreover, under Goal 2, the cities' and counties' comprehensive plans must be consistent with Metro's framework and functional plans." Jt App 57 (citation omitted).

We generally agree with petitioners that Metro's role as regional coordination authority under ORS 195.025 does not obviate or diminish its obligation under Goal 2 to coordinate its decisions with affected local governments. We also agree that performance of that obligation is all the more important where, as here, the financial and service obligations of implementing Metro's decisions fall not on Metro but on those affected local governments. As the Court of Appeals observed in *Parklane II*:

> "[T]he essence of coordination must be a cooperative effort on the part of the governmental bodies involved. LUBA and the courts can require findings or other procedural devices to demonstrate that the necessary efforts have been undertaken. But in the last analysis, the participating bodies alone are responsible for undertaking the efforts. It is difficult to imagine a process that depends more for its success than this one on the participants' active desire and efforts to make it successful. The findings and other procedural trappings that LUBA and the courts may require can be nothing more than shadows if the parties are not committed to achieving any underlying substance for them to reflect." 165 Or App at 27.

B. Opportunity to Comment

Petitioners argue that Metro failed to provide an opportunity for local governments to comment or express concerns regarding the version of the RVCP that was actually adopted. Petitioners explain that Metro circulated a version of the RVCP on June 21, 1998, and a technical supplement on October 16, 1998. The cities provided extensive comment on that version, voicing concerns about transportation and costs of service, and skepticism about the plan's assumptions. However, petitioners explain, the version of the RVCP and supplement that Metro actually adopted is dated December 1, 1998. According to petitioners, the December 1, 1998 version of the RVCP was not given to the cities until the December 3, 1998 final hearing at which the Metro Council voted to approve the proposed UGB expansion. Petitioners argue that the December 1, 1998 version is almost twice as long as the previous version, and is significantly different in many respects. Although the Metro Council held the record open for an additional seven days to allow comment, petitioners argue that the decision to expand the UGB based on the revised RVCP was made at the December 3, 1998 hearing, and the additional period for comment did not provide adequate opportunity for the cities to review and comment on the revised RVCP or for Metro to consider and accommodate those concerns.

Intervenors argue that the RVCP was revised to reflect the cities' earlier comments and thus the December 1, 1998 version itself represents the "accommodation" that petitioners argue is missing. Intervenors also argue that the cities did not contend at the December 3,

1998 hearing that they had inadequate time to review and comment on the revised RVCP, or request more than seven days in order to respond.

We agree with intervenors that petitioners have not demonstrated that Metro acted inconsistently with its coordination obligation. Petitioners do not dispute intervenors' point that the differences in the revised RVCP are modifications or accommodations based on the affected cities' previous comments. Petitioners do not contend that anything in the December 1, 1998 version surprised the cities, or warranted more than the seven-day period for additional comment Metro provided. Finally, we agree with intervenors that, if something in the revised RVCP warranted an additional period for comment beyond that provided, the cities had some obligation to make that request.

These assignments of error are sustained, in part.

FIFTH ASSIGNMENT OF ERROR (CITIES)

Petitioners argue that Metro failed to coordinate with affected local governments as required by MC 3.01.012(e)(13) and 3.07.1120(M), because it failed to resolve local government concerns by means of the dispute resolution process required by those provisions.

MC 3.01.012(e)(13) and 3.07.1120(M) both provide that:

> "The urban reserve plan shall be coordinated among the city, county, school district and other service districts, including a dispute resolution process with an MPAC [Metro Policy Advisory Committee] report and public hearing consistent with RUGGO [Regional Urban Growth Goals and Objectives] Objective 5.3. * * *"

In turn, RUGGO Objective 5.3 provides:

> "Functional Plan Implementation and Conflict Resolution. Adopted functional plans shall be regionally coordinated policies, facilities and/or approaches to addressing a designated area or activity of metropolitan concern, to be considered by cities and counties for incorporation in their comprehensive land-use plans. If a city or county determines that a functional plan requirement should not or cannot be incorporated into its comprehensive plan, then Metro shall review any apparent inconsistencies by the following process:

"5.3.1 Metro and affected local governments shall notify each other of apparent or potential comprehensive plan inconsistencies.

"5.3.2 After Metro staff review, the MPAC shall consult [with] the affected jurisdictions and attempt to resolve any apparent or potential inconsistencies.

"5.3.3 The MPAC shall conduct a public hearing and make a report to the Metro Council regarding instances and reasons why a city or county has not adopted changes consistent with requirements in a regional functional plan.

"5.3.4 The Metro Council shall review the MPAC report and hold a public hearing on any unresolved issues. The Council may decide to [take one of three specified options]."

Petitioners explain that the City of Lake Oswego requested that Metro invoke the dispute resolution process to address concerns regarding the proposed urban reserve plan, pursuant to MC 3.01.012(e)(13) and 3.07.1120(M). Metro declined, finding that it is premature to invoke the RUGGO Objective 5 dispute resolution process, largely because that process resolves disputes over whether functional plan requirements are consistent with city and county comprehensive plans, and the challenged decision does not adopt any functional plan requirements.[16]

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[16]Metro's findings state, in relevant part:

"This concept plan meets all of the requirements of Title 11, which effectively replicates the standards of MC 3.01.012(e). This urban reserve concept plan was coordinated among all affected jurisdictions * * *.

"The RUGGO Objective 5 dispute resolution process has not been triggered because no functional plan provision has been adopted and because Metro chooses not to presume further recalcitrance after the UGB amendment approved under this concept plan is finalized. This concept plan does implement a functional plan provision as it will be incorporated into applicable comprehensive plans, including the plan of Clackamas County. The condition of approval attached to this decision requires identified cities and Clackamas County and service providers to adopt an agreement consistent with ORS 197.065. The Council concludes it is inappropriate to presume that these entities will refuse to comply with this legal requirement.

"Accordingly, Metro determines under its own RUGGOs [that] it is premature to invoke a dispute resolution process which anticipates problems with or impediments to functional plan compliance. While Lake Oswego and Clackamas County have not exhibited a particular spirit of regionalism or cooperation, their principal problems have stemmed from a vigorous disagreement with Metro's policy choice to urbanize the concept plan area[.] It is believed

Petitioners contend that Metro's determination that it is premature to invoke the RUGGO Objective 5 process is inconsistent with MC 3.01.012(e)(13) and 3.07.1120(M), which expressly require application of a dispute resolution process consistent with RUGGO Objective 5.3 to coordination of *urban reserve plans*. That requirement means nothing, petitioners argue, if the RUGGO Objective 5 process applies only to resolve differences in how those plans, once adopted and incorporated into a Metro functional plan, are implemented into city and county comprehensive plans. According to petitioners, Metro's view that the RUGGO Objective 5 process does not apply when considering whether to adopt urban reserve plans effectively renders MC 3.01.012(e)(13) and 3.07.1120(M) nullities. Under Metro's reading of MC 3.01.012(e)(13) and 3.07.1120(M), petitioners argue, those provisions only require Metro to do what Goal 2 and RUGGO Objective 5 otherwise require it to do.

Intervenors argue that Metro correctly interpreted the RUGGO Objective 5 process as applying only after the urban reserve plan is adopted and incorporated into a functional plan. We agree that Metro's interpretation, as far as it goes, is consistent with the text of RUGGO Objective 5.3. However, Metro apparently considered only whether *RUGGO Objective 5* requires a dispute resolution process to address city and county concerns prior to adopting an urban reserve plan. As far as we can tell, Metro did not interpret MC 3.01.012(e)(13) or 3.07.1120(M), or consider whether *those provisions* require a dispute resolution process "consistent with RUGGO Objective 5.3" in coordinating city and county concerns prior to adoption of an urban reserve plan. Petitioners are correct that the requirement in MC 3.01.012(e)(13) and 3.07.1120(M) for a dispute resolution process with respect to urban

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that these entities will accept their legal responsibilities once this area is included within the UGB. The divisive issue has been whether to urbanize this first priority area. The region hopes and believes that when the 'whether to accommodate newcomers' question is removed from the table, appropriate land use actions consistent with state and regional law will prevail. Any other interpretation of the RUGGOs, Objective 5 and Functional Plan in this context is wrong." Jt App 56-57.

reserve plans is redundant if it only refers to a post-adoption process that is available to affected local governments in any case. If Metro understands those provisions to merely restate Metro's Goal 2 coordination obligation and point out the availability of a post-

adoption dispute resolution process, then petitioners are correct that those provisions have no apparent function or purpose.

It may be that Metro can interpret MC 3.01.012(e)(13) and 3.07.1120(M) to the effect that no dispute resolution process is available under those provisions prior to adoption of the urban reserve plan, in a manner that is consistent with and gives effect to the terms of those provisions. However, Metro does not take that position in its findings or in its response brief. Accordingly, remand is appropriate to consider what coordination obligations MC 3.01.012(e)(13) and 3.07.1120(M) impose.

The fifth assignment of error (cities) is sustained.

SIXTH ASSIGNMENT OF ERROR (CITIES)

Metro justified inclusion of the 762 acres of EFU lands in the Rosemont area based in part on a "reasons" exception to Statewide Planning Goal 3 (Agricultural Lands) pursuant to Goal 2, Part II(c), ORS 197.732(1), and OAR 660-004-0010(1)(c)(B). Petitioners contend that Metro misapplied Goal 2, Part II(c)(2), ORS 197.732(1)(c)(B), and OAR 660-004-0010(1)(c)(B)(ii) (hereafter "exception criterion (ii)"), which each require a demonstration that "areas which do not require a new exception cannot reasonably accommodate the use." Petitioners also contend that Metro erred in failing to apply the last two factors of Goal 2, Part II(c)(3) and (4), ORS 197.732(1)(c)(C) and (D), and OAR 660-004-0010(1)(c)(B)(iii) and (iv) (hereafter, "exception criteria (iii) and (iv)").

A. Exception Criterion (ii)

According to petitioners, Metro's findings regarding whether areas that do not require a new exception can reasonably accommodate the proposed use are flawed by the same analytical error that LUBA identified in *Parklane I*. In *Parklane I*, petitioners point out, LUBA held that:

> "The issue for purposes of exception criterion (ii), as well as Subsection 4(a) [of the Urban Reserve Rule], is not whether lower priority lands are 'more appropriate' or 'better' in some particulars than higher priority lands, but

> whether the need at issue can be 'reasonably accommodated' on those higher priority lands." 35 Or LUBA at 569.

In both the urban reserve decision and the present decision, petitioners argue, Metro considered whether alternative sites not requiring a new exception can accommodate the proposed residential use *as well as* the resource land within the Rosemont area, and answered that question in the negative. The proper inquiry, petitioners argue, is whether the proposed use can be "reasonably accommodated" on lands not requiring an exception, not whether the proposed expansion area is the "best" area to accommodate that use. Petitioners contend that Metro findings essentially concede that existing exception lands in the Stafford area can accommodate the proposed urbanization, although given parcelization and partial development of those lands, more of such lands might be needed and they might not be as easy to develop compared to the relatively unparcelized and undeveloped resource lands in the Rosemont area.

Respondents argue that Metro properly considered whether lands not requiring a new exception could be developed as easily as the Rosemont area EFU lands, in determining whether those exception lands can "reasonably accommodate" the proposed use. Respondents cite to several cases involving exception criterion (ii) in which LUBA has recognized a wide range of considerations in addressing whether alternative sites can reasonably accommodate the proposed use.[17] However, the considerations addressed in the cited cases are factors such as safety hazards that rendered alternative sites unsuitable for the proposed use. The cited cases do not stand for the proposition that alternative sites cannot "reasonably accommodate" the proposed use simply because it is more difficult to develop those sites as compared to the resource lands within the proposed expansion area.

[17]Respondents cite *Laurance v. Douglas County*, 33 Or LUBA 292, 299 (1997) (safety hazard); *Cox v. Yamhill County*, 29 Or LUBA 263, 270 (1995) (high water level); and *Gordon v. Clackamas County*, 13 Or LUBA 46, 54 (1985) (alternative sites have inadequate capacity for proposed airport expansion).

Respondents also argue that Metro's alternative sites analysis examined several exception areas in the subregion and properly concluded, based on such considerations as steep slopes, existing residential development, resident objections, and the presence of protected natural resources, that such areas cannot reasonably accommodate the proposed use. These areas include exception lands in and north of URSA 30, adjacent to the City of West Linn; URSA 34, adjacent to the City of Tualatin; and the western portion of URSA 33, adjacent to the City of Lake Oswego.[18]

With respect to the exception areas north of URSA 30, the findings state that those lands contain more steep slopes and more significant natural resources (forested areas and wildlife habitat) than the Rosemont area. Jt App 11. With respect to URSA 30, the decision excludes that area because it concludes that

> "it is not functionally a part of the Rosemont Village concept plan area and does not well serve identified needs in the equivalent, efficient manner that Rosemont Village is able to serve such needs. Moreover, the City of West Linn has opposed a UGB amendment in this area. There is no reason to include this URSA in the UGB at this time under these circumstances." Jt App 13-14.

With respect to exception lands within URSA 34, the decision declines to consider those lands for inclusion in the UGB for residential purposes, because the Department of Land Conservation and Development (DLCD) and the City of Tualatin have identified those lands as potential sites for industrial and commercial development. Jt App 14.

With respect to the exception lands in the western portion of URSA 33, the decision only comments that such lands are "generally unproductive." Jt App 11. However, it adds a general comment on exception lands in the subregion that appears to apply to the exception lands within URSA 33:

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[18]Although petitioners also fault Metro under this assignment for failing to consider alternative sites around the region as a whole rather than in or near the subregion, for the reasons expressed above with respect to the first assignment of error (Residents), we disagree that Metro was required to address alternative sites that are outside of the subregion.

> "[S]ome of the excluded exception areas include a small pocket of fairly dense existing settlement patterns, comprised almost entirely of small acreage single family residential dwellings. The residents in this area expressed serious concerns about the area's suitability for urbanization. These lands do not provide an adequate amount of additional development capacity to the UGB to justify its inclusion, given the serious objections of the persons who reside in the area, as well as the objections of the cities of Lake Oswego, West Linn, Tualatin and Clackamas County. While Rosemont Village provides great productivity for a 2040 concept community, these excluded areas do not furnish similar efficient opportunities to do so. To achieve the same amount of 2040 concept community planning in the excluded exception areas as is accommodated in Rosemont Village would require utilization of more land, with greater environmental impact, making more people unhappy with less public benefit." Jt App 14.

Based on the foregoing considerations, the decision concludes:

> "Accordingly, the Rosemont Village Concept Plan area is the only area that can reasonably accommodate the proposed use as an area with demonstrated capability to provide realistic affordable housing opportunities that do not otherwise exist within this subarea of the region. * * *" Jt App 15.

We agree with petitioners that the foregoing findings generally approach the relevant question under exception criterion (ii) as a matter of whether exception lands can accommodate the proposed use *as well as* resource lands. We rejected that approach in *Parklane I*, and do so again here. We also agree with petitioners that the foregoing findings are inadequate to demonstrate, based on the points of comparison used, that exception lands in the subregion cannot "reasonably accommodate" the proposed use.

We first observe that to a large extent the inquiry under exception criterion (ii) turns on the nature of the proposed use. The use proposed here, it appears, is additional land for residential development to redress an affordable housing imbalance in the subregion. To some extent the affordability of such development appears to be correlated with the density provisions of the 2040 Growth Concept. However, as petitioners point out elsewhere, all land brought within the UGB must comply with the 2040 Growth Concept provisions. Metro's findings do not indicate any reason to believe that exception lands within the subregion (many of which Metro has selected as appropriate candidates for future residential

urbanization) cannot comply with those provisions. That said, we briefly address the types of considerations Metro relies upon to conclude that exception lands in the area cannot reasonably accommodate the proposed use.

With respect to exception lands north of URSA 30, Metro relies primarily on the greater presence of steep slopes and protected natural resources, as compared to the Rosemont area. While the presence of features that restrict buildable lands is a pertinent consideration under exception criterion (ii), the fact that an existing exception area has more such restrictions than the resource land under consideration does not, without more, demonstrate that the exception area cannot reasonably accommodate the proposed use. With respect to exception lands within URSA 30, Metro relies primarily on the City of West Linn's opposition and the fact that those lands do not "serve identified needs in the equivalent, efficient manner that Rosemont Village [does]." Jt App 13. As petitioners point out, Metro does not consider the opposition of adjoining communities to be a barrier to inclusion of the Rosemont area, which is opposed by both West Linn and Lake Oswego. In any case, Metro does not explain why such opposition demonstrates that exception lands cannot reasonably accommodate the proposed use. As noted above, the fact that exception lands in URSA 30 cannot be developed as efficiently as the Rosemont area does not, without more, establish that such lands cannot reasonably accommodate the proposed residential use.

With respect to exception lands in URSA 34, petitioners do not directly challenge Metro's conclusion that identification of such lands for future industrial and commercial uses renders those lands unavailable to accommodate the proposed residential use. To the extent petitioners do challenge that conclusion, we see no error in considering such factors under exception criterion (ii).

Finally, with respect to exception lands in URSA 33, Metro relies primarily on the fact that such lands are less "productive" than are the resource lands in the Rosemont area. We understand "productivity" as Metro uses the term to mean the average number of

dwelling units that can be built per buildable acre. Apparently, existing patterns of development on the exception lands in URSA 33 make those lands less productive compared to less developed lands. The result is, as Metro notes, that more acres of such exception land must be urbanized in order to satisfy a given need for residential housing than would be the case for relatively undeveloped resource land. However, as explained above, that such exception lands cannot be developed as efficiently or as easily as resource lands does not, without more, demonstrate that those exception lands cannot reasonably accommodate the proposed use.[19]

This subassignment of error is sustained.

B. Exception Criteria (iii) and (iv)

Petitioners also argue under this assignment that Metro failed entirely to find compliance with exception criteria (iii) and (iv). Exception criteria (iii) and (iv) require, respectively, consideration of the ESEE consequences of including the expansion area within the UGB and consideration of compatibility with adjacent uses. Petitioners explain that Metro's findings appear to assume that consideration of analogous criteria under Goal 14, factors 5 and 7 suffices to demonstrate compliance with exception criteria (iii) and (iv). However, petitioners argue, the Court of Appeals in *Parklane II* rejected a similar argument that the two sets of criteria are functionally equivalent and that consideration of one set necessarily satisfies the other.

Respondents argue that exception criteria (iii) and (iv) are implemented and repeated, word for word, in MC 3.01.020(c)(2) and (3). Respondents point to findings at Jt App 75 that address and find compliance with MC 3.01.020(c)(2) and (3). Respondents argue, and

[19]We do not understand Metro to take the position that there is a "need" under either Goal 14, factors 1 and 2 or ORS 197.298(3)(a) for residential land that can be developed in the most efficient manner or at the highest possible density. As we suggested in *Parklane I*, defining the relevant need in such terms is arguably inconsistent with the priority scheme in the urban reserve rule (and, by extension, in ORS 197.298), because lower-priority resource land can almost always be developed more efficiently and at higher densities than higher-priority exception lands. 35 Or LUBA at 569, n 36.

we agree, that petitioners do not challenge or identify any error in those findings. We agree with respondents that petitioners have not demonstrated that Metro failed to find compliance with exception criteria (iii) and (iv), as those criteria are implemented in the Metro code.

This subassignment of error is denied.

The sixth assignment of error (cities) is sustained, in part.

SEVENTH ASSIGNMENT OF ERROR (CITIES)

Petitioners argue that Metro's decision fails to demonstrate compliance with Goal 14, factor 3, and MC 3.01.020(b)(3).[20] Both provisions require a determination that the proposed UGB amendment will result in the "orderly and economic provision of public facilities and services."

Petitioners explain that Metro's November 24, 1998 staff report conducted a study of most of the urban reserve areas in the region, and ranked URSAs in the Stafford area in the bottom half of the studied URSAs for utility feasibility, and for efficiency for urbanization. However, petitioners note, Metro rejected its own staff conclusions regarding the Rosemont area, and assigned a high rank to URSAs 31 and 32 (which comprise the majority of the Rosemont area) with respect to urbanization and the orderly and economic provision of

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[20]MC 3.01.020(b)(3) provides:

> "Factor 3: Orderly and economic provision of public facilities and services. An evaluation of this factor shall be based upon the following:
>
> "(A) For the purposes of this section, economic provision shall mean the lowest public cost provision of urban services. When comparing alternative sites with regard to factor 3, the best site shall be that site which has the lowest net increase in the total cost for provision of all urban services. In addition, the comparison may show how the proposal minimizes the cost burden to other areas outside the subject area proposed to be brought into the boundary.
>
> "(B) For the purposes of this section, orderly shall mean the extension of services from existing serviced areas to those areas which are immediately adjacent and which are consistent with the manner of service provision. For the provision of gravity sanitary sewers, this could mean a higher rating for an area within an already served drainage basin. For the provision of transit, this would mean a higher rating for an area which could be served by the extension of an existing route rather than an area which would require an entirely new route."

urban services. Jt App 60-65. Petitioners argue that Metro's conclusion is erroneous because it relies on findings and reasoning that were rejected in *Parklane I*. In any case, petitioners argue, the *Parklane I* findings and reasoning do not constitute an adequate factual base for concluding that development of the RVCP will result in orderly and economic provision of services, because the RVCP was not before Metro at the time it adopted the urban reserve decision at issue in *Parklane I*. Finally, petitioners argue, Metro improperly rejected the staff report's consideration of offsite transportation impacts and necessary improvements at the Interstate 205 (I-205) interchange, access roads and new bridges over the Tualatin River.

Metro responds that the relatively low ranking of the Stafford area URSAs for provision of urban services compared to other URSAs in the *region* has no significance for present purposes, because the challenged UGB amendment is predicated on a subregional need. We agree with Metro that, given the identified subregional need, Metro need only consider lands that could reasonably meet that subregional need, for purposes of any considerations based on Goal 14, factor 3.

Intervenors argue that Metro properly relied on those findings in its urban reserve decision that were not specifically rejected in *Parklane I*. The fact that the RVCP was not before Metro at the time of the urban reserve decision, intervenors argue, does not mean that findings in that decision relating to feasibility of providing services to URSAs 31 and 32 are not germane to development of the RVCP, which includes the entirety of those URSAs. Intervenors also argue that Metro properly rejected the staff report's (1) low ranking of the Stafford area URSAs and (2) consideration of offsite transportation improvements in evaluating the cost of providing urban services to the Rosemont area.

We agree with intervenors that Metro can use findings or rationales in its urban reserve decision as part of its considerations under Goal 14, factor 3 with respect to the challenged UGB amendment, to the extent those findings or rationales were not rejected in

Parklane I or *II*. Petitioners do not challenge any specific findings that rely on Metro's urban reserve findings, much less establish that those specific urban reserve findings were rejected in *Parklane I* and *II*. Absent such argument, petitioners' global argument that Metro erred in relying on its urban reserve findings in considering Goal 14, factor 3 does not provide a basis for reversal or remand. We also agree that the fact that the RVCP was not before Metro when it adopted Goal 14, factor 3 findings with respect to URSAs 31 and 32 does not invalidate reliance on those findings in considering development of those URSAs, as proposed in the RVCP.

Whether Metro erred in refusing to consider off-site transportation impacts as part of its Goal 14, factor 3 evaluation is a closer question. Metro's findings on this point state:

> "The productivity analysis [in the November 24, 1998 staff report] incorrectly attributes to Rosemont Village substantial improvements to the I-205 interchange not located anywhere near Rosemont Village or even with [URSA] 31 through 34 at all, [and] a five-lane Stafford Road from the I-205 interchange all the way to Highway 43 in the City of Lake Oswego, again a substantial road improvement well outside of the Rosemont Village or even any of the Stafford urban reserve areas. The productivity analysis attributes all of the cost of reconstruction of the existing aging Tualatin River bridge to Rosemont Village and all of the Stafford [URSAs] notwithstanding that the bridge will very likely require reconstruction in any case given its age over the 20 year planning horizon and also given that the bridge is located outside of the Rosemont Village area. In addition, the productivity analysis adds not just one bridge across the Tualatin, but two bridges crossing the Tualatin River were attributed to the Stafford urban reserves. Again, the second bridge would be located well outside of the Rosemont Village area and likely outside of any of the Stafford [URSA] areas and again, there is no known support that a second bridge is required, appropriate or makes any sense other than as a way to misrepresent the costs of Rosemont Village." Jt App 62.

Petitioners challenge Metro's refusal to consider off-site transportation costs, contending:

> "If the RVCP area were a separate planet equipped with transporters from the Starship Enterprise, these offsite transportation impacts might well be irrelevant to the question of orderly and efficient provision of public facilities and services. However, back on planet [E]arth, one needs only to look at the map to realize that the development in the RVCP area and in the rest of Stafford will necessarily impact these facilities and that these impacts will

have to be addressed. Metro's conclusion that these impacts are not appropriately [considered] is a violation of Factor 3 as a matter of law." Cities' Petition for Review 29.

We agree with petitioners that Metro's apparent refusal to consider any off-site transportation impacts or costs necessitated by urbanization of the Rosemont area or the Stafford area URSAs is inconsistent with Goal 14, factor 3. The fact that such improvements are not within or close to the Rosemont area or Stafford area URSAs does not mean they may be ignored, if such improvements are in fact necessitated, at least in part, by urbanization of those areas. Metro's above-quoted findings do not reject the November 24, 1998 staff report's conclusion that urbanization of those areas will require improvements to certain off-site transportation facilities. Given that undisputed conclusion, Metro's Goal 14, factor 3 analysis erred in failing to consider the costs of transportation improvements made necessary by urbanizing the expansion area.

The seventh assignment of error (cities) is sustained, in part.

EIGHTH ASSIGNMENT OF ERROR (CITIES)

Petitioners contend that Metro's decision fails to comply with ORS 197.298, which provides the priority scheme for including lands within an urban growth boundary.[21]

[21]ORS 197.298 provides:

"(1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary 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.

"(b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.

Petitioners argue that the priority scheme at ORS 197.298 is based on and is essentially the same as the priority scheme in the urban reserve rule at OAR 660-021-0030 that was at issue in *Parklane I* and *II*, with three minor differences not relevant here. Accordingly, petitioners argue, the statutory priority scheme should be interpreted consistently with LUBA's and the Court of Appeals' interpretations of the urban reserve rule in *Parklane I* and *II*. Petitioners contend that Metro's decision is inconsistent with ORS 197.298 in several respects.

Metro's findings conclude that the Rosemont area is properly included within the UGB under ORS 197.298:

> "The Rosemont Village concept plan area is appropriate to include within the UGB under ORS 197.298(1)(a) as a designated urban reserve and also under ORS 197.298(1)(b) as a 'second' priority area that, while zoned [EFU], is 'completely surrounded by exception areas' and is not high value farmland as described in ORS 215.710. * * *

> "(c) If land under paragraphs (a) and (b) of this subsection is inadequate to accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).
>
> "(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.
>
> "(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
>
> "(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:
>
> "(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;
>
> "(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or
>
> "(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands."

> "The Rosemont Village concept plan area is also included within the UGB under the alternative special analysis of ORS 197.298(3)." Jt App 22.

Petitioners contend, and respondents concede, that URSAs 31, 32 and 33 are no longer "designated urban reserve lands" by virtue of the *Parklane I* and *II* decisions, and thus Metro cannot rely on ORS 197.298(1)(a) to include the Rosemont area in the UGB. No party disputes that Metro properly prioritized the 68 acres of exception lands in the Rosemont area within the UGB, pursuant to ORS 197.298(1)(b). However, the parties dispute whether Metro correctly applied the statutory priority scheme in including the 762 acres of resource lands under either ORS 197.298(1)(b) or 197.298(3).

A. Completely Surrounded By Exception Areas

The 762 acres of resource lands in the Rosemont area are bordered on three sides by exception lands or lands within the UGB. On the south, those resource lands are bordered by other resource lands that contain high-value soils. Further to the south of those resource lands lie exception areas. Viewed on a large scale, the resource lands in the Rosemont area are the northern part of a larger group of resource lands that is surrounded on all sides by exception lands or lands within the UGB.

In *Parklane I*, LUBA determined that Metro misconstrued the urban reserve rule in concluding that the same resource lands at issue here in URSAs 31, 32 and 33 were "completely surrounded by exception areas" for purposes of OAR 660-021-0030(3)(a). We rejected Metro's argument that "completely surrounded" means "mostly" or "sufficiently" surrounded by exception lands, as being facially inconsistent with the rule. We also rejected a related argument that, while the resource lands in URSAs 31, 32 and 33 are not themselves completely surrounded by exception areas, they can be included in urban reserves under OAR 660-021-0030(3)(a) because they are part of a larger group of resource lands that, viewed as a whole, are "completely surrounded by exception areas" within the meaning of the rule. We rejected that argument because Metro had not studied that larger group of resource lands for inclusion in urban reserves and there was no basis to conclude whether

those lands were "prime or unique agricultural lands" that are not eligible for inclusion as first priority land under OAR 660-021-0030(3)(a). 35 Or LUBA at 589.[22] Accordingly, we held that OAR 660-021-0030(3)(a) allows Metro to include resource lands in urban reserves as first priority lands only if those lands are bordered on all sides by rural lands for which an exception to Goals 3 or 4 had been taken. *Id.*

In the present case, Metro concludes, essentially for the same reasons we rejected in *Parklane I*, that the resource lands in the Rosemont area are "completely surrounded by exception areas" and thus can be included as second priority lands under ORS 197.298(1)(b). Petitioners argue, and we agree, that the phrase "completely surrounded by exception areas" in ORS 197.298(1)(b) has the same meaning as the identical phrase in OAR 660-021-0030(3)(a). Not only are the operative terms identical, but the phrase serves the same function in both the rule and the statute: to identify isolated resource lands that can be considered coequal with exception lands in priority for urbanization.

Nonetheless, intervenors argue that the context of ORS 197.298(1)(b) is different than OAR 660-021-0030(3)(a) and the rule and statute should be interpreted differently, based on that context. Intervenors cite to various statutory, rule and goal provisions that, according to intervenors, indicate intent to protect resource land only if it remains relatively unimpacted by nonresource development. It is inconsistent with that intent, intervenors contend, to interpret ORS 197.298(1)(b) to preclude inclusion of resource land in a UGB no matter how badly it is impacted by nearby exception areas, just because those exception areas do not border the resource land on all sides. Further, intervenors point out, ORS 215.705(3)(c)(A) allows siting of a nonfarm dwelling on high-value farmland if the tract is "bordered on at least 67 percent of its perimeter by tracts that are smaller than 21

[22]As we pointed out in *Parklane I*, some of the resource lands in URSAs 31, 32 and 33 and much of the resource land south of those URSAs in the Stafford area consist of prime or unique agricultural lands, and it was not clear whether or not the resource lands in the Stafford area, viewed as a whole, could qualify as first priority lands under OAR 660-021-0030(3)(a), even if "completely surrounded" by exception areas.

acres." Intervenors argue that if the legislature intended "surrounded" to mean "bordered on the perimeter" it would have used words to that effect, as it did in ORS 215.705(3)(c)(A). Thus, intervenors conclude, the phrase "completely surrounded" by exception areas in ORS 197.298(1)(b) must mean "encompassed at a distance" by exception areas rather than "bordered on all sides" by exception areas. Intervenors' Response Brief 33.

It is not clear to us that the context of the rule and statute is different in any significant respect: the statutes, rules and goal provisions identified as context for ORS 197.298(1)(b) are also relevant context for OAR 660-021-0030(3)(a). In any case, consideration of that context does not persuade us that we erred in *Parklane I* or that such similar terms should have different meanings.[23] If that context indicates a general intent to allow development of resource lands that are impacted by surrounding nonresource uses, it also indicates a specific intent to protect high-value farmland even if completely surrounded by nonresource uses. Thus, intervenors' proposed interpretation suffers from the same flaw as the similar interpretation rejected in *Parklane I*: it would allow urbanization of certain resource lands even if those lands are part of a larger group of resource lands with soils that render that larger group ineligible for inclusion as first priority lands. The practical effect of our interpretation in *Parklane I* is that local governments must consider the entirety of a contiguous group of resource lands that are completely surrounded by exception areas, and determine whether that group of resource lands have soils that qualify for inclusion under OAR 660-021-0030(3)(a). The answer to that question determines whether any part of that group can be included as first priority lands. As we suggested in *Parklane I*, it is inconsistent with the rule to study only a subset of those resource lands and include them in urban reserves without considering whether the entirety of resource lands that are completely

[23]The inference that might otherwise be drawn from the legislature's choice of words in ORS 197.298(1)(b) and ORS 215.705(3)(c)(A) is significantly vitiated by the fact that, as petitioners point out, ORS 197.298 is based directly on the urban reserve rule at OAR 660-021-0030.

surrounded by exception areas qualifies for inclusion under OAR 660-021-0030(3)(a). Intervenors have not persuaded us that any reason exists to reach a different conclusion with respect to ORS 197.298(1)(b).

This subassignment of error is sustained.

B. Marginal Lands, Resource Lands

Petitioners argue that, to the extent Metro includes any lands in the Rosemont area as either third priority "marginal lands" under ORS 197.298(1)(c) or fourth priority resource lands under ORS 197.298(1)(d), Metro's decision is inconsistent with those provisions. Petitioners point out that no lands within the Rosemont area have been designated "pursuant to ORS 197.247" and thus no such lands can be included under ORS 197.298(1)(c). Further, petitioners argue, Metro failed to prioritize resource lands (indeed any lands) according to soil capability, as ORS 197.298(2) requires, and thus cannot include any resource lands under ORS 197.298(1)(d).

Neither Metro nor intervenors contend that the challenged decision includes any lands in the Rosemont area pursuant to either ORS 197.298(1)(c) or (d). However, petitioners point to language in Metro's findings that can be read as doing so. To the extent the challenged decision includes any lands pursuant to ORS 197.298(1)(c) or (d), we agree with petitioners that Metro has not demonstrated that doing so is consistent with those provisions.

This subassignment of error is sustained.

C. Specific Type of Identified Land Need

Petitioners contend that Metro erred in several respects in including lower priority resource lands within the UGB pursuant to ORS 197.298(3)(a) in order to satisfy a "specific type of identified land need" for affordable housing.

Petitioners argue first that Metro's findings under ORS 197.298(3)(a) fail as a threshold matter, because they fail to recognize that the priorities at ORS 197.298(1) and (2)

and the exceptions to those priorities, at ORS 197.298(3), are sequentially and hierarchically organized. Petitioners point out that LUBA and the Court of Appeals concluded with respect to the analogous provisions at OAR 660-021-0030(3) and (4) that "correct application of any of the subsections depended on the proper and complete application of the one before it." *Parklane II*, 165 Or App at 17. In other words, the numbered provisions of OAR 660-021-0030(1) through (4) are to be applied sequentially, and the priorities of OAR 660-021-0030(3) are to be determined and are to be the governing consideration in designating urban reserves. *Id.* at 20. Consequently, the exceptions in OAR 660-021-0030(4) can only be applied to lands that have been prioritized in accordance with OAR 660-021-0030(3). *Id.* That interpretation is necessary, the Court of Appeals noted, to ensure that "the exceptions will operate only under the circumstances that justify them and will not serve instead as a default mechanism for filling voids in the pool of available lands left by an incomplete application of the identification and prioritization process under [OAR 660-021-0030(3)]." *Id.* at 21. Petitioners contend, in the present case, that the similar provisions of ORS 197.298(1) and (3) must be interpreted in the same manner, and thus that Metro erred in failing to complete application of the ORS 197.298(1) and (2) priorities before applying the exception at ORS 197.298(3)(a).

Petitioners argue, second, that Metro's findings fail to demonstrate compliance with ORS 197.298(3)(a), because they do not demonstrate that the need for affordable housing cannot be met on higher priority land. ORS 197.298(3)(a) requires a finding that a specific type of identified land need "cannot be reasonably accommodated on higher priority lands," which petitioners argue is essentially the same inquiry that exception criterion (ii) demands. For the same reasons articulated in the sixth assignment of error (cities), petitioners argue that Metro has failed to demonstrate that higher priority exception lands in the Stafford area "cannot reasonably accommodate" the identified need.

Respondents argue, for the same reasons asserted in response to the sixth assignment

of error (cities), that Metro correctly determined that no higher priority lands in the subregion can reasonably accommodate the identified land need for affordable housing.

We agree with petitioners' initial point that the relationship between the elements of ORS 197.298(1) through (3) is essentially the same as the relationship between the elements of OAR 660-021-0030(3) and (4), and LUBA's and the Court of Appeals' interpretation of the latter should guide the interpretation of the former. Accordingly, we agree with petitioners that correct application of ORS 197.298(3) depends upon the proper and complete application of the preceding subsections. We also agree that, under the circumstances of this case, the inquiry under ORS 197.298(3)(a) is almost indistinguishable from the analysis required under exception criterion (ii), *i.e.*, Metro must demonstrate that the identified need cannot be reasonably accommodated on higher priority exception lands. For the same reasons expressed in resolving the sixth assignment of error (cities), we agree with petitioners that the challenged decision fails to make that demonstration.

The eighth assignment of error (cities) is sustained.

Metro's decision is remanded.