MEMORANDUM

TO: NUAMC

FROM: Doug Rux, Newberg Community Development Director
Ken Friday, Yamhill County Planning and Development Director

SUBJECT: CPMA21-0002 (City)/PA-01-21 (County) Newberg Urban Reserve Area Expansion

DATE: March 28, 2023

Attached is the 2nd Supplement containing public comments received after 12 p.m. on March 27, 2023 related to CPMA21-0002 (City)/PA-01-21 (County) Newberg Urban Reserve Area Expansion.

Attachments: 1. Public Comments

Doug Rux

From: PLANNING
Sent: Monday, March 27, 2023 3:31 PM
To: Doug Rux
Subject: FW: CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion,

FYI

From: chefcwcook@comcast.net <chefcwcook@comcast.net>
Sent: Monday, March 27, 2023 3:13 PM
To: Ken Friday <fridayk@co.yamhill.or.us>; PLANNING <planning@newbergoregon.gov>; Doug.Rux@newbergoregon.com; planning@co.yamhill.or.us
Subject: CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion,

Dear Commissioners,

I am writing in regard to CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion. I am opposed to this expansion for many reasons, first and foremost, the city does not need this area as it has more than enough property in its reserve to get by until 2040, per the report done for the City of Newberg. I can bet the new 1000 plus page report done by the DOWL group must say we need more in the Urban Reserve but what else would it say in a report written by the group that is being paid by the applicant. Without having enough time to go through the 1000 plus page report it would seem that the committee should postpone any vote on this proposal until all interested parties have a chance to go over the report. I know this property was denied in the past because the area could not handle the increase in traffic on Corral Creek and Fernwood, so what has changed since 2007 that it should be approved now? I know at a previous meeting your staff had recommended a no vote. If they have changed their recommendation now based on the DOWL report, I feel you must grant a continuance until an independent and unbiased report can be done. I believe that's how government works. Newberg is still a rural and farming community, up until late last summer there were still cows grazing on parts of this property. Why would we want to ruin that? This is not what Newberg needs at this time.

Thank you for your time and consideration.

Chris Cook
5118 Fairway (The Greens)
Newberg, 97132
chefcwcook@comcast.net

Doug Rux

From: PLANNING
Sent: Monday, March 27, 2023 2:27 PM
To: Fe Bates; Doug Rux
Subject: FW: CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

Ashley Smith
Assistant Planner
City of Newberg
Direct: 503.554.7768
Cell: 971.281.9911
Email: ashley.smith@newbergoregon.gov
Pronouns: she/her/hers

From: wynneb2@gmail.com <wynneb2@gmail.com>
Sent: Monday, March 27, 2023 12:33 PM
To: PLANNING <planning@newbergoregon.gov>
Subject: CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

My husband and I are requesting a Continuance of the Newberg Urban Planning Commission hearing March 28 as the public **has not been given adequate time** to review the more-than 1,000 plus page application to develop land along Corral Creek Road and Fernwood Road. This is a very impactful and critical request, and I believe members of the public, particularly those who are directly impacted, deserve more time to read and analyse the application.

Respectfully,
Dana Farver

Doug Rux

From: PLANNING
Sent: Monday, March 27, 2023 12:30 PM
To: Doug Rux; Fe Bates
Subject: FW: Newberg Urban Reserve Area Expansion

Ashley Smith
Assistant Planner
City of Newberg
Direct: 503.554.7768
Cell: 971.281.9911
Email: ashley.smith@newbergoregon.gov
Pronouns: she/her/hers

From: d.klep@comcast.net <d.klep@comcast.net>
Sent: Monday, March 27, 2023 10:04 AM
To: PLANNING <planning@newbergoregon.gov>
Subject: Newberg Urban Reserve Area Expansion

Dear Newberg Urban Area Management Commission,
I am writing you regarding CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion, submitted by Brian and Kathy Bellairs, (represented by DOWL LLC), and Bestwick LLC. I live on property that is adjacent to the Bellairs, across Corral Creek Rd. at 31800 NE Adalyn Way, Newberg, 97132.
My wife and I are opposed to this expansion for the following reasons:

1. This property has previously been denied admission to the Urban Reserves, primarily due to the increased traffic it would put Corral Creek Road and the lack of a signal at Corral Creek Road and Highway 99W. Since nothing has changed since the previous denial in 2007 that would mitigate these circumstances, I see no reason why the city should grant the request now. ODOT has no plans (or funding) to install a signal at Corral Creek Road and 99W. Corral Creek is still a very narrow two-lane country road without sidewalks, and already has seen increased traffic since the Greens development has gone in, the Dundee Bypass has been opened, and access to Wilsonville Road rerouted. We have seen increased traffic from those who wish to access the Dundee Bypass and avoid the three stoplights at 99W and Providence Drive, Brutscher Street, and Springbrook Road. We have also seen increased traffic from those wanting to access Wilsonville Road via Corral Creek Road and Renne Road. Corral Creek has become a shortcut for many, and is already a busy and dangerous road. It cannot handle the load of another 377 residences. NE Fernwood Road is NOT a viable alternative. The speed limit is 25 mph, it has a golf course with golfers crossing the road frequently, and would be a very circuitous route to get to 99W heading east (which is where the majority of commuter traffic would go). An honest traffic assessment would have to conclude the burden of traffic would be on Corral Creek Road.
2. The cost to build the infrastructure to support this development would be excessive, and there is land much better suited for development to the north and west of Newberg. **Your own planner advised against this development**. There is considerable flat, buildable land with much easier access to water and sewer mains in

areas North A & B, Northwest A & B, and Northeast A & B. Development of the Bellairs/Bestwick land would require constructing and maintaining costly pumping stations for sanitary and stormwater management, along with water supply mains and street improvements. All the aforementioned areas have much easier access to existing lines they can tap into. There is also considerable wetlands and wildlife habitat on the Bellairs/Bestwick property that would need to be considered.

3. This land is viable farmland that is currently being worked. Any argument to the contrary is not true. We have watched them harvest hay from the Bellairs property, and watched cattle grazing on the Bestwick property as recently as 2022. It would also put high density zoning up against rural properties along Corral Creek Road,

It is our hope that you would follow the original recommendation of your own planner and deny this application. It will be DOA once it hits ODOT, so it only makes sense to save everyone time and effort and focus the expansion in the other more viable areas.
At the very least we would request a continuance to allow for time to review the last-minute 1,000-plus page agenda packet.
Please enter our comments into the record for the commission and subsequent hearings for this proposal.

Thank you for your consideration,
David & Teresa Klepinger
31800 NE Adalyn Way
Newberg, OR 97132

Doug Rux

From: Lance Woods <woodsl@co.yamhill.or.us>
Sent: Monday, March 27, 2023 2:31 PM
To: Doug Rux
Cc: Ken Friday
Subject: FW: Urban Expansion Proposal

Hello Doug,

Our office received this comment as well.

Best regards,

Lance Woods
Associate Planner / GIS Analyst
Yamhill County Planning & Development
525 NE 4th Street, McMinnville, OR 97128
Phone (541) 450-1595 | Email woodsl@co.yamhill.or.us

From: Planning <planning@co.yamhill.or.us>
Sent: Monday, March 27, 2023 2:23 PM
To: Lance Woods <woodsl@co.yamhill.or.us>
Subject: FW: Urban Expansion Proposal

From: Jenni Jeronimo <cantertunes@gmail.com>
Sent: Monday, March 27, 2023 10:49 AM
To: Planning <planning@co.yamhill.or.us>
Subject: Urban Expansion Proposal

March 27,2023

Dear County Planning Staff,

I am writing in regards to the Urban Expansion proposal on Corral Creek and Fernwood Rd. As a local citizen I have many concerns about the proposal to expand the Urban Reserve boundaries on these properties.

- Our urban growth boundary was set in place to protect rural, farm and forest land and there are laws governing the growth. To ignore/bend the rules is detrimental to the well being of Oregon's natural resources and the people of Oregon.
- The critical infrastructure for this property including drainage, sewer and water is legally questionable and would be extremely expensive to route drainage, sewer and water and meet state guidelines. This would have to be paid in large part by taxpayer dollars.

- The traffic created by this development has no suitable route to access Hwy 99, which is the main thoroughfare. There is one 2 lane, windy country road and a high pedestrian use neighborhood road.
- In 2007 ODOT and the city council denied the project stating the intersection of Corral Creek and Hwy 99 as dangerous. Traffic has only gotten worse since then and no improvements have been made.
- The noise, traffic and congestion is not congruent with a rural setting which is why many live outside the city limits.
- There are other sites within the city limits which meet the Urban Expansion criteria. There is no good reason to escalate this property into the Urban Reserve.

I would also like to request a continuance as I have only recently been aware of this meeting that affects our community long term. The proposal is over 1,000 pages so will take some time to read completely.

Sincerely,

Jenni Jeronimo

Doug Rux

From: KATHY COOK <kamcook@comcast.net>
Sent: Monday, March 27, 2023 5:05 PM
To: Doug Rux
Subject: Fwd: RE: CPMA21-0002/PA-01-21 Newberg Urban Reserve Area (URA) Proposed Expansion

Hi Doug,

Resending this to you - I had an incorrect email address.
Thank you,
Kathy Cook

---------- Original Message ----------
From: KATHY COOK <kamcook@comcast.net>
To: "planning@co.yamhill.or.us" <planning@co.yamhill.or.us>, "planning@newbergoregon.gov" <planning@newbergoregon.gov>, "Doug.Rux@newbergoregon.com" <Doug.Rux@newbergoregon.com>, "fridayk@co.yamhill.or.us" <fridayk@co.yamhill.or.us>
Date: 03/27/2023 2:00 PM
Subject: RE: CPMA21-0002/PA-01-21 Newberg Urban Reserve Area (URA) Proposed Expansion

Dear Commissioners and Planning Directors,

Please seriously consider opposing the proposed expansion of the URA to include the property owned by the Bellairs and Bestwick families. I stand in opposition to this proposal as I believe there are far too many 'loose ends' surrounding it. Please consider:

- **Providing a continuance** to allow interested parties enough time to digest the 1000+ page latest iteration of the Bellairs/Bestwick proposal.
- It is every citizen's responsibility to exercise forward thinking in this decision and account for the **public safety** of those who live and travel in this area, not only by automotive means, but motorcycle, bicycle and foot traffic as well.
- The need for adequate **infrastructure** (water, sewage, electricity and so forth) to support this large development. Certainly revisions and additions to the current structures will be needed - who will pay? I don't want to.
- **Socioeconomically**, where are these people going to work?
- Is this change in designation actually needed at this time? Isn't there **enough land currently within the UGB/URA for additional housing**? Do we need to add thousands of individuals escaping the Portland debacle to our landscape?
- The impact of this development on **our environment**: not just the loss of land for our wildlife, but, the increase of **light pollution** that has harmful effects on animals, plants and humans (yes, we are affected as well). Why do we want to usurp this precious farmland and ruin our rural atmosphere further?

I thank you for your kind consideration and the time you have spent on this matter. This is not to be taken lightly - please think past any 'seemingly beneficial' economic gain and think of the welfare of your taxpayers/voting citizens.

Best regards,

Kathleen Cook
5118 Fairway Street in the Greens at Springbrook

Doug Rux

From: Lance Woods <woodsl@co.yamhill.or.us>
Sent: Monday, March 27, 2023 2:28 PM
To: Doug Rux
Cc: Ken Friday
Subject: FW: NUAMC case CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

Hello Doug,

This comment was submitted to the Board earlier today.

Lance Woods
Associate Planner / GIS Analyst
Yamhill County Planning & Development
525 NE 4th Street, McMinnville, OR 97128
Phone (541) 450-1595 | Email woodsl@co.yamhill.or.us

From: Planning <planning@co.yamhill.or.us>
Sent: Monday, March 27, 2023 2:21 PM
To: Lance Woods <woodsl@co.yamhill.or.us>
Subject: FW: NUAMC case CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

FYI

From: Kurt Kightly <k2jlk09@gmail.com>
Sent: Monday, March 27, 2023 1:23 PM
To: Planning <planning@co.yamhill.or.us>; Ken Friday <fridayk@co.yamhill.or.us>
Subject: NUAMC case CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

Dear Commissioners,

This correspondence concerns CPMA21-0002/PA-01-21, Newberg Urban Reserve Area Expansion, submitted by the Bellairs. We live in the Greens and I was on the committee that submitted a report from members of the Greens to the city and county, some months ago, citing many of these issues.

We are opposed to this land use inclusion into the Urban Reserve area at this time. This has also been an active topic of conversation with many of our neighbors, and they too are against this construction.

Following are our areas of significant concern:

- This property has previously been denied admission, primarily for the increased traffic it would put on Corral Creek Road and the lack of a signal at Corral Creek Road and Highway 99W. As ODOT has no plans (or funding) to install a signal at Corral Creek Road and 99W, any construction will cause significant increased traffic and congestion on Corral Creek Road, Fernwood and Brutscher.
- Additional traffic within The Greens is problematic as it creates a further blockage in case of emergencies.
- We have seen an increase in traffic accidents, both in commercial and civillian traffic. We have also seen increased traffic from those wanting to access Wilsonville Road via Fernwood and/or Corral Creek Road. This route is now busy and dangerous, and with traffic from additional construction, it will be worse.
- The Newberg City Planner originally advised against this URA expansion due to water and wastewater issues. There is already land with better water access in other locations contiguous with the Newberg UGB that is available now.
- This is high quality agricultural land (EF-20). Advocating to bring this into the URA at this time negates Oregon's strong land use laws. We have seen cattle each year grazing here and the land is harvested each year.

This landowner generated request to expand the Urban Reserve Area to include this acreage should be denied as originally recommended by the Newberg City Planner. The traffic, safety and agricultural issues have not been addressed. Please focus on areas that are more practicable and less costly to Newberg citizens.

Respectfully,

Kurt and Julia Kightly

137 Wood Ct, Newberg OR 97132

720-883-1303

Doug Rux

From: PLANNING
Sent: Monday, March 27, 2023 12:25 PM
To: Doug Rux; Fe Bates
Subject: FW: Request for continuance of NUAMC case CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

Ashley Smith
Assistant Planner
City of Newberg
Direct: 503.554.7768
Cell: 971.281.9911
Email: ashley.smith@newbergoregon.gov
Pronouns: she/her/hers

From: Kurt Kightly <k2jlk09@gmail.com>
Sent: Monday, March 27, 2023 11:02 AM
To: PLANNING <planning@newbergoregon.gov>
Subject: Request for continuance of NUAMC case CPMA21-0002/PA-01-21 Newberg Urban Reserve Area Expansion

Request that the NUAMC continue case CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion(continued from 8/23/22, 10/25/22, 11/22/22, and 1/24/23) in order to allow citizens an opportunity to have time to review the 1000+ pages just posted.

Kurt and Julia Kightly
137 Wood Ct, Newberg, OR 97132
720-883-1303

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All that is necessary for the triumph of evil is that good men do nothing.

Edmund Burke

If a equals success, then the formula is A equals X plus Y and Z, with X being work, Y play, and Z keeping your mouth shut.

Albert Einstein

Socialism is a philosophy of failure, the creed of ignorance, and the gospel of envy, its inherent virtue is the equal sharing of misery.

Winston Churchill

An appeaser is one who feeds a crocodile, hoping it will eat him last.

Winston Churchill

Socialist governments traditionally do make a financial mess. They always run out of other people's money...They then start to nationalise everything... they're now trying to control everything by other means. They're progressively reducing the choice available to ordinary people.

Margaret Thatcher

Doug Rux

From: Corinne Waterbury <cawater@msn.com>
Sent: Monday, March 27, 2023 3:52 PM
To: PLANNING; Doug Rux; Ken Friday
Subject: Proposed URA Expansion

We are against this proposal for many reasons:

- There are more compatible UR areas already identified by the Urban Management Commission. Newberg has an ample supply for development at present. There is no need to add this land now.
- The applicant's engineering report does not adequately address the extensive infrastructure improvements needed to develop this rural property into an urban cityscape.
- ODOT was previously opposed to a similar development scheme on this property. The two-lane, steep and winding rural roads in the area, NE Fernwood and Corral Creek, cannot support the urban traffic proposed by this application.
- Sanitary sewer and storm drainage. We concur with the statements in the Ladd Hill Neighborhood Association's (LNHA) statement of 10/22/22 on this matter.
- Previous reports against the proposal by staff, 1000 Friends of Oregon, Friends of Yamhill County and Ladd Hill Neighborhood Association were researched and written by experts in this field.

Regards,
David and Corinne Waterbury

Schwabe
WILLIAMSON & WYATT®

March 27, 2023

Joseph O. Gaon
T: 503-796-2077
jgaon@schwabe.com

VIA E-MAIL (DOUG.RUX@NEWBERGOREGON.GOV)

Mr. Doug Rux
Community Development Director
City of Newberg
414 E First St.
Newberg, OR 97132

RE: CPMA21-0002/PA-01-21 – Newberg Urban Area Expansion

Dear Doug:

This firm represents Brian and Kathy Bellairs, the "Applicant" in the above referenced matter. It is our understanding that additional comments were submitted to the record in the above referenced matter, some of which requested a continuance of the continued public hearing. As shown in the minutes from the November 22, 2022, Newberg Urban Area Management Commission ("NUAMC") Meeting attached as **Exhibit 1**, the record was closed to public testimony. As a result, these public comments should be excluded from the record on this matter.

Notwithstanding the foregoing, and in response to the public comments received, the Applicant is not proposing a UGB expansion, a rezoning of the subject property, or annexation of the subject property in the City of Newberg's limits. The Applicant is only requesting expansion of the City's URA, which does not permit or authorize additional development at this time.

Moreover, to the extent that NUAMC is concerned with permitting the public to have an opportunity to comment, it should be noted that this is *not* the end of public involvement in the proposal. In fact, following NUAMC's recommendation, two additional *de novo* public hearings *must* occur, one before City Council and one before the Yamhill County Board of Commissioners. As such, the public may still file comments to be considered during those hearings.

Further, as stated in the minutes, NUAMC directed staff to prepare a resolution for both approval and denial of the application for consideration at the next public hearing on the application, which staff prepared. No new evidence or testimony was submitted to the record. As a result, the Applicant hereby opposes any request for continuance of the public hearing because any project opponents were all provided the opportunity to respond to all of the evidence and testimony provided by the Applicant.

ORS 197.797(6) only requires NUAMC to grant a continuance request if it is made prior to the close of the initial evidentiary hearing. Because the record was closed at the initial evidentiary hearing on November 22, 2022, NUAMC is not obligated to grant any continuance request.

This process has been long and arduous. Indeed, the application in question was deemed complete almost a year ago with the first public hearing taking place in August of 2022.

The Applicant respectfully requests that NUAMC proceed to a recommendation and not reopen the record.

Very truly yours,

Joseph O. Gaon

JOG:jmhi
Enclosure

Cc: Brian and Kathy Bellairs *(via email w/enclosure)*
Read Stapleton *(via email w/enclosure)*
Matthew Robinson *(via email w/enclosure)*
Ken Katzaroff *(via email w/enclosure)*

PDX\106195\255263\JOG\36300384.1

NUAMC Meeting Minutes

Tuesday, November 22, 2022, 7:00 PM

(This is for historical purposes as meetings are permanent retention documents and this will mark this period in our collective history)

I. CALL TO ORDER

Chair Jeff Musall called the meeting to order at 7:00pm

II. ROLL CALL

Members Present: Kit Johnston, Maryl Kunkel, Ken Summers, Mary Starrett, Jeff Musall

Members Absent: Rick Rogers, Alan Halstead

Newberg Staff Present: Doug Rux, Community Development Director
Ken Friday, Yamhill County Planning & Development Director

III. APPROVAL OF October 25, 2022, MEETING MINUTES:

MOTION: Member Kit Johnston made a Motion to approve the October 25, 2022 meeting minutes and Member Ken Summers seconded, motion carried: 5 Yes ___ No ___ Abstained 2 Absent.

IV. COMMUNICATIONS FROM THE FLOOR (5 minutes maximum per person) - For items not listed on the agenda. There were none.

V. REPORT OF FINAL DISPOSITION OF AGENDA ITEMS FROM PREVIOUS MEETING:

Staff had nothing to report.

VI. PUBLIC HEARINGS:

QUASI-JUDICIAL HEARING: CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion
Chair Jeff Musall re-opened the public hearing. Chair Musall explained that the proponent will be allowed a 30 min testimony time limit instead of the normal 15 minutes in addition a representative of the Opposition will be allowed 30 minutes to testify.

Chair Musall called for any abstentions, bias, ex parte contacts, or objections to jurisdiction. There were none.

CDD Rux read the legal announcement.

Chair Musall asked CDD Rux to present the staff report. CDD Rux entered the staff report into the record and informed everyone that the original hearing date for this project was scheduled back in August 2022, but was continued to October 25, 2022, where it was continued to today November 22, 2022. The property location encompasses several Tax Lots and is located at the NW corner of the intersection of Fernwood Road and Coral Creek Rd. The area that's proposed to be brought in is 95.3 gross acres. That includes right away for Fernwood Road and Corral Creek Rd. It's currently has a zoning in Yamhill County of Exclusive Farm use, EF20.

At the time that we wrote the staff report, and it was issued seven days prior to this continued hearing,

the City had received 30 written comments. 19 of those were in opposition, eleven of those were in support. All of those comments are included as an attachment in the packet you received for review. CDD Rux reviewed the Oregon Administrative Rules for determination of Urban Reserve. He then informed the Commission Members that they would be hearing the City of Newberg's review first then YCPDD Ken Friday will address Yamhill County's side.

CDD Rux went on to speak about the Newberg Comprehensive plan, Section 5 land needed supply information. This information was from 2005 to 2025 with projections from 2026 out to 2040. The Applicant used our buildable lands inventory and housing needs analysis information from 2021, we also have an economic opportunities analysis that we did, and we did a public and semi-public land analysis. CDD Rux noted that those documents have only been accepted by the Newberg City Council. They have not been adopted by ordinance by the council, and they have not gone through a post acknowledgement process with DLCD. He continued to explain if the land currently within the Urban Reserve Area meets the 2051 land needs and what land should be included in the Urban Reserve Area to meet the 2051 land needs. The Oregon Administrative Rules hierarchy standards for lands incudes reasonably serviceable. The Applicants representative worked with the City and created a Comparative Site Study of the subareas 1 mile outside Newberg's existing Urban Growth Boundary. CDD Rux explained the map that represents the information gathered from the study. City of Newberg Engineering Division defines Reasonably Serviceable as "the provision of public facilities to an exception area is unreasonable if the value of benefits derived from developing that land beyond the costs are demonstrably less than the value of the benefits of developing lower priority lands beyond the costs"

CDD Rux spoke to the Intervening Resource Lands that affects the subject project and how they affect the project.

CDD Rux explained that this proposed project would be a Type III Procedure and that it would have to apply for a comprehensive plan map amendment. He informed the Commission members that the Newberg Comprehensive Plan, Newberg Urban Area Growth Management Agreement, the applicable Statewide Planning Goals, the Oregon Administrative Rules and the Oregon Revised Statutes had to be reviewed and addressed, all these findings were included in the packet given to the Commission members. This concluded the City of Newberg Staff Report.

YCPDD Ken Friday presented the Yamhill County Staff Report. He informed the Commission that in addition to the Administrative rules already stated the request must also be in compliance with the Yamhill County Comprehensive Plan goals and policies, the detailed notes are included in the packet that was provided to the Commission.

CDD Rux informed the Commission that earlier the day of the hearing the applicant submitted supplemental information, which copies were provided to the Commissioners at their seats and copies were put at the back of the room for the public. The Staff did not have time to review or analyze the new information the applicant submitted. In addition, there was additional public comment from Charles W. Woodward, IV, submitted earlier today, a copy was also at the Commissioners seats. At the time the staff report was issued the staff recommendation was to move to adopt NUAMC Resolution 2022-23, which recommends that the Newberg City Council and Yamhill County Board of Commissioners deny the request for Urban Reserve Area Designation to include the 93.5-acre site in the Newberg URAs. CDD Rux concluded the staff report.

Chair Musall asked the Applicant to come forward.

Read Stapleton, Land Use Planning Manager from DOWL, a land use firm that is working with the Applicant Kathy and Brian Bellairs and who are the owners of the majority of the property that's under consideration. Brian Bellairs is going to say a few words during the presentation then one other member

of our team will be presenting as well. Mr. Stapleton thanked the staff for their patience, there has been a lot of information submitted to go through and thanked the Commission for their patience with the continuances which helped them address some comments that were received from staff's initial report. DOWL prepared the bulk of the evidentiary record that will be reviewed with the Commission tonight. Read Stapleton went over the main points they will touch on in the presentation. Then introduced Brian Bellairs for him to say a few words to the Commission on behalf of him and the other applicant Bestwick LLC.

Brian Bellairs addressed the Commission as his daughter handed out to the members packets of information: 19 years ago, the city knew that it was running out of buildable land and needed to plan for the future. An ad hoc committee was born by the city to develop a plan for Newberg's future. You have that ad hoc committee report in front of you. The committee was a team, consisting of city staff doing the same sort of analysis you see today. The former planning director, land use consultants and civic leaders, including the previous mayor and current Mayor Rick Rogers, in his position with Habitat for Humanity. The committee conducted focus groups, did surveys and held 26 public meetings to develop a comprehensive vision for Newberg. The conclusion was that there was not enough land in the urban reserve. They encouraged connectiveness among neighbors that are located close to employment centers to support the city's employers and reduce automobile traffic. That the recreation needs of the citizens should be addressed and that large and complete neighborhoods were very desirable. Based on this comprehensive study, the city strongly recommended expansion of the urban reserve in 2007. And the land in the application before you were included in the urban reserves in 2007. This boundary was unanimously approved by the city of Newberg, Yamhill County and by this committee. Both the 2007 ad hoc committee report and the ordinance expanding the urban reserves were done. I have provided you excerpts from these studies, which show how strongly the city leaders and planning staff supported our inclusion. Let me summarize a few things. They said, we need Corral Creek and Fernwood land in the urban reserves. It has low capability soil and the area provides flat properties. The properties are appropriate for development of a complete community. Utilities and services can be provided for more readily than other areas that were studied. He also said that the committee recommends the area as the most appropriate expansion of the UGB. In 2010, the state remanded the decision back to the City of Newberg for an official response to questions raised. The city was granted five years and two extensions, but the city chose not to respond and walked away from mediation instead. Here we are 15 years later, and there's an even greater need for the expansion plan. Since the last study was conducted on our land, Providence Newberg has been built a ¼ of a mile from our property. The studies suggest strongly that land should be located close to employment for less independence on the automobile. A Providence representative, Joseph Yoder has written a letter supporting our inclusion. He believes an amazing recreation community so close to the hospital, would greatly enhance their ability to attract and retain medical professionals.

Mr. Bellairs went on to talk about their vision: They have committed to CPRD that they would donate to them their fishing pond and enough land for eight Pickleball Courts. Pickleball is America's fastest growing sport, it results in connectiveness, it is easy to learn and players from 10 to 90 years old can compete in it. Our vision is to have pedestrian paths that go all the way from Corral Creek down to Providence and into Crestview Crossing. This sort of community is being built all across the United States, but it's not been built in Portland. The inclusion of this land in the URA would provide the development of an amazing recreation community that could provide numerous benefits to the city of Newberg. It would provide Newberg with the largest, least parceled land, immediately adjacent to the urban growth boundary, which can easily be serviced and developed to address diverse housing needs. It provides much needed connectivity between the Greens and Corral Creek, which was supposed to be a condition of the last two phases of that neighborhood, which is shown as a major priority on the city's transportation plan. It provides an opportunity for us to fix the dangerous roads in the area also. A recreational community addresses the city's recreational objectives. We are private citizens who've taken on the financial burden, and we've taken that off the City to once again prove that Corral Creek is

the best land for URA approval. We have engaged planners and consultants who will demonstrate the Corral Creek needs to be included. It has not been farmed for 100 years, and it has very low agricultural soil. Mrs. Schaad, the previous owner, has submitted a letter to the committee saying it is not good for farmland, and it is very, very poor soil. This land can benefit the City of Newberg in many ways. We have seen how our two pickleball courts improves our neighbors' lives with healthy exercise and social interaction. We want to bring this to all of Newberg. We want to build a beautiful recreation community we can be proud of. We're asking for the Commission's support once.

Read Stapleton with DOWL introduced other members of the team working on the project; Joe Gaon with Schwabe Williamson & Wyatt, Todd Mobley with Lancaster Mobley who is present virtually and will be able to answer any traffic related questions if any arise.

Mr. Stapleton went forward with his presentation explaining to the Commission that Urban Reserves are intended to establish a reservoir of land that the city can review and make a decision upon when it looks to expand the Urban Growth Boundary. The City intentionally looks beyond the UGB horizon, so that the City has an array of options for where it can expand in the future. He went on to explain Dowl's method of how they came up with the numbers they provided showing that the exiting URA cannot meet future land needs. Mr. Stapleton pointed out to the commission that if this property were to be brought into the URA there would not be immediate urbanization/development, the property would not change its current zoning designation that there are many steps and process that would need to be implemented before anything could be done with the property.

Joe Gaon addressed the Commission about the Oregon Administrative Rules URA determination and how they meet these criteria. Mr. Gaon also pointed out that the City will need to update the UGB pretty soon because it is only projected out until 2025. He acknowledged that the City can satisfy its lands need up to 2041, but in the near future the City will have to undergo an analysis like the applicant has done to determine its land needs up to 2053, 54 or 55. He addressed Subsection 2 of the regulatory framework that speaks to there being a demonstration of reasonable alternatives, he feels that some verbiage is being missed specifically that it says "or" not "and" the section reads" "A demonstration that there are no reasonable alternatives that will require less or have less effect upon resource land." The Dowl study has shown there is going to have to be resource land included in the URA to satisfy the City's needs through 2051. This project will have less effect upon resource land, because there is a residential subdivision located directly to the west of this property and there are county roads that bisect this property. Including the properties in the application at this time does not preclude any of the other higher priority land from being brought into the URA at a later date.

Mr. Stapleton explained how they designated the reasonably serviceable exceptions land in their study and the analysis findings they got due to this information. He went on to summarize the information they presented to the Commission in their conclusion of the application presentation.

Chair Musall asked the Commission if they had any questions for the applicant or the applicants' representatives. There were none.

Chair Musall asked if there was a principal proponent who would like to use the 30 minutes to counter.

Beau Svendsen went up to testify as an opponent to the application; We live in a rural area. We have to follow the zoning code to protect the environment and ensure that we don't have unsustainable urban sprawl. When you have unsustainable urban sprawl, it increases the cost of government services. It's not anybody else's problem that the applicant can't develop the property the way they want, because they bought property that's not meant to be what they want. If I bought a house in town, I wouldn't think that I could turn it into an animal farm. So when you buy property that's zoned agricultural and forestry, I'm sorry, it's not anyone else's problem that you spent a bunch of money doing reports to try to get the

zoning change. I've lived in Newberg my whole life, and I've lived in this area specifically for five years. When they say that there's been no farming done on that property for over 100 years, that is a blatant lie. The same people that harvest my field do theirs. Huge amounts of wildlife pass through there that would be displaced. Why is it the City of Newberg's problem that someone invested a bunch of money doing something they're not allowed to do before they're allowed to? It's not a benefit to you for them to do this. It's someone attempting to manipulate a local government. If all it takes for me to manipulate my local government is to go somewhere and buy some land and have a bunch of money behind me, what's to stop anybody from doing anything like that? I'm sure there's been studies to see how it will affect the wildlife and the environment. But no one can tell me that it's better for the environment to put in a development. We have a town where people are living in church parking lots. Are you telling me that what they're planning on building is going to be affordable for those people. We have areas in Newberg that are abandoned. The Mill area would make more sense to put housing where it's perfectly flat and I'm sure there's sewer and electric a lot closer. This isn't about the urban growth. This is about the needs of a couple parties that want to make a quick buck and then move on. We all know this. I've lived in Newberg my whole life, and I'm getting sick of seeing more things done for new people. What about the people that are here already. You know this development isn't going to provide housing for people that already live in Newberg. Who cares about Providence, we shouldn't change the boundary for a housing development to suit Providence. It doesn't make any sense. Let's have Newberg in the news for taking a stand against people just walking into small towns and taking them over. Can we do that for a change? If this is put through all it's going to be is the Greens part two or three, and you didn't even finish part 2.

Chair Musall asked the Commissioners if they had any questions?

Chair Musall opened up the floor for any additional public comments, that are to be kept to 5 minutes.

Michael Kringlen went up to testify as a proponent of the application; I live in the Greens, which is adjacent to the property, I'm in favor of expansion. I just found out tonight that this is just one step and the development of the property is part of a later step. I am involved heavily in the Newberg Pickleball Club and work with others on an advisory committee to the Chehalem Park District. The Bellairs plan includes additional pickleball courts, which are sorely needed and as Mr. Bellairs pointed out, pickleball provides health benefits for anybody of an older age. But more importantly, this seems to be very logical location for expansion of the urban growth boundary. From what I understand the homes that are proposed to be built would be consistent with the quality of homes in the Greens. As the gentleman pointed out there is a need for housing for the homeless, but I don't see that area as a logical site for that. Building housing for professionals and business owners, whether they live in Newberg, Sherwood or beyond, would contribute to tax revenue. So, I from an economic standpoint, it just seems like a good choice.

Gary Bowen went up to testify as proponent of the application. My wife and I are excited about the possibility of a new housing/pickleball community in Newberg. We have lived in the Portland metro area our entire life. We are now both retired and currently living in Beaverton. I have checked out in person these types of communities in Nevada and Arizona. The only drawback is the extreme heat in summer. We would rather spend our time in the beautiful Northwest with four seasons. Pickleball is a social sport, and we've already made 20 to 30 friends just from playing. A bonus for us would be the opportunity to be playing golf at Chehalem Valley Golf Course, and then pickleball matches right from our backyard. I would rather spend my taxes and money for services in the city of Newberg. I certainly hope this will become a reality.

Delaine Bowen went up to testify as proponent of the application. The reason I'm speaking here is because I got addicted to pickleball. If any of you haven't tried it, I would highly recommend it. You meet so many people because your courts are open to the whole community. Like my husband said,

we've been researching different communities in Arizona and in Nevada. And we haven't moved after we've retired because we really wanted to stay in the Portland area. I would love my money to go into something that would support different corporations and different businesses in Newberg. I'm elated there's a hospital here, because if you're retired, you want those kinds of services close. I just wanted to say how the community of pickleball, is so fun and age diverse, it is a community environment where we have kids and grandparents playing and supporting each other.

Don Clements went up to testify as proponent of the application as Superintendent for Chehalem Park & Recreation District. One of the things I wanted to point out is we set out many years ago, I served on the Northwest Specific Plan, and the Springbok Oaks Specific Plan. I've sat on, I can't tell you how many committees. Why this land went away and was not included in the URA today. I do not understand, it ought to be included, it was included and it should be included. I don't know why it went away, but things like that occur. One of the things we wanted to do was build social capital. In a community to build social capital and community is extremely important. Harvard has done studies over the years, and they've come up with one thing, social capital builds successful communities. Do we want to be a successful community? That's why we set out to build the Cultural Center, the trail systems that we are trying to get constructed, the park system, the aquatic and fitness center, the sports complexes. All of that builds social capital. There is no reason whatsoever not to include this land in the URA. The one thing I heard earlier is that this will take time. As the planners know, we can build parkland on farmland. And we have and will continue to do that. We will get with Brian and his wife to incorporate the fishing pond so that community can have a place to go out and go fishing. That's very important, along with the pickleball. I would encourage you to include this land into the URA, it's very important.

Ron Knox went up to testify as proponent of the application. I'm a neighbor of the Bellairs, I live off of Corral Creek Rd next to the undeveloped portion of the golf course. I am curious why the 2007 proposal was not followed through on. It was approved several times then just vanished, what happened with that? I went back through the initial final report and on page 95 it says; "Measures should be taken to prevent having areas east and southeast of the proposed bypass isolated from the rest of the city. Substantial development of complete neighborhoods should occur on both sides of the proposed bypass." That statement makes sense to me, because complete communities include road work and dealing with the bypass going through the middle of communities. I thought that was a clever point they made and that if it was a good idea in 2007, than maybe it's a little bit more critical now that Newberg's population densities is getting larger. I really think the City should embrace the citizen and planning work already done back in our 2007 study. According to that study the Bellairs land is perfectly positioned to be added to the urban reserve this time around.

Lynden Hansen went up to testify as proponent of the application. I'm here because I heavily support the inclusion of the Bellairs property into the URA. The Bellairs property could provide the land needed to create a community that will put Newberg on the map for the future. I was recently at the League of Oregon Cities conference in Bend, where it was discussed that that Oregon has a severe need of housing due to its growth. Oregon has seen a surplus of about 50,000 people entering our state per year since 2008. The state has an annual growth rate of approximately 10%. Newberg's annual growth rate is at 1.2%. Why is it so low? I shared the Bellairs vision with every Mayor I could speak with at the conference and all of them expressed that it would be a great addition and couldn't understand why there would be any resistance. Why would there be resistance for a community that would bring more professionals? To me it makes sense why we're 9% under the state's average in growth. Even at the current rate of Newberg's growth of 1%, Newberg would see 3,000-5,000 more people live here within the next 10 years. Imagine if we were to get closer to the state's 10% growth rate, where would they live? How about the doctors unwilling to work at Providence right now due to no home suitable for them? There are currently only 11, one level homes for sale in all of Newberg, and none of them were built in the last 25 years. Since we all care about Newberg, it's fair to say that Newberg will grow, regardless of what happens here tonight. However, it would be in our best interest to allow Newberg to

grow responsibly and with the beauty to our own citizens and our surrounding neighbors, and allowing those who want to do the heavy lifting on behalf of the city to do it.

Charles W. Woodward testified via zoom in opposition of the application. I would like to point out why this application should be denied. I would like to turn to specific criteria that does affect this application, I'm speaking directly to OAR 616-021- 0030. The applicant has stated that staff report interpretation of the subsections in that particular provision is somehow unsupported. I would argue that it is quite supportive, as they have been demonstrated. And the applicant does put forward a different opinion, in which case you have a problem with the ambiguity of the language of the provision, and then under statutory construction. If the plain language doesn't settle things you look towards the context. If you look at subsection 2, which provides; inclusion of land within an urban reserve shall be based upon the location factors of Goal 14, and a demonstration that there are no reasonable alternatives that will require less or have less effect upon resource land. Yamhill County staff report also mentioned it would require and extensive amount of data to show that there are no reasonable alternatives that would require less or have less effect upon the land. That's the context provided by the applicable provisions in that section. This gives clear guidance of what to apply in the hierarchies contained in in subsections 3 and 4, that also aligns with the report's interpretation from both Yamhill County and Newberg in regards to the plain language.

A little more on point is the case law regarding this particular division and specifically for the exceptions and subsection 4, that says, as LUBA summarized; Accordingly, we conclude the correct application with subsection 4 requires a local government to categorize inventory of suitable land, according to the subsection three priorities and sub-priorities. And then, in considering a specific site for the one of the subsection 4 exceptions to determine that no higher priority land is adequate to make a particular subset of 4. I think that based on what I just said, this supports the reports conclusion of the interpretation of that statute.

To the notion of reasonably serviceable. The interpretation presented in the staff reports by the KGH memo are both on point. As the staff reports have noted, no interpretation has been put forth by the applicant and certainly not any evidence to support why their interpretation might be more reasonable, or that the staff report interpretation is unreasonable or implausible.

Regarding the response that was put in late by the applicant. Section 4 states that they had a comparative analysis of competing resources. Resource lands is forthcoming, there's no analysis included for analysis at this time. Which makes it a little hard to make any sort of judgments based on evidence that's not actually in the record at this point.

In addition to these specific issues, the applicant has not addressed the failure the of application, to comply with several provisions of the Yamhill County Comprehensive Plan, nor has the applicant addressed stating that inclusion of the subject property in the URA would comply with Statewide Planning Goal 14. Statewide Planning Goal 14 also provides a context as to how the particular OARs that are applicable in this application should be viewed as to the reasonableness of the interpretation.

Again, just to focus on the specific criteria that's actually an issue. I appreciate pickleball and all the other issues. But the specific criteria that the staff reports has denied this application under are all valid and is supported by Friends of Yamhill County and 1000 Friends.

Joe Hughes testified via zoom in opposition of the application. I'm an adjacent, cross street property owner. Back in about 2002, I was head of the Parrot Mountain neighbors alliance and was there when Roger Shadd and Lewis & Clark College attempted to do the same sort of application for this property, without the Bestwick property. We objected to it then. But the final item that stopped it in the end was ODOT saying that there was not going to be any development that puts more traffic on Corral Creek

Road and Hwy 99 due to the safety issues. ODOT didn't want more traffic on that intersection until a new intersection or the Bypass was built. If you go through the records, I think it was really the final blow that stopped the Lewis and Clark/ Roger Shadd application. There's ample land in Newberg to develop without developing this property. The contention that it's not farmland is erroneous. There's a testimony in 2003 or 2004 from 1000 Friends of a soil analysis that states it's high value agricultural land. The fact that the current owners haven't been farming it to its highest potential is doesn't mean that it should be developed. It means that should be considered. My parents bought the property we have across the road in 1971. I'm not a newbie showing up saying let's not develop here. I consider myself and my family locals. It's not right to have people come in and decide they're going make a bunch of money by developing the property. I'm here to stop it, and I'll do the best I can to stop it. I hope government supports us on that, because it's not the right thing to do for that property on a whole bunch of levels.

Arnie Kielcham went up to testify as opponent of the application. I live up on Old Parrett Mountain Rd, and we have lived there for 13 years. I am a concerned owner about a development being so localized. Our deck looks out over the valley and from our deck, we can see Hwy 99. You ought to see what Hwy 99 looks like at 4:00 o'clock, 5:00 o'clock in the afternoon, or 5:00 o'clock on Friday, or 5:00 o'clock on Sunday, or 6:00 o'clock in the morning, it's a mess. I think the new development that's going in across from Hwy 99 from Providence is going to add to that, I did a rough calculation and that is going to add 2,000 cars to Hwy 99 with no additional infrastructure done to the road. In April of this year, I was on Corral Creek, going to the golf course, which I use regularly, and I was hit by a person who was probably going 50 miles an hour. I could not imagine what's going to happen with Corral Creek if you add this complex. Renne Road is a mess, people cut across Anna Drive and go up Schaad Road which is a bumpy mess, from people speeding on the road. Parrett Mountain traffic has increased in the 13 years we have been here. If you've ever been to Molalla, and you look at downtown proper Molalla, and you look at the outskirts of Molalla, you'll see that there was no plan. There was no plan for development. There's no big plan to make the city a viable, functional unit. I hope that doesn't happen to Newberg, where we just have all these little pockets growing with no big plan. I'm also concerned about water, and if wells are dug then the landowners above may have an issue with water supply. The applicant did say that they would be on City water, and if so then it is moot point, but wanted to bring it up.

David Moyle went up to testify as proponent of the application. I'm one of those pickleball crazies. I've been lifelong athlete and played racquetball for 25 years. I found this new sport called pickleball and have played at the Bellairs house many times. The difference between pickleball and all the other sports I've been involved in is the social nature of it. I think one reason is, when you play pickleball, it's almost always played in doubles and you're only 15 feet across from your opponents. There's a group of us that plays pickleball at sunrise in Murray Hill three days a week, rain or shine. If you arrive late, there are two things that you will hear; the sound of pickleballs being hit back and forth and laughter. There is something about the sport that generates fun and friendships. For me personally, to live in a community where I can have a single-story home, that's built around a community of of people who are interested in recreation and doing things together would be a very desirable place to live. I think it would really enhance Newberg to have a community built around that.

Dayne Ingram went up to testify as a proponent of the application. My family owns property between Providence Drive and Corral Creek. I want to say we are in support of the inclusion of Bellairs property into the URA. The reasons we support it is, as mentioned, the current URA is inadequate, and does not provide enough developable land through 2051. Secondly, the city services are already available nearby. Third, with the bypass coming in, it just makes sense to bring the area around the bypass into the URA. Add to that the fact that it was already approved previously. We see no reason not to approve the addition of this property.

Vance Stimler: 31775 NE Corral Creek Rd, testified via zoom as an opponent of the application. I can

appreciate that the City of Newberg has grown and the need for housing. A lot of people that have moved in the last five or ten years or more have benefited from additional land. I was born in Newberg, raised in Tigard, lived in Sherwood and I've seen a lot of what I would call irresponsible growth due to the need for land. My understanding of the UGB is that once it gets that point is there's mandates by Metro they have small lots. I don't understand how single-family houses are realistic. The initial proposal talked about high density housing for the new development. I have a lot of concerns about traffic on Corral Creek Rd, in the last month there have been 2 serious accidents on Corral Creek and Hwy 99. I pull onto Hwy 99 every day to go to work and I pay very close attention because cars are already going 55, and they're changing lanes without regards to traffic pulling on to Hwy 99. I can wait sometimes 5 minutes in order to pull out safely onto Hwy 99. Having this development will add a lot of traffic and there's no infrastructure for that additional traffic on Hwy 99. Then you could be looking at widening Hwy 99. In regard to the report. My understanding is that the report states there's need for more land by 2051. That doesn't mean you have to make a decision now for something that's not required for another couple years. It's confusing to me that that they would ask for you to make this decision on something that's not even required at this time. I want to go back to the initial proposal there's plans to develop it much faster than the applicant is stating with much different housing than is being stated. I also see the farming that occurs on that land. I don't feel like there's a genuine representation of what the true intent is.

Applicant representatives came forward to make a rebuttal to the public testimony.
Read Stapleton from DOWL addressed the comment that the applicant did not offer an interpretation of reasonably serviceable. Stapleton pointed out that a very straightforward definition of what's reasonably serviceable has been established. To them reasonably serviceable is: can the property be feasibly served with utilities? Are there conventional utility systems that can be delivered to serve these properties? They feel it is a very clear criteria that come into play in regard to if the property is a feasible site to develop? Such as; Can it be developed with sewer infrastructure, downstream capacity issues, or pipe increases, or pump stations. Stapleton pointed out that it did not relate to the definition offered by staff which he thought was a fundamentally flawed definition. He said KGH Engineering, stated that that definition from staff could be perceived by stakeholders in different ways as circumstances change over time. Which does not make it a feasible definition when it's inherently acknowledged that it is subject to all sorts of different interpretations.

Stapleton's second point was that approving this application would not increase the traffic. If it does come into the urban growth boundary and develops. That would be where there are traffic control improvements provided at intersections, sidewalk improvements, road widening and shoulder widening. If this site is brought in the UGB and develops the roads will be safer due to the state's transportation planning requirements.

Joe Gaon addressed the Commission with some comments and closing arguments. Mr. Gaon pointed out that the City may not be required to approve the application, but the City has the authority to approve the application and that the City is going to be required to bring in additional property in the very near future. Why not utilize the work the applicant has already done.

The second point addressed was regarding Mr. Woodward's comment about reasonable alternatives that will require less or have less effect upon resource land. Mr. Gaon stated that resource land is going to have to be included to meet the City's future needs.

The last point Mr. Gaon made was a rebuttal to Mr. Woodward's reference to the case of DS Park VS Metro. Mr. Gaon informed the Commission that Mr. Woodward omitted that LUBA specifically overturned what Metro was doing because they skipped step three in the process. Mr. Gaon pointed out that no steps in the process were skipped, which is why the case law that was cited by Mr. Woodward should not pertain. In regard to the last section of the quote that Mr. Woodward provided Mr. Gaon felt

that the applicant has shown that the higher priority in land, in this instance, is not adequate to meet the city's needs. And that is why the applicant is requesting for its property to be included in the URA.

Chair Musall closed the public portion of the testimony and asked for final comments from staff.

CCD Rux replied that staff is recommending to adopt Resolution 2022-23 that recommends denying the proposed request. But after hearing all of the testimony the Commission, has the opportunity to deliberate on the proposal. If the Commission chooses to make a decision that is different than what was recommended. You would have to want to come up with your findings for the decision you made. Or you could provide direction to staff, to revise findings and come back with a different resolution.

Chair Musall asked YCDD Friday if he had any additional comments.

YCDD Friday commented that he did not and that it is difficult to for the County to recommend approval if the City is not recommending approval because the burden to demonstrate if it falls under the criteria is greater for the City. Plus, the Comprehensive Plan for Yamhill County states that it must be an efficient transition from rural to urban land. If the City believes that there are other areas of higher priority the County is unable to conclude otherwise.

Chair Musall opened it up to the Commission for deliberation.

Member Johnston asked a question to CDD Rux. Is that the only way to get property into the URA is by someone applying for it or can the City designate other pieces of property into the URA?

Applicant representative Joe Gaon requested to raise a legal argument.

Chair Musall asked the Commissioners if they were OK with re-opening public comment for 5 minutes, there were no objections.

Applicant representative Joe Gaon informed the Commission that pursuant ORS197-797(6)(e), that unless we waive it, the applicant is entitled to final written legal argument. I just want to raise that issue now that at this point in time, we are not waiving final written legal argument.

Chair Musall closed public comment and opened it up to Commission deliberations.

CDD Rux informed the Commission that there is enough land supply for the next 20 years. An UGB expansion can be done without a URA designation. The URA designation of land is what is typically reviewed first though in a UGB expansion. It was pointed out that the housing needs analysis has not been adopted by the City Council or acknowledged by DLCD and cannot be used for this application. Staff is not saying that we do not have enough in our URAs. What staff is addressing is the issue of what is reasonably serviceable. The Engineering staff has come up with a definition and DOWL is approaching it a different way. The City acknowledges we need additional land, according to the population numbers from PSU, in 50 years, Newberg is projected to be a community of 50,000 plus. The City has been working on the urban growth boundary process, but it's now been placed on hold, because of some issues and comments that have come back to the City from the Department of Land Conservation and Development. There are two different ways to do it incorporate land into the city. One way is to have an Urban Reserve that has land that you can go and look at first, or you can go through an UGB expansion process where you can look at exception lands.

Member Johnston asked if you do either? Or is it urban reserve area first? CDD Rux informed him that either could be done.

Member Starrett commented that she felt it was an inappropriate project for the area and does not feel that it is reasonably serviceable and feels there are too many negatives to approve the application.

Member Kunkel stated that she understands the more land but that it comes down to a question of what kind of land is needed. From looking at the Comprehensive Plan commercial and industrial land is what we are in a deficit of. The big point is that can according to Doug, we must use what's in the current comprehensive plan not the other reports provided to for what land is available and the hierarchy of how we choose the land. Which is why the application should be denied.

Chair Musall asked CDD Rux if there was a way to put together a resolution to not deny it outright? Stating that if the property is added into the Urban Reserve Area it does not guarantee anything because it still has to go through the development processes down the line.

CDD Rux commented that the City and the County would need to have some clarity from the Commission on how they believe the findings that have been prepared are incorrect, and some guidance on the findings that support what the Commission desires to do.

Chair Musall asked CCD Rux if he agreed with the assessment that we'd have to revisit our land supply in a couple years? CCD Rux commented that according to the State the City needs to have a 20-year supply of land. Resent work that was done shows that we have deficiencies and that is why the City is working on the UGB. It comes down to the question do we go with the UGB approach or the URA approach. CDD Rux pointed out that this URA process is only looking at land supply, not use. The UGB process will be the one that will designate if the land would be for residential, commercial and so on. Chair Musall asked if the property was just in the URA if the next step would be to add it to the UGB. CCD Rux explained that when expanding the UGB that the first lands reviewed are the ones in the URA then the Exception lands based on the need and type.

Chair Musall asked for other comments from the Commissioners.

Member Summers commented that he agreed with some of Member Starrett comments about the area but from what he understands this hearing is not addressing the property use, possible traffic or water issues, that is something that will be addressed later through another process. Because of this he does not see a reason not to approve it at this point.

Member Johnston addressed Chair Musall that if he is looking for a happy medium that approving the application would be that happy medium since it is only adding it to the URA not designating any use. According to Mr. Clements testimony this area had been looked at for quite some time. Due to this he is leaning towards approving it also.

Chair Musall commented that Mr. Clements also mentioned in his testimony the recreational benefits. Plus, the addition of multiple types of balanced housing opportunities.

Member Johnston mentioned that from what he understood from CDD Rux the Planning Commission could also choose not to add this property into the UGB expansion. CDD Rux informed the Commission that NUAMC is the one that designates the UGB expansion not the Planning Commission. So, when this comes back around, they would be deciding on if it would be included in the UGB.

Member Kunkel asked for clarification of CCD Rux comment that the Engineering Department has not had an opportunity to assess the newest information from DOWL. CCD Rux confirmed that they received the information late that morning which he forwarded it on to YCDD Friday and City Engineering, but staff did not have sufficient time to review the new information. Member Kunkle clarified with CDD Rux that there is enough land in the URA for projected growth through 2041. CDD Rux confirmed that was correct.

Member Kunkel asked that since staff was not able to review the newest information provided by the applicant if it would be possible for that to happen before a decision is made.

CDD Rux informed the Commission that they could continue the hearing to January 24th. They could ask the applicant what they felt about a continuance.

Chair Musall asked if there would need to be another meeting if they moved to approve the application. CDD Rux said that there would need to another meeting to bring the new findings back to the Commission for approval.

Chair Musall asked the applicant if they were OK to continue the hearing to January 24th. The Applicant confirmed that they were OK to extend the hearing to give staff additional time to review the new information that was submitted.

Member Kunkel asked about Mr. Clements comments about having parks on farmland, YCDD Friday informed Commission that it could happen through a conditional use permit with the County.

Chair Musall asked CDD Rux if they could move to continue the hearing with the request that staff provide a resolution for approval and denial to the next meeting. CDD Rux said that could be possible.

Chair Musall asked for a Motion.

MOTION: Member Kit Johnston made a Motion to have an approval and denial written up for the January 24th meeting and Member Ken Summers seconded, motion carried: 5 Yes ___ No ___ Abstained 2 Absent.

MOTION: Member Kit Johnston made a Motion continue the hearing to January 24th, at 7pm at the Public Safety Building and Member Mary Kunkle seconded, motion carried: 5 Yes ___ No ___ Abstained 2 Absent.

VII. ITEMS FROM STAFF

Next Meeting–January 24, 2023

VIII. ITEMS FROM COMMISSIONERS – None

Marry Starrett made note that Kit Johnston is now a sitting County Commission member and there can not be two. Kit will most likely carry on the Commission and she would not.

YCDD Friday mentioned that a Planning Commissioner would be assigned. CDD Rux informed the Commission that he will be working with YCDD Friday on the member assignment.

IX. ADJOURN

Chair Jeff Musall adjourned the November 22, 2022, NUAMC meeting at 9:24 pm

APPROVED BY THE CITY OF NEWBERG/YAMHILL COUNTY, NEWBERG URBAN AREA MANAGEMENT COMMISSION (NUAMC) this 24th Day of January, 2023

Jeffrey Musall, Chair NUAMC

Fe Bates, Recording Secretary

Doug Rux

From: chefcwcook@comcast.net
Sent: Monday, March 27, 2023 5:07 PM
To: Doug Rux
Subject: Fwd: CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion,

---------- Original Message ----------
From: chefcwcook@comcast.net
To: "fridayk@co.yamhill.or.us" <fridayk@co.yamhill.or.us>, "planning@newbergoregon.gov" <planning@newbergoregon.gov>, "Doug.Rux@newbergoregon.com" <Doug.Rux@newbergoregon.com>, "planning@co.yamhill.or.us" <planning@co.yamhill.or.us>
Date: 03/27/2023 3:12 PM
Subject: CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion,

Dear Commissioners,

I am writing in regard to CPMA21-0002/PA-01-21Newberg Urban Reserve Area Expansion. I am opposed to this expansion for many reasons, first and foremost, the city does not need this area as it has more than enough property in its reserve to get by until 2040, per the report done for the City of Newberg. I can bet the new 1000 plus page report done by the DOWL group must say we need more in the Urban Reserve but what else would it say in a report written by the group that is being paid by the applicant. Without having enough time to go through the 1000 plus page report it would seem that the committee should postpone any vote on this proposal until all interested parties have a chance to go over the report. I know this property was denied in the past because the area could not handle the increase in traffic on Corral Creek and Fernwood, so what has changed since 2007 that it should be approved now? I know at a previous meeting your staff had recommended a no vote. If they have changed their recommendation now based on the DOWL report, I feel you must grant a continuance until an independent and unbiased report can be done. I believe that's how government works. Newberg is still a rural and farming community, up until late last summer there were still cows grazing on parts of this property. Why would we want to ruin that? This is not what Newberg needs at this time.

Thank you for your time and consideration.

Chris Cook
5118 Fairway (The Greens)
Newberg, 97132
chefcwcook@comcast.net

Doug Rux

From: KATHY COOK <kamcook@comcast.net>
Sent: Monday, March 27, 2023 5:05 PM
To: Doug Rux
Subject: Fwd: RE: CPMA21-0002/PA-01-21 Newberg Urban Reserve Area (URA) Proposed Expansion

Hi Doug,

Resending this to you - I had an incorrect email address.
Thank you,
Kathy Cook

---------- Original Message ----------
From: KATHY COOK <kamcook@comcast.net>
To: "planning@co.yamhill.or.us" <planning@co.yamhill.or.us>, "planning@newbergoregon.gov" <planning@newbergoregon.gov>, "Doug.Rux@newbergoregon.com" <Doug.Rux@newbergoregon.com>, "fridayk@co.yamhill.or.us" <fridayk@co.yamhill.or.us>
Date: 03/27/2023 2:00 PM
Subject: RE: CPMA21-0002/PA-01-21 Newberg Urban Reserve Area (URA) Proposed Expansion

Dear Commissioners and Planning Directors,

Please seriously consider opposing the proposed expansion of the URA to include the property owned by the Bellairs and Bestwick families. I stand in opposition to this proposal as I believe there are far too many 'loose ends' surrounding it. Please consider:

- **Providing a continuance** to allow interested parties enough time to digest the 1000+ page latest iteration of the Bellairs/Bestwick proposal.
- It is every citizen's responsibility to exercise forward thinking in this decision and account for the **public safety** of those who live and travel in this area, not only by automotive means, but motorcycle, bicycle and foot traffic as well.
- The need for adequate **infrastructure** (water, sewage, electricity and so forth) to support this large development. Certainly revisions and additions to the current structures will be needed - who will pay? I don't want to.
- **Socioeconomically**, where are these people going to work?
- Is this change in designation actually needed at this time? Isn't there **enough land currently within the UGB/URA for additional housing**? Do we need to add thousands of individuals escaping the Portland debacle to our landscape?
- The impact of this development on **our environment**: not just the loss of land for our wildlife, but, the increase of **light pollution** that has harmful effects on animals, plants and humans (yes, we are affected as well). Why do we want to usurp this precious farmland and ruin our rural atmosphere further?

I thank you for your kind consideration and the time you have spent on this matter. This is not to be taken lightly - please think past any 'seemingly beneficial' economic gain and think of the welfare of your taxpayers/voting citizens.

Best regards,

Kathleen Cook
5118 Fairway Street in the Greens at Springbrook

Doug Rux

From: Karen (Knisley) Kirkham <xapury@gmail.com>
Sent: Monday, March 27, 2023 5:06 PM
To: Doug Rux; Ken Friday; johnstonk@co.yamhill.or.us; PLANNING; planning@co.yamhill.or.us
Subject: NUAMC: Letter of Opposition and Request for Continuance
Attachments: URBAN GROWTH Opposition - March 27 2023.pdf

Attached is our Letter of Opposition regarding CPMA 21-0002 Newberg Urban Reserve Area Expansion (Fernwood/Corral Creek Development).

We are also asking for a continuance, not having had appropriate time to read through and evaluate the 1079 page agenda document. Additionally would it be possible to be advised of future meetings held regarding this subject either by email or postal service?

Thank you.

Arnie Kirkham
Karen Kirkham
32725 NE Old Parrett Mountain Rd.
Newberg, OR 97132

Arnie Kirkham
503.703.5324
arniekirkham@gmail.com

Karen Kirkham
503.475.3479
xapury@gmail.com

March 27, 2023

TO: Doug Rux, City of Newberg Community Development Director
Ken Friday, Yamhill County Planning Director
Kit Johnson, Commissioner - Yamhill County Board of Commissioners
Newberg Planning Division
Yamhill Co Planning

SUBJECT: Opposition – CPMA 21-0002 Newberg Urban Reserve Area Expansion
(Fernwood/Corral Creek Development)

TO WHOM IT MAY CONCERN:

As residents of NE Old Parrett Mountain Rd., we are writing to reiterate our concerns voiced in our previous correspondence to Doug Rux dated September 1, 2022 regarding subject above. This letter is included in the upcoming March 28th Newberg Urban Area Management Agenda, Page 153 of 1079.

Those concerns were, and are:

- Increased traffic, with disregard to our rural properties
- Detriment to our water source

While we identified these, others have cited additional concerns which we support, including but not limited to lack of infrastructure needed for better roads, storm drainage, sanitary and sewer services.

Having stared at the 1079 page document for more than several hours, we find we are overwhelmed and have not had sufficient time to review the information to evaluate its content. The document is so lengthy it freezes up if any attempt is made at printing select pages.

We ask for a continuance to allow us to better understand the information while also affording us the opportunity to meet with others having similar concerns.

Sincerely,

Arnie and Karen Kirkham
32725 NE Old Parrett Mountain Rd.
Newberg, OR 97132
(503) 703-5324

Arnie Kirkham - arniekirkham@gmail.com
Karen Kirkham - xapury@gmail.com

Sending via email to:
Doug.Rux@newbergoregon.gov
fridayk@co.yamhill.or.us
johnstonk@co.yamhill.or.us
planning@newbergoregon.gov
planning@co.yamhill.or.us

Doug Rux

From: PLANNING
Sent: Tuesday, March 28, 2023 2:45 PM
To: Doug Rux
Subject: FW: CPMA-21-002/PA-10-21

Clay Downing
Planning Manager
City of Newberg
Direct: 503.554.7728
Cell: 971.281.9695
Pronouns: he/him

-----Original Message-----
From: Leann Bennett <leannrbennett@gmail.com>
Sent: Tuesday, March 28, 2023 10:13 AM
To: Doug.Rux@newbergoregon.com; planning@co.yamhill.or.us; PLANNING <planning@newbergoregon.gov>; Ken Friday <fridayk@co.yamhill.or.us>
Cc: Joe Hughes <jhughes@jhc-companies.com>
Subject: CPMA-21-002/PA-10-21

March 28,2023

To:
Newberg Urban Area Management Commission Doug Rux, Newberg Planning director Ken Friday, Yamhill county Planning director

From:
Friends of Parrett Mountain
Leann Bennett, President

Regarding:
Newberg Urban Reserve Are Expansion (CPMA-21-002/PA-10-21)

Friends of Parrett Mountain is a Non profit neighborhood organization dedicated to the livability of our area.
For reasons summarized below Friends of Parrett Mountain does NOT support this proposed expansion.

1. Parrett Mountain/Ladd Hill is a rural community of farms and eco tourism. Recently the Willamette valley was named one of the top tourist destinations in the world.
This is due to our beloved wineries, equine facilities and agriculture, (berry farms, hazelnut farms, flower farms).

Siting a high density development next to rural farms is a recipe for disaster.
Using Ville Bois in Wilsonville as an example there is a long standing sheep farm next door to this massive housing development and the barrage of odor complaints is constant.
Under the current zoning area residents are allowed to have dog kennels (with conditional use permit), pig farms, cattle and dairy farms, chicken farms etc.
All these uses can be noisy and odorous

2. The topography does not lend itself to easy development. With steep and rolling hills, rocky soils (note quarry in the area) and winding narrow roads with farm equipment and animals on the road the infrastructure cannot support this expansion.The applicant's concept plan does not address extensive offsite and onsite utility infrastructure improvements.

3. Newberg does not need LDR zoning to satisfy its affordable housing issues. These will be homes starting in the million dollar range.

4. Newberg does not need HDR land for renters only. How does this bridge the wealth gap? In order to develop wealth low income folks need to have the ability to be able to afford to BUY not rent homes. This creates better neighborhoods and a healthier community invested in the area. How can you assure that an apartment developer won't develop this and be the only party to wealth growth? HDR needs access to public transport, grocery stores, pharmacies etc. This location siting does not satisfy these requirements.

Thank you for your time and consideration.

Leann Bennett,
President, Friends of Parrett Mountain
16840 SW Parrett Mountain Rd.
Sherwood, OR 97140

From: wynneb2@gmail.com <wynneb2@gmail.com>
Sent: Monday, March 27, 2023 10:47 AM
To: Joe Hughes <jhughes@jhc-companies.com>
Subject: Re: Writers Block? Here's help-

Dana Farrer

Hi Joe, here is what I have so far. Let me know what you think.

As a homeowner living off Corral Creek Road, I am very concerned about the potential addition of more than 300 housing units currently proposed along Fernwood Road and Corral Creek Road, and the addition of at least 300 more vehicles traveling these roads. I'm assuming that many of the new drivers would be trying to get to work or school in Portland or one of Portland's nearby communities such as Beaverton. They would likely try to access Highway 99. Currently, from the area of development proposed, there are only two routes that would offer access: one via Fernwood Drive, which is a less direct route going past a golf course (and a 4-way stop requiring drivers to yield to golf carts), and with a number of signal-light, and stop sign stops that would slow down anyone trying to get to work/school/activities.

The other route is along Corral Creek Road, a two-lane road with mostly zero shoulder, designed for occasional rural drivers, and winding by residences. Anyone traveling this road frequently knows how hazardous it is to encounter drivers who are exceeding the 25 mile per hour speed limit: rounding a corner, that on-coming car will be in your lane rather than go off into someone's yard. Additionally, the "entryway" to Highway 99 from NE Corral Creek Road is little more than a ramp with trees and brush on one side and a business on the other, and cannot accommodate two, full-size vehicles. I believe the addition of hundreds of motorists trying to access Highway 99 on the way to work or school in a variety of weather conditions is a recipe for serious accidents.

And if the City of Newberg is interested in widening Corral Creek, either the new construction developers would be required to give up land on one side of the road for this, or the city would need to try to take property from private owners on the other side of the road. Improving Corral Creek to accommodate that much additional traffic would be a very expensive, litigious, and complex project.

But not paying attention to the transportation infrastructure that would be directly impacted by the ambitious proposal for both retail and dense housing is irresponsible. I urge both city and county officials to consider this in their decision: lives may be at stake.

March 27, 2023

Sent

TO: City of Newberg / Yamhill County Newberg Urban Area Management Commission

FROM: Andrea and Jason Fields
32710 NE Lesley Road
Newberg, Oregon 97132

RE: Newberg Urban Reserve Area Expansion Request
(CPMA21-0002/PA-01-21)

We own property that resides near the proposed expansion area and recently became aware of an initiative to develop the 90-acre area into low density, high density, and commercial properties.

We would request a continuance on this matter to allow time to read, understand and evaluate the proposal (1,089 pages).

There is much to consider for this expansion request and as property owners that would be impacted by this decision, we want to be allowed the time to make an informed decision.

Thank you for your consideration.

Andrea and Jason Fields

Doug Rux

From: PLANNING
Sent: Tuesday, March 28, 2023 2:47 PM
To: Doug Rux
Subject: FW: Newberg Urban Reserve Area Expansion Request (CPMA21-0002/PA-10-21)

From: jennifer hapke <jenniferhapke1@gmail.com>
Sent: Tuesday, March 28, 2023 11:15 AM
To: fridayk@co.yamhill; PLANNING <planning@newbergoregon.gov>; Doug.Rux@newbergoregon.com; planning@co.yamhill.or.us
Subject: Newberg Urban Reserve Area Expansion Request (CPMA21-0002/PA-10-21)

To Newberg Area Managagement Commission,

As residents of Yamhill county, we have serious concerns about the following issues in regard to this project:

Our first concern is related to **significant traffic increase** on sensitive rural roads. We fear this will potentially lead to an increased incidence of accidents and pedestrian safety compromise. The roads are narrow, without shoulders, and winding, although pleasant to drive on, they are not designed to handle the traffic expected if this expansion is allowed to proceed.
As well, it is our understanding that just a few years ago **ODOT** denied proceeding with development here due to insufficient traffic control and in the intervening years nothing has been done to improve/alter existing roads to meet ODOT's prior demands.
We are also concerned that, as others documented, the **report minimizes extensive infrastructure improvements** needed to incorporate this land into the urban reserve, and importantly, if these costs will be passed on to Newberg and Yamhill county taxpayers. We do not see a broader community benefit that these increased tax dollars would fund.
Finally, as non experts in the field of urban development, and the fact that the report is more than 1000 pages, and because we will rely on other expert opinions as to the safety and rationality of this expansion request, we are asking, at the very least, for a **continuance** in order to be able to more fully engage in meaningful discourse about these concepts.

Thank you for your sincere consideration of these concerns,
Jennifer and Ron Hapke
35776 NE Kramien Rd
Newberg, OR 97132
503 736 9444

--
Jennifer Hapke

Doug Rux

From:	Joe Hughes <jhughes@jhc-companies.com>
Sent:	Tuesday, March 28, 2023 4:28 PM
To:	Doug Rux; PLANNING
Subject:	Tonight's Hearing
Attachments:	1767_001.pdf; 1766_001.pdf; 1765_001.pdf; 1764_001.pdf; 1763_001.pdf; 1762_001.pdf; 1761_001.pdf; 1760_001.pdf; 1759_001.pdf; NUAMC Hearing Statement - 3.28.23 - pkt.pdf; DLCD rejection in 2009.pdf; NUAMC 2004 Denial.pdf

Attached are letters from the neighborhood, some of which you have and some of which will be submitted tonight. Also attached is some back up info for my talking points tonight and below is my "speech". I'll bring along hard copies of all this for you…..see you soon….joe hughes

3-28-2023

Members-

Submittals: Comments by Charles Woodward IV, attorney. Copies of citizens objection letters, a Copy of DLCD File number 2008-005, Order number. 001767, Copy of Newberg Order No. 2007-0004

Hi! I'm Joe Hughes- For 52 years my family and I have owned and farmed the 44 acre Puzzle Tree Farm at 31205 NE Schaad Road on the corner of Schaad Rd. and Corral Creek Rd., directly across Corral Creek Road from the subject property.

I want to start with a request for a continuance of this hearing based on the voluminous, one thousand plus page application for which the applicant has had months to prepare and for which we, the public, have had little time to review and comment. If staff finds a continuance unacceptable, I request that we are allowed as an alternate some time (two weeks?) to leave the record open to allow time to thoroughly read, understand and comment on the application.

We object to this proposal to extend the URA boundary for many reasons; legal, environmental and of course, emotional. As you can see my neighbors have raised many issues, all of which I agree with. Rather than risk redundancy, I'll briefly address my submittal. It is a five page account of some of the deficiencies of the current application. Due to time constraints we've only hit some highlights. and not risk putting you all asleep.

Between 2002 and 2009 previous ownership of 2/3rds of this same property attempted to bring it into the URA. After several years, this proposal was rejected by the DLCD in 2009 and Newberg in 2007 (See attached). In the time since then many of the conditions and concerns remain unchanged. Traffic safety, narrow rural roads, intersection of HWY 99 and Corral Creek Rd., Water, sewer and storm resources, high value farm land. As the DLCD states "the priority for bringing land into a URA is intentionally weighted to avoid development of resource land, particularly valuable farm land…". My letter explains this in detail citing supportive legal decisions handed down by LUBA.

Another Critical factor, applicant has not addressed Statewide Planning Goal #14 and the locational factors pursuant to OAR 660-021-0030(2).

I encourage the Commission to read my submittals and carefully consider this decision…..thank you for your time…..joe hughes

Speeker

I'd like to thank the committee for the opportunity speak tonight. My name is Dawn Paulson and I live in the Greens.

I'm speaking tonight to ask the committee to deny the application by Brian and Kathy Bellairs and Bestwick LLC to include the subject properties in the Newberg Urban Reserve Area.

Bottom line, there are many properties more suitable to bring into the Newberg Urban Reserve Area before this one. The reason for this is, and, has been consistent each time someone has applied to bring this property into the UR area: it is not consistent with the Urban Reserve Rule (OAR 660-021-0030 and that it contradicts the Comprehensive Plan Urbanization Goal #1, which is "**to provide for the orderly and efficient transition from rural to urban land uses.**" There are much more reasonably suitable areas that should be a higher priority for inclusion than this one.

This site consists of 89% high quality production class I, II & III soils. Again, the Urban Reserve Rule, OAR 660-021-0030 states that lower quality soils, classified as Class IV or higher, are prioritized for inclusion over higher quality soils, classified as Class I, II, and III. It's important we remember the purpose of our exceptional Oregon land use laws, which in part were created to protect our high quality farm lands such as these Exclusive Farm Use designated resource lands.

I'd also like to highlight Goal 4, Policy q in Order number 2007-0004 which was also a denial to include this property within the UR area, adopted in 2007.

At that time, "The City agrees not to approve expansion of the Newberg UGB or Urban Reserve Areas around the East Newberg or Oregon 219 interchanges until IAMPs (interchange area management plans) for the two interchanges are prepared and adopted by ODOT, Yamhill County and the City or Newberg." This is still wise advice today. Without a plan for putting an additional 371 households onto HWY 99W, and with a future bypass phase in the area, it would be dangerous and irresponsible overlook this issue.

I am not against progress or growth of our city in any way, but it would be a poor decision to include this land in the Newberg Urban Reserve Area. It is still not the right time.

Thank you, Dawn Paulson

Speeter

March 25, 2023

To: Newberg Urban Area Management Commission
Doug Rux, City of Newberg Community Development Director
Yamhill County Planning and Development Department
Ken Friday, Yamhill County Planning Director

Subject: Proposed Expansion of Newberg Urban Reserve Area

My name is Darren Blass. On behalf of my wife and I, and as residents of Newberg, Oregon, I am sending this communication to voice our opposition to the proposed expansion of the Newberg Urban Reserve Area (URA) eastward to Corral Creek Road.

April of 2009 the Oregon Department of Land Conservation and Development determined that the need for the Newberg URA to expand and include this same currently active, productive agricultural farmland was NOT supported. With the current inventory of land already identified and available for development in the existing Newberg Urban Reserve Area, there has been no change in circumstance that would now support a change to the 2009 decision.

Both the City of Newberg and the Oregon Department of Transportation have previously denied this expansion of URA because of insufficient road structure, road/highway interchanges, and need for increased traffic support and infrastructure. This proposal would put dangerous pressure on two lane Corral Creek Rd to Highway 99. Without substantial upgrades to these roads and intersections for which ODOT, the State of Oregon, Yamhill County, or the City of Newberg are NOT willing or able to pay for, this proposal will result in an increasingly dangerous egress and digress from busy Highway 99 to a small country road. Nothing has changed since the previous decision. The increase in traffic on the bordering road, Fernwood, will dangerously increase traffic volume on that road which currently has high pedestrian traffic and two non-traffic light-controlled crosswalks and increased traffic pressure on Brutscher Rd. Brutscher Rd. also intersects with Highway 99, feeds the area's primary commercial area, and is bordered by multiple senior and advanced care residential communities, whose residents routinely walk along this road. Increased vehicle pressure on this road without substantial infrastructure upgrade will pose in increased public risk.

The development and population increase as a result of this proposed URA will negatively impact water drainage and storm water flow systems, putting adjacent homes and agricultural properties at risk. Increasing development density will strain of limited resources (water, gas, electricity) and limit availability of these resources, increase costs, and increase supply and outage risks to all residents.

For the reasons listed, we strongly urge not moving forward with this proposed Urban Reserve Area expansion in Newberg.

Darren Blass
35905 NE Kramien Rd
Newberg, Oregon 97132
darrenblass@gmail.com

March 27, 2023

To: Newberg Urban Area Management Commission (NUAMC)
Doug Rux, Newberg Planning Director
Ken Friday, Yamhill County Planning Director

From: Robert and Dorothy Roholt of 31150 NE Schaad Rd

Re: Newberg Urban Reserve Area Expansion Request
City File No. CPMA21-0002
County File No. PA-10-21

We own property directly north across Corral Creek Rd from the subject site, between Schaad Road and Adelyn Way. We have lived on this property since January of 1990–34 years. We are opposed to the change of the land-use zoning designation of the Bestwick/Bellairs property from exclusive farmland to urban reserve for several reasons.

We believe that the impetus for this proposal is more economic than a need for additional land in the URA. The lands around Newberg have not been developed to the extent anticipated by the comprehensive plan from 2005. A new evaluation may prove the anticipated usage does not meet the current total usage and therefore the urgency for bringing additional resource lands into the URA is not needed.

The statement that this is not agricultural land is not true. It has been stated in the report that this property bears prime soils for multiple agricultural uses.The two farms that make up the subject property have raised grass hay and cattle for the 33 years that we have lived here. T. Harold & Loretta Bestwick raised herds of cattle for over 40 years. Roland Schaad, the owner prior to the Bellairs, raised hay that was cut and baled and sold to a dairy. The Bestwick property had cattle on it again last year and the Bellairs have cut and baled hay each year. The land has been farmed for over 100 years, with different families living on the property during that time.The fact that someone wants to convert farmland to high and medium density housing is extremely concerning to us.

The Staff report discusses requirements for water supply. One of those requirements is a new reservoir to be constructed at a higher elevation. Where is this reservoir going to be placed? How big will this resevoir be? How much will it cost? How much disruption will there be to the Greens neighborhood and to other area should it be built?

Storm water from this area is currently an issue. The drainage along Fernwood road runs full most of the time during rain storms. What is going to happen when the fields are not there to absorb the flows' volumes when increased. These currently flow overtop the roads? The plan does not adequately address this. Also, the subject property is the bottom land for the adjacent mountain and it receives storm water that flows down Schaad Road across Corral Creek Road. Currently there are two places where water crosses Corral Creek and onto the subject property creating a safety hazard that is not be addressed in the plan. In winters with a lot of rain, water flows over the banks of the small creek on the Bellairs land, and this water disburses into the field. Where will all the water go if the land is developed? This is not adequately addressed in the proposal.

The Staff report also states that wastewater will gravity flow from the site to Fernwood Road and then down Fernwood Road to the pump station. While the pump station is lower than the collection site, there exists a hill between the pump station and the collection site. This would require a secondary pump station which is not discussed.

There is also not a discussion about the disruption and displacement of wildlife on the subject parcels. Typically the animals move from the wooded areas on the properties to other wooded areas nearby. The typical wildlife of deer, coyotes, fox, rabbits, squirrels, racoons and others would most likely be disbursed some to the north. But also into the Greens Development, Chehalem Glenn Golf Course or to other nearby properties, such as has happened after the Adelyn Way Development next door to our farm. If they travel across roadways there would be additional road kill.

This is rural land, it is not urban land. We don't have adequate roads to handle the volume of traffic that we currently have. When the city of Newberg allowed "The Greens" to be developed, instead of improving the road that was the direct connection to Sherwood, Tigard and Portland, they placed a sign at the exit of the Greens that directed traffic to Portland and even Wilsonville west to Brutscher St. To the credit of "The Greens" occupants, they ignore the sign and drive Fernwood Road to Corral Creek to 99 West and onto Portland, and south off Fernwood to Wilsonville Road. Now we have a rural road, unimproved, that carries an additional volume of traffic that is inadequate. The result has been many accidents and injuries. Cars sliding off the roads and landing upside down in the ditches, trucks hitting because the corners are too sharp and narrow for normal traffic, vehicles sliding on water and ice rain water or ice at the corners and which we have first hand experience of.

Because this zone change is from resource land to URA, it does not require a traffic/transporation plan to be furnished by the applicants. However, the impact of traffic in this area is one of the worst problems anticipated in this proposal. The properties are situated between Fernwood Road and Corral Creek Roads, the primary roads that service the area, taking traffic to Newberg or toward Portland. Especially since Wilsonville Road has been amended to no longer have direct access to Springbrook Road into Newberg, Fernwood Road receives more cars. Traffic from higher up Parrett Mountain, where there has been significant development in the last decade, funnels into Fernwood Road and Corral Creek Road. Corral Creek Road, the preferred way to go north, is narrow, winding, with almost no shoulder and deep ditches on each side. It empties onto Highway 99 at Rex Hill, with only a stop sign for traffic control before the highway. A traffic signal for the four lanes on Rex Hill would not be realistic, especially in the winter and for heavy trucks. Fernwood Road, the preferred way to Newberg for those coming down the mountain, and Wilsonville Road traffic via Renne Road, is also two lanes, with hairpin curves at the north end of the subject site, and 25 mph speed limits and pedestrian traffic at the Greens Neighborhood, Chehalem Glen Golf course (which has a four-way stop) and west into Newberg. There is poor visibility at the corner of Corral Creek and Fernwood Roads, and traffic accelerates at that corner coming down the hill.

In our 34 years living on Corral Creek Road, we have witnessed more accidents than we can probably remember. We have had 2 vehicles drive through our pasture fences because of loose gravel coming off of Schaad Road. A pedestrian was hit by another vehicle coming over the rise by Schaad Road. Lasts year a local driver who drove the same route to work each day, flipped her vehicle at the 90 degree curve at Adelyn Way because of ice from stormwater flowing off the mountain. Only a couple of months later, there was a head-on crash at the same corner. And we also remember when a school bus was rear-ended when a driver couldn't stop on Schaad Road gravel. A motorcyclist was killed on lower Corral Creek Road and there have been numerous accidents reported by neighbors on that

section of the road beyond our view. Additional accidents have happened at the hairpin curves on Fernwood Road including one when a driver narrowly missed our family car but totalled his.

When accidents occur on Rex Hill the traffic is officially or unofficially diverted to Corral Creek Road when Highway 99 is blocked, usually creating bumper to bumper traffic until Highway 99 is opened again. These are existing problems that plague the residents in our area. With additional hundreds of car trips potentially from a new development on the proposed site, the traffic would be a nightmare. We have more and more cars using these road, and little maintenance for the existing traffic.

With the proposed plan, responsibility of road maintenance would transfer to the City of Newberg. Yet residents in our area are not confident about what will happen if work on a development site commences. We still remember the three years that Fernwood Road was closed when simply one culvert was to be installed. The road was cut across, but permits were not ready, and the project didn't move forward. Three years the road was closed and residents had to instead use Hwy 99 and Wilsonville Road. How much disruption would work on this proposed development cause? A plan for traffic is absolutely necessary when it is such a key part of this proposal. Otherwise your time and ours is wasted as the traffic problems have shut similar proposals down in previous applications. This area's traffic is also affected by the pending plan for the Newberg Dundee Bypass. Though there is currently no funding for this project, planning still continues, and the bypass is slated to cross over Fernwood Road. Avoiding the issue of traffic in this plan is not realistic.

Because of the lack of a transportation plan, we request that at the very least a continuance be made for this application until an up-to-date traffic analysis can be made and a transportation plan be included. We anticipate that the traffic problems would bear the greatest burden to all the residents in the area, and not having a transportation plan available for public review delays a complete evaluation of the proposal. How will the completed bypass affect the access to Corral Creek Road? How will additional access points from Corral Creek Road affect traffic flow through the Greens development? Is the City of Newberg willing to make the necessary improvements to the county roads for safety?

For these reasons we are in opposition to the zoning change from exclusive farm to URA.

Sincerely,
Robert and Dorothy Roholt

Doug Rux

From: PLANNING
Sent: Tuesday, March 28, 2023 2:47 PM
To: Doug Rux
Subject: FW: 97 acres Corral Creek

From: Sally Royston <ssmr1994@gmail.com>
Sent: Tuesday, March 28, 2023 12:10 PM
To: PLANNING <planning@newbergoregon.gov>
Subject: Fwd: 97 acres Corral Creek

Sent from my iPad

Begin forwarded message:

> **From:** Sally Royston <ssmr1994@gmail.com>
> **Date:** March 28, 2023 at 12:08:38 PM PDT
> **To:** fridayk@co.yamhill.or.us
> **Subject: 97 acres Corral Creek**
>
> Sally and I have lived at 11675 NE Anna Dr since the early 90's. The traffic on this horribly maintained gravel road has quadrupled over the years, with vehicles, trucks/trailers going in excess of 45-50 MPH..we have physically stopped speeding
> vehicles by standing in the middle of the road so they would be forced to slow down so we and our 3 dogs wouldn't be run over or forced to inhale the dust storm they cause. All this is true for Schaad Rd., Old P M Road, Corral Creek and Fernwood Rd.
> If you allow 377 more homes to be built, there will be hundreds of vehicles all of which cannot be supported by the roads if this project is allowed. We have not addressed
> how this will affect our water, our wells, and our safety. How is the fire department and law enforcement going to handle the added load.? This past summer our 91 year old mother wandered off of our property while we were home. When we called the sheriff, they apologized because they were too busy with an accident on 99 and would get back to us. It turned out fine after 2 hours of driving around.
>
> The road department stated "they would pave Anna Dr and possibly Schaad Rd when no more homes legally can be built on the above roads". Traffic on 99 going south or north can't handle the traffic now, so it flows onto side streets, country roads, gravel roads, etc…including trucks over the weight limit stated. If a pedestrian is hurt or killed on these roads due to the increased traffic, road conditions and speeding…we will testify in court of all the concerns made above. Lastly, if you're driving on 99 at night, trying to make a left turn on Old P M Rd is like entering a black hole in space.
>
> We need a CONTINUANCE….WE CANNOT READ 1089 pages in such a short time and is a ploy to try to

trick us into allowing the above. CONTINUANCE

Sally S Royston
Paul E Schytz
503-201-5908
503-407-3970

Sent from my iPad

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March 28, 2023

Re: Newberg Urban Reserve Area Expansion, File No. CPMA21-0002/PA-01-21

Joe Hughes ("Hughes") provides the following comments for consideration in the proposed urban reserve area expansion, File No. CPMA21-0002/PA-01-21. The original Staff Reports from both the Newberg Urban Area Management Commission ("NUAMC") and Yamhill County (collectively, "Reports") recommend the denial of the application in this case, a conclusion with which Hughes concurs. These comments will address concerns that were voiced by several commissioners regarding the previous denial of expanding the URA to the subject property and the standing case law that is applicable to the present application.

For the following reasons, this application for the expansion of the urban reserve area ("URA") should be denied as per the Reports original recommendations.

I. <u>Previous denial of expanding the URA to the subject property</u>

The previous attempt to bring the subject parcel into the URA involved a proposal by the City to adopt land into the URA, land that included the subject property. The letter submitted by 1000 Friends, dated September 6, 2022 ("1000 Friends Letter"), summarized the results of the previous process:[1]

> " Newberg completed the review and adoption of the city's urban reserves in 2008 (Ordinance 2008-2697). The subject property was included in the urban reserves at that time, along with higher-priority lands. Ordinance 2008-2697 was subject to review and approval by the director of the Department of Land Conservation and Development (DLCD).
>
> The DLCD director remanded the adoption (DLCD Order 001767) in 2009. Inclusion of the area that included the subject property was not called out specifically as a reason for the remand. The remand order did state, however:
>
>> 'The city makes a case that including higher priority exception land in the URA is a difficult and costly proposition. Exception land surrounding Newberg, like elsewhere in the state, is extensively parcelized and developed in a manner that makes it clearly less attractive for urbanization compared to flat, undeveloped

[1] The 1000 Friends Letter also details the NUAMC denial of the attempt to have the subject property included in the URA at that time as memorialized in Order 2007-0004.

> farmland. The department understands that providing future urban services to these exception areas is less reasonable if the analysis is a narrow examination of what land is merely easiest, least costly, or most convenient to develop. ***However, the priority scheme for bringing land into a URA is intentionally weighted to avoid development of resource land, particularly valuable farm land. Newberg proposes inclusion of extremely productive agricultural land within the URA. The burden to do so is very high. .*** . '(Order 001767, p. 16)

> While this is not, as we will see, the ultimate decision on the matter, it does provide insight into how DLCD is likely to review the current case.
>
> The DLCD remand was appealed to the Land Conservation and Development Commission (LCDC), which conducted a hearing on the matter in 2009 and subsequently remanded the decision in 2010 (Order 10-Remand-001778). No further progress has been made on updating Newberg's urban reserves."

1000 Friends Letter at 2-3 (emphasis added). Order 001767 can be found in the NUAMC Agenda & Packet-3.28.23 ("Packet") at page 525 and the subsequent remand, Order 001778 can be found at page 548. Clearly, the main issues with including the subject property in 2009-2020 remain: ***the subject property contains high value soils, and the inclusion of land with high value soil must meet a very high burden***. The Reports original denials take into account this high burden, one that the applicant has not surpassed.

In 2007, the City of Newberg denied an earlier application to include part of this same land in the URA. *See* Packet, at 352 (the corresponding NUAMC Resolution No. 2006-16 can be found at 324). The same issues from 2007 today plague the subject property's inclusion into the URA. In 2007, Newberg found that the subject property was of the lowest priority for inclusion in the URA under OAR 660-021-0030(3). Inclusion of lower priority lands is governed by subsection (4), which provides that elimination of higher priority lands for consideration in favor of lower priority lands requires that the higher priority lands could not reasonably be provided with urban services due to topographical or other physical constraints and/or the "maximum efficiency of land uses within the proposed URA requires inclusion of lower priority lands in order to include or provide services to higher priority lands." In 2007, Newberg found that the applicant had not met the burden to prove that the lower priority land qualified for inclusion under subsection (4).

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II. ***Parklane* and the proper analysis under OAR 660-021-0030(4)**

As to the analysis for subsection (4), *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999) provides applicable guidance. It should be noted that this case was discussed in previous comments submitted for Corinne Waterbury on November 22, 2022. At that hearing, the attorney for the developer attempted to distinguish *Parklane* from the present case by noting that, in *Parklane*, the analysis under subsection (3) was not completed. This is correct, however, the decision's guidance as to the required analysis under subsection (4) was not predicated on this failure and nonetheless remains applicable here.

Parklane clearly delineates the required analysis and findings for inclusion in URAs of lower priority lands under OAR 660-021-0030(4), as LUBA summarized:

> "Accordingly, we conclude that correct application of Subsection 4 requires the local government to categorize the inventory of suitable lands according to their Subsection 3 priorities and subpriorities, and then, in considering a specific site under one of the Subsection 4 exceptions, determine that no higher priority land is adequate to meet the particular Subsection 4 need."

Id. at 77 (based on pagination of LUBA No. 97-048 *et seq*.). Therefore, inclusion of lower priority lands under subsection (4) requires an analysis that finds an inadequacy of higher priority exception lands which qualify for inclusion under subsection (4) to satisfy land supply needs *before* including lower priority lands for inclusion under subsection (4). Despite this clear case law, the applicant contends that reasonably serviceable resource lands may be included ahead of reasonably serviceable exception lands if the demand cannot be met. *See* Packet, at 975. Given that OAR 660-021-0030(3)(a) states that exception land is first priority and that resource land can only be included in first priority if the subject property is completely surrounded by exception areas (*see also, Parklane* at 12-13), the applicant's interpretation is contradicted and invalidated by standing case law under *Parklane* and the plain text of the provision. *Parklane* provides: "[T]he terms "lower priority" and "higher priority" lands expressly invoke the Subsection 3 priority scheme. Applying Subsection 4 without regard to the Subsection 3 priority scheme allows urban reserves designations that fundamentally undermine that priority scheme." *Id.* at 74. Thus, the Applicant's interpretation also violates ORS 174.010.

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For these reasons, the Applicant has failed to demonstrate that the subject property, which is considered the lowest of priority lands, resource land with high value soils, qualifies for inclusion in the URA at this time.

III. Reasonably serviceable

The Applicant argues that the private costs of providing public facilities should be included in the analysis of lower priority lands under OAR 660-021-0030(4)(a) as this impacts the developability of those lands. However, while developability is a concern for the developer, the provision deals with whether providing services is reasonable. As stated in the 1000 Friends Letter:

> "'Higher relative cost' is not synonymous with 'unreasonable,' but the application often conflates the two. Because farmland is almost always cheaper to serve than previously developed land, exception areas will nearly always get excluded from, and farmland included in, the urban reserve using the proposed findings and conclusions. This turns the land-priority scheme in the urban reserve rule on its head.
>
> In addition, current cost is not relevant to the analysis. The LCDC order remanding the city's urban reserve amendment in 2010 states:
>
>> The Commission interprets OAR 660-021-0030(4)(a) as allowing local governments to consider costs of providing services to exclude lands (due to topographical or other physical constraints), but also notes that the text of the rule requires local governments to that "* * * *future* urban services cannot *reasonably* be provided * * *." Given that such a showing must be made for the future planning period, typically 30 to 50 years in the future, the Commission believes that this standard will normally be difficult to meet. (Emphasis in original. LCDC Order 10-Remand-001778, pp. 8-9)
>
> An exception area having relatively higher cost to serve today does not make it unreasonable to serve that area in 30 to 50 years, as the city can prepare for it with planning and intervening actions. We urge the Newberg Urban Area Management Commission to find that the application has not demonstrated compliance with the administrative rule."

1000 Friends Letter, at 6-7.

Here, the Applicant focuses solely on the current costs, which include the complete cost outlay for development now (including those borne by the developer) as opposed to an analysis accounting for the resulting infrastructure build out that would naturally happen from the City (through planning and intervening

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actions as mentioned in the 1000 Friends letter) thereby making development more "reasonable" (and less costly, even using applicant's rubric and including private costs) once development actually happened. Again, the provision does not look at costs of development now without consideration of intervening facility improvements, it looks at whether the *future* provision of services is *reasonable*. Thus, the applicant's and the Staff's analysis (in the version of the Report recommending approval) fails to analyze the "reasonableness" of development in the future as required under the provision.

IV. Additional issues with the Application

In addition to the issues addressed above and in the Response, the Applicant has not addressed the failure of the application to comply with Statewide Planning Goal 14 and the locational factors pursuant to OAR 660-021-0030(2).

V. Conclusion

For the above reasons and in the November 22, 2022, Hearing Comments prepared for Corinne Waterbury, Hughes requests that the NUAMC deny this application to expand the urban reserve area, File No. CPMA21-0002/PA-01-21, as explained in the Staff Reports recommending denial.

Respectfully submitted,
Charles W. Woodward, IV
Attorney for Joe Hughes

Attachment:
D.S. Parklane Development, Inc. v. Metro, 35 Or LUBA 516 (1999)

CHARLES W. WOODWARD, IV
Attorney At Law

BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

D.S. PARKLANE DEVELOPMENT, INC.,	)	LUBA No. 97-048
WASHINGTON COUNTY FARM BUREAU and OREGON FARM BUREAU FEDERATION,	)	LUBA No. 97-050
CITY OF LAKE OSWEGO and CITY OF WEST LINN,	)	LUBA No. 97-052
COALITION FOR A LIVABLE FUTURE, et al,	)	LUBA No. 97-053
THE HALTON COMPANY and EDWARD H. HALTON, JR.,	)	LUBA No. 97-054
JOHN R. SKOURTES, et al,	)	LUBA No. 97-055
DEPARTMENT OF AGRICULTURE, et al,	)	LUBA No. 97-057
CITY OF HILLSBORO,	)	LUBA No. 97-063
Petitioners,	)	
vs.	)	FINAL OPINION AND ORDER
METRO,	)	
Respondent.	)	

Appeal from Metro.

Richard Whitman, Assistant Attorney General, Salem, and Celeste J. Doyle, Assistant Attorney General, Salem, filed a petition for review and argued on behalf of petitioners Oregon Department of Agriculture, Oregon Department of Transportation, and Oregon Department of Land Conservation and Development. With them on the brief was Hardy Myers, Attorney General, David Schuman, Deputy Attorney General, Michael Reynolds, Solicitor General and Lucinda Moyano, Assistant Attorney General.

Mary Kyle McCurdy, Portland, filed a petition for review and argued on behalf of petitioners Coalition For a Livable Future, Ecumenical Ministries of Oregon, 1000 Friends of Oregon, and Malinowski Farm.

Steven M. Claussen, Portland, filed a petition for review and argued on behalf of petitioners Washington County Farm Bureau and Oregon Farm Bureau Federation. With him on the brief was Williams Frederickson Stark and Littlefield.

Elizabeth Graser-Lindsey, Beavercreek, filed a petition for review and argued on her own behalf.

Richard T. Perry, Portland, filed a petition for review and argued on behalf of petitioners John R. Skourtes et al.

Gregory S. Hathaway, Portland, filed a petition for review and Timothy R. Volpert argued on behalf of petitioner D.S. Parklane Development, Inc. With them on the brief was Davis Wright Tremaine.

Jeffrey G. Condit, Portland, filed a petition for review and argued on behalf of petitioners City of Lake Oswego and City of West Linn. With him on the brief was Miller Nash Wiener Hager and Carlsen.

Michael E. Judd, County Counsel, Oregon City, filed a brief on behalf on intervenor-petitioner Clackamas County.

Corinne C. Sherton, Salem, filed a petition for review and argued on behalf of petitioner City of Hillsboro. With her on the brief was Johnson Kloos and Sherton.

D. Daniel Chandler and Jeff H. Bachrach, Portland, filed a petition for review and argued on behalf of petitioners The Halton Company and Edward H. Halton, Jr. With them on the brief was O'Donnell Ramis Crew Corrigan and Bachrach.

William C. Cox, Portland, filed a petition for review and argued on behalf of intervenor-cross petitioner Heritage Homes Investment Company Corp.

Daniel B. Cooper, General Counsel, and Lawrence S. Shaw and Kenneth D. Helm, Deputy Counsels, Portland, filed response briefs and argued on behalf of respondent Metro.

Jeff H. Bachrach, Portland, filed a response brief and argued on behalf of intervenors-respondent Genstar Land Company Northwest and Sisters of St. Mary's of Oregon. With him on the brief was O'Donnell Ramis Crew Corrigan and Bachrach.

Corinne C. Sherton, Salem, filed a response brief and argued on behalf of intervenor-respondent City of Hillsboro. With her on the brief was Johnson Kloos and Sherton.

Mark J. Greenfield, Portland, filed a response brief and argued on behalf of intervenor-respondent Jim Standring.

William C. Cox, Portland, filed a response brief and argued on behalf of intervenor-respondent Heritage Homes Investment Company Corp.

Wendie L. Kellington, Portland, filed a response brief and argued on behalf of intervenors-respondent The Halton Company and Edward H. Halton, Jr. With her on the brief was Schwabe Williamson and Wyatt.

Jack L. Orchard, Portland, filed a response brief on behalf of intervenor-respondent Joseph E. Hanauer. With him on the brief was Ball Janik.

Timothy R. Volpert, Portland, filed a response brief on behalf of intervenor-respondent D.S. Parklane Development. With him on the brief was Davis Wright Tremaine.

Jeff H. Bachrach, Portland, and Thane W. Tienson filed a response brief on behalf of intervenor-respondent Metropolitan Land Company. With them on the brief was O'Donnell Ramis Crew Corrigan and Bachrach, and Copeland Landye Bennett and Wolfe, respectively.

Mary Kyle McCurdy, Portland, filed a response brief on behalf of intervenor-respondent Coalition for a Livable Future et al.

Jerry Parmenter, Portland, filed a response brief on behalf of himself. Mark J. Greenfield, Portland, argued on behalf of intervenor-respondent Jerry Parmenter.

GUSTAFSON, Board Member; HANNA, Board Member, participated in the decision.[1]

REMANDED 2/25/99

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

[1]Due to his prior legal representation of petitioners in LUBA No. 97-050 in this consolidated appeal, Board Chair Michael A. Holstun has not participated in LUBA's review at any stage of this appeal.

Opinion by Gustafson and Hanna.

NATURE OF THE DECISION

Petitioners appeal Metro's adoption of Ordinance 96-655E, which designates urban reserve areas for the Portland metropolitan region (metro region) and amends Metro's procedures for expanding the metropolitan urban growth boundary (metro UGB).

MOTIONS TO INTERVENE

A number of parties, detailed in a footnote below, move to intervene in this proceeding.[2] There is no opposition to any motion to intervene, and they are each allowed.

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[2]City of Hillsboro and Clackamas County move to intervene in LUBA No. 97-052, Elizabeth Graser-Lindsey in LUBA No. 97-053, and Charlie Hoff and Stafford Road Property Owners Association in LUBA No. 97-054 on the side of petitioners.

The Halton Company, Edward H. Halton Jr., City of Hillsboro, Metropolitan Land Company, Phil DeNardis, Cliff Joss, Charlie Hoff, Stafford Road Property Owners Association, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene in LUBA No. 97-048 on the side of the respondent.

The Halton Company, Edward H. Halton, Jr., Jim Standring, Genstar Land Company Northwest, Sisters of St. Mary of Oregon, City of Hillsboro, D.S. Parklane Development, Inc., Charlie Hoff, Stafford Road Property Owners Association, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent in LUBA No. 97-050.

The Halton Company, Edward H. Halton, Jr., Charlie Hoff, Stafford Road Property Owners Association, Kent Seida, James S. Robinson, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent in LUBA No. 97-052.

The Halton Company, Edward H. Halton, Jr., Jim Standring, Genstar Land Company Northwest, Sisters of St. Mary of Oregon, City of Hillsboro, D.S. Parklane Development, Inc., Metropolitan Land Company, Phil DeNardis, Cliff Joss, Charlie Hoff, Stafford Road Property Owners Association, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent in LUBA No. 97-053.

City of Hillsboro, City of Lake Oswego, Clackamas County, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent in LUBA No. 97-054.

City of Hillsboro, Craig Reed Swenson, Mark Richard Farrell, George D. Purvis III, Carolyn Seymour, Mike Piedra, Ruth Green, David Nash, Aviva Nash, Lorraine E. Libert, Bharati Ingle, Jayant Ingle, Keith E. Miller, Monika A. Miller, John R. Panaccione, Vicky Kuhl, Roger Pierson, Gertrude Reusser, Kenneth L. Reusser, Ken Reusser, Donna McAllister, Dennis Hainsey, Carol Plath Hainsey, John Klor, Judy Klor, Perry C. Cotton, Kathleen E. Cobb, Kenneth McAllister, Eleanor F. Hale, Gordon Hale, Marcia Peck, Dennis Peck,

MOTIONS TO FILE REPLY BRIEFS

The Oregon Department of Agriculture et al. (the state agencies), petitioners in LUBA No. 97-057, and Elizabeth Graser-Lindsey, intervenor-petitioner in LUBA No. 97-053, each move to file reply briefs to Metro's combined response in LUBA Nos. 97-050/053/057. D. S. Parklane Development, Inc. (D.S. Parklane), petitioner in LUBA No. 97-048, City of Hillsboro, petitioner in LUBA No. 97-063, and the Halton Company et al. (Halton), petitioners in LUBA No. 97-054, each move to file a reply brief to Metro's response briefs in those cases.

A reply brief is allowed only to the extent it is confined to "new matters raised in the respondent's brief." OAR 661-010-0039. Metro opposes the reply briefs of the state agencies, intervenor-petitioner Graser-Lindsey, and D.S. Parklane, on the grounds that those briefs are not confined to new matters raised in any of Metro's briefs, but merely respond to arguments Metro made in those briefs, or embellish arguments made in their respective petitions for review.

Larry J. Oliver, Janet G. Stedman, John W. Stedman, Peggy Lindsay, Teri Tomlinson, Jock Toulliuson, Connie Durum, John M. Stevko, Susan K. Stevko, Kim Kollie, Rick Kollie, Jerry Parmenter, Cynthia Day, James A. Day, James W. Harrie, Jan C. Harrie, Lisa M. Thomson, Carmen M. Crosno, Leigh W. Gladstone, Fleta Gregory, Ellen M. Dana, Ardith Tenison, Laurence J. Tenison, Susan Young, Susan M. Hurt, Lyne Das, Anant Das, Susan Tew, Sharron M. Miller, Dale S. Denfeld, Leslie Denfeld, Ervin Sweet, John L. Pittman, Ila Kay Pittman, D.F. Bolender, Stephen M. Donovan, Tina R. Donovan, Karen Leland, Doug Leland, Rick Bader, Sherry Lane Bader, Intisor Azzus, Fadi Noah, Tanyua Prince, Victor Prince, Judith E. Bullard, Peter D. Bullard, Carole A. Oliver, Vicki S. Mayberry, Timothy J. Leslie, Debbie Khazeni, Martin D. Dill, Karen Stiling, Jeff Stiling, Karen M. Dill, Mike Casady, Spiro G. Demas, Patricia Becker, Debra N. Pollard, Rita M. Demas, Dorothy Buckley, James Buckley, Peter Bonafede, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent in LUBA No. 97-055.

The Halton Company, Edward H. Halton, Jr., Jim Standring, Genstar Land Company Northwest, Sisters of St. Mary of Oregon, City of Hillsboro, D.S. Parklane Development, Inc., Metropolitan Land Company, Phil DeNardis, Cliff Joss, Charlie Hoff, Stafford Road Property Owners Association, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent in LUBA No. 97-057.

The Halton Company, Edward H. Halton, Jr., Coalition for a Livable Future, Ecumenical Ministries of Oregon, 1000 Friends of Oregon, Malinowski Farm, Charlie Hoff, Stafford Road Property Owners Association, Joseph E. Hanauer, City of Happy Valley, Albertsons, Inc., Larry R. Petersen, Joseph W. Angel, and Heritage Homes Investment Company Corp. move to intervene on the side of respondent LUBA No. 97-063.

With respect to the state agencies, their motion identifies seven responses in Metro's brief that, according to the state agencies, constitute "new matters" because they raise issues or interpretations of law so new that petitioners could not reasonably have anticipated them. Citizens For Florence v. City of Florence, ___ Or LUBA ___ (LUBA No. 98-029, October 21, 1998) slip op 3; Franklin v. Deschutes County, 30 Or LUBA 33, 35 (1995). Metro responds, and we agree, that none of the seven identified matters in the state agencies' motion are "new matters" within the meaning of OAR 661-010-0039, as described in Citizens For Florence and Franklin. In Franklin, the petitioners assigned as error the county's failure to provide notice of the decision. The intervenor-respondent responded by pointing to local legislation that, in its view, deprived the petitioners of entitlement to notice or local appeal of the decision. In Citizens For Florence, the petitioner argued that the city erred in failing to consider the option of amending its transportation plan in order to comply with the Transportation Planning Rule. The intervenor-respondent rejoined that the city's transportation plan existed only in draft form and thus that option was unavailable. In both cases, the matter raised in the response brief was not a direct response to the stated merits of an assignment of error but rather an attempt to demonstrate why the assignment of error should fail regardless of its merits, based on facts or authority not involved in the assignment of error, and thus not matters that the petitioners could reasonably anticipate. Accordingly, this Board allowed the petitioners' reply briefs in those cases, which were confined to those specific issues.

In the present case, the primary focus of the state agencies' petition for review is the meaning and proper application of the urban reserve rule, OAR chapter 660, division 21, and accordingly each of the state agencies' assignments of error are based on their interpretation and understanding of the rule. Metro's response attacks the merits of those arguments in part by proffering its own interpretations of the urban reserve rule. The state agencies should have reasonably anticipated that Metro would disagree with their interpretations and offer its

own. We conclude that Metro's responses to the state agencies' arguments do not constitute "new matters" within the meaning of OAR 661-010-0039.[3]

With respect to the motions of intervenor-petitioner Graser-Lindsey and petitioner D.S. Parklane, Metro argues, and we agree, that their motions do not identify "new matters" raised in Metro's briefs within the meaning of OAR 661-010-0039, and that both reply briefs are better characterized as merely refining arguments already raised in the respective petitions for review.

With respect to the motions of the City of Hillsboro and Halton, we agree with both petitioners that their reply briefs are confined to a new matter raised in Metro's responses: whether Metro's subsequent amendment of the "First Tier" concept involved in the challenged decision moots petitioners' assignments of error challenging that concept. A claim of mootness is an archetypal "new matter" that, if raised for the first time in a response, warrants a reply brief. Century 21 Properties v. City of Tigard, 17 Or LUBA 1298, 1300, 1303, rev'd on other grounds, Century 21 Properties, Inc. v. City of Tigard, 99 Or App 435, 783 P2d 13 (1989).

The motions of petitioners in LUBA No. 97-057 and 97-048, and intervenor-petitioner in LUBA No. 97-053 to file reply briefs are denied. The motions of petitioners in LUBA No. 97-063 and 97-054 to file reply briefs are allowed.

OTHER MOTIONS

A. Metro's Motion to Strike Appendix to Intervenor-Petitioner's Petition for Review

Intervenor-petitioner Graser-Lindsey filed a 60-page petition for review with a 24-page appendix. Metro moves to strike intervenor-petitioner's 24-page appendix because it consists almost entirely of additional argument rather than documents already in the record,

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[3]Our disposition of the agencies' motion to file a reply brief also disposes of Metro's motion to strike the exhibits attached to that reply brief.

and thus violates the Board's order of April 23, 1998, which limited petitions for review to 60 pages, with certain exceptions not relevant here.

We agree with Metro's characterization of and conclusion regarding the 24 pages attached to intervenor-petitioner's petition for review, and allow Metro's motion to strike.

B. Halton's Motion to Strike the Fifth Assignment of Error in LUBA No. 97-057

Intervenor-respondent Halton moves to strike the Fifth Assignment of Error in LUBA No. 97-057 (the petition for review of the state agencies, including the Oregon Department of Agriculture (ODOA), the Oregon Department of Transportation (ODOT), and the Department of Land Conservation and Development (DLCD). Halton argues that, pursuant to OAR 660-018-0035, if DLCD participates in local proceedings such as the one resulting in the challenged decision, DLCD must notify the local government and that notification must indicate any concerns DLCD has with regard to the proposed decision. Halton contends that DLCD participated below and was even shown a draft of the proposed decision, but failed to express any concerns regarding Metro's determination that certain lands are "completely surrounded" under OAR 660-021-0030(3)(a). Halton argues that DLCD has thus waived its right to challenge that determination, as the state agencies do in the Fifth Assignment of Error.

We disagree with Halton that DLCD's alleged failure to raise concerns with Metro as required by OAR 660-018-0035 has the result of waiving DLCD's right to challenge Metro's decision on appeal with respect to concerns not raised. Even if it did, Halton does not explain why that waiver would also apply to petitioners ODOA and ODOT, nor the other petitioners who incorporated the Fifth Assignment of Error into their petitions for review.

Halton's motion to strike the Fifth Assignment of Error in LUBA No. 97-057 is denied.

C. Halton's Motion to Take Official Notice

Halton requests that the Board take official notice of the Land Conservation and Development Commission's (LCDC's) acknowledgment of Clackamas County periodic review task no. 2, which approves the county's Urban Fringe Development Capacity Analysis. Halton attaches to its response brief various documents it represents to constitute LCDC's acknowledgment of periodic review task no. 2.

In DLCD v. Klamath County, 24 Or LUBA 643, 646 (1993), we held that LCDC enforcement orders are judicially cognizable law, of which we may take official notice. Similarly, we conclude that an LCDC acknowledgment order is judicially cognizable law, of which we may take notice.

Halton's motion to take official notice is allowed.

INTRODUCTION

These consolidated appeals challenge Metro's March 6, 1997, decision to designate approximately 18,579 acres of land as urban reserves for the metro region, pursuant to the urban reserve rule, OAR chapter 660, division 21. Application of the urban reserve rule is a matter of first impression,[4] and its application in the present case to the metro region involves a complex factual and procedural context. Accordingly, we describe the urban

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[4]Most of the issues in these consolidated appeals revolve around the meaning and correct application of the urban reserve rule. The interpretation of administrative rules, like that of statutes, is a matter of the enactor's intent (in this case the intent of LCDC), and subject to the analytical framework articulated in PGE v. Bureau of Labor and Industries, 317 Or 606, 610, 859 P2d 1143 (1993). Under that familiar framework, the first step of analysis is to examine the text of the rule in its context. If the enactor's intent is clear from the textual and contextual inquiry, then no further inquiry is necessary. If and only if the enactor's intent is not clear from that textual and contextual inquiry, is it appropriate to consider legislative history. If that does not resolve the intended meaning of the text, resort to general maxims of statutory construction is permissible. Id. at 611-12. In the present case, although the parties disagree about the meaning, or more precisely the correct application, of a number of provisions in the urban reserve rule, no party suggests that it is necessary to resort to the second and third stages of the PGE analysis. We agree that each of the interpretational issues raised in this appeal are resolvable by examination of the text and context of the urban reserve rule, and resolve them accordingly in the body of this opinion. However, in the interests of brevity, we do not repeatedly invoke the PGE formula at the many places in this opinion where we discuss and resolve interpretational issues.

reserve rule, other applicable law, the relevant facts and the procedural history at some length.

A. The Urban Reserve Rule (OAR 660-021-0030)

LCDC adopted OAR chapter 660, division 21, the urban reserve rule, in 1992. The purpose of the urban reserve rule is to authorize local governments to plan for and reserve areas outside urban growth boundaries for eventual inclusion within such boundaries, and thereby protect those areas from patterns of development that would impede future urbanization. OAR 660-021-0000. To achieve this purpose, OAR 660-021-0030(1) through (5) set out requirements for determining urban reserve areas.

OAR 660-021-0030(1) (Subsection 1) requires that "[u]rban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the time frame used to establish the urban growth boundary." In other words, the local government must estimate the supply of developable land needed to meet projected demand at a point in time at least 10 years and no more than 30 years beyond the time frame used to establish that government's urban growth boundary.[5] The urban reserve rule defines "developable land" as "[l]and that is not severely constrained by natural hazards, nor designated or zoned to protect natural resources, and is either entirely vacant or has a portion of its area unoccupied by structures or roads." OAR 661-021-0010(5).

Once the local government has identified the planning period and the amount of additional developable land needed for urban uses, the local government must then identify lands "adjacent" to the UGB that are "suitable" for inclusion in urban reserves, pursuant to OAR 660-021-0030(2) (Subsection 2). Subsection 2 provides that

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[5]Pursuant to ORS 197.296, the metro UGB must contain a 20 year supply of land. The urban reserves are designed to meet urban land needs 10 to 30 years beyond the capacity of the UGB.

"Inclusion of land within an urban reserve area shall be based upon factors 3 through 7 of Goal 14 and the criteria for exceptions in Goal 2 and ORS 197.732. [Local governments, including Metro,] shall first study lands adjacent to the urban growth boundary for suitability for inclusion within urban reserve areas, as measured by Factors 3 through 7 of Goal 14 and by the requirements of OAR 660-004-0010. Local governments shall then designate for inclusion within urban reserve areas those suitable lands which satisfy the priorities in [Sub]section (3) of this rule."

The urban reserve rule defines "lands adjacent to the urban growth boundary" to mean "[l]ands either abutting or at least partially within a quarter of a mile of an urban growth boundary." OAR 660-021-0010(6). Thus, from the pool of lands "adjacent" to the UGB, the local government must study and identify those lands that are "suitable" for inclusion in urban reserves, "as measured by" the criteria of Goal 14, factors 3 through 7,[6] and the requirements of OAR 660-004-0010, ORS 197.732 and Goal 2.[7]

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[6] Goal 14 (Urbanization) provides that establishment and change of urban growth boundaries shall be based upon consideration of seven factors. Factors 3 through 7, sometimes called the "locational" factors because they guide decisions regarding where UGB expansions should occur, provide that UGB changes shall be based on consideration of:

"(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 being the lowest priority; and

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

[7]OAR 660-004-0010 provides that the Goal 2 exceptions process generally applies to certain statewide planning goals, including Goal 14 (Urbanization). Most pertinently, OAR 660-004-0010(1)(c)(B) provides:

"When a local government changes an established urban growth boundary it shall follow the procedures and requirements set forth in Goal 2 "Land Use Planning", Part II, Exceptions. An established urban growth boundary is one which has been acknowledged by the Commission under ORS 197.251. Revised findings and reasons in support of an amendment to an established urban growth boundary shall demonstrate compliance with the seven factors of Goal 14 and demonstrate that the following standards are met:

"(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14.);

1 Next, from the inventory of adjacent lands suitable for inclusion in urban reserves,
2 pursuant to OAR 660-021-0030(3) (Subsection 3) the local government may include land
3 within an urban reserve area, but only according to a set of four priorities.[8] Subsection 3
4 requires that the local government first attempt to meet the demand estimated in Subsection 1
5 from "first priority" lands: exception areas, nonresource lands and "completely surrounded"

"(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

"(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

The standards at ORS 197.732 and in Goal 2, Part II are identical to those at OAR 660-004-0010(1)(c)(B).

[8]Subsection 3 provides:

"Land found suitable for an urban reserve may be included within an urban reserve only according to the following priorities:

"(a) First priority goes to lands adjacent to an urban growth boundary which are identified in an acknowledged comprehensive plan as exception areas or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;

"(b) If land of higher priority is inadequate to accommodate the amount of land estimated in [Sub]section (1) of this rule, second priority goes to land designated as marginal land pursuant to ORS 197.247;

"(c) If land of higher priority is inadequate to accommodate the amount of land estimated in [Sub]section (1) of this rule, third priority goes to land designated as secondary if such category is defined by Land Conservation and Development Commission rule or by the legislature;

"(d) If land of higher priority is inadequate to accommodate the amount of land estimated in [Sub]section (1) of this rule, fourth priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. 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."

resource lands.[9] Only if the amount of suitable first priority land is inadequate to meet the estimated demand may the local government include "second priority" lands, those designated as "marginal" lands pursuant to ORS 197.247 (1991). If first and second priority lands together are inadequate to meet the estimated urban land need, third priority "secondary" lands may be included. Finally, if first, second and third priority lands are together inadequate to meet the estimated demand, fourth priority resource lands may be included, with higher priority being given to land of lower capability as measured by either the soil capability classification system (agricultural lands) or cubic foot site class (forest lands).

OAR 660-021-0030(4) (Subsection 4) sets out three circumstances in which the local government may alter the Subsection 3 priority scheme and substitute lower priority land identified in Subsection 3 for higher priority land.[10] The predicate to application of Subsection 4 is a finding that higher priority land identified in Subsection 3 is inadequate to accommodate the Subsection 1 urban land need for one or more of three reasons. The first

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[9]The urban reserve rule defines "exception areas" as "[r]ural lands for which an exception to Statewide Planning Goals 3 and 4 * * * has been acknowledged." OAR 660-021-0010(4). "Nonresource areas" are defined in this context as lands not subject to Goals 3 or 4, while "resource areas" are conversely defined as lands subject to those goals. OAR 660-021-0010(2) and (3).

[10]Subsection 4 provides:

> "Land of lower priority under [Sub]section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in Subsection (1) of this rule for one or more of the following reasons:
>
> "(a) Specific types of identified land needs including the need to meet favorable ratios of jobs to housing for areas of at least 100,000 population served by one or more regional centers designated in the regional goals and objectives for the Portland Metropolitan Service district or in a comprehensive plan for areas outside the Portland area, cannot be reasonably accommodated on higher priority lands; or
>
> "(b) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or
>
> "(c) Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands."

reason is that specific types of identified land needs, including the need to redress unfavorable ratios of jobs to housing in areas of at least 100,000 population within the metro region, cannot be reasonably accommodated on higher priority land. The second reason is that urban services cannot be reasonably provided to the higher priority area due to topographical or other physical constraints. The third reason is that "maximum efficiency" of land uses within a proposed urban reserve area requires inclusion of lower priority land in order to include or provide services to higher priority lands.

Finally, OAR 660-021-0030(5) (Subsection 5) requires that "[f]indings and conclusions concerning the results of the above consideration shall be included in the comprehensive plans of affected jurisdictions."

B. Metro's Application of the Urban Reserve Rule

The challenged decision is the culmination of several years of planning, analysis and intermediate decisions, made within the context of the urban reserve rule and Metro's own legislation. We describe in some detail Metro's legislation and other relevant documents, and the procedural course leading to the challenged decision.

Metro is a special district that functions as a regional government for the metro region, with exclusive jurisdiction over the metro UGB and consequently the UGBs of cities within its district boundaries. In 1991, Metro adopted Regional Urban Growth Goals and Objectives (RUGGOs) in order to provide regional land use policy direction for the metro region consistent with the statewide planning goals. RUGGOs are directly applicable only to Metro; city and county plans must comply with RUGGOs only when they are implemented by Metro in its more detailed functional plan provisions.

In 1995, the RUGGOs were amended to add Goal II.4, the Metro 2040 Growth Concept (2040 Concept). The 2040 Concept text and map constitute an integrated set of goals and objectives for the region, designed to achieve a desired urban form by the year 2040. Accompanying the 2040 Concept was the "Region 2040 Recommended Alternative

Technical Appendix," which contains background data used by Metro to estimate the density and capacity of the region in developing the 2040 Concept. Metro implemented the 2040 Concept in part by developing the Urban Growth Management Functional Plan (UGM Functional Plan), which Metro adopted November 21, 1996. To implement the 2040 Concept, the UGM Functional Plan sets certain "target capacities" and requires, among other things, that local governments take specific measures to increase residential density within their respective UGBs to meet those target capacities.

The 2040 Concept estimates that the Metro UGB will need to accommodate an additional 359,653 households and 561,800 jobs by the year 2040. The UGM Functional Plan estimates that, if the target capacities are achieved, the current metro UGB can accommodate an additional 243,600 households and 461,633 jobs by the year 2017. Metro used these estimates as the starting point for determining how many acres of land Metro needed to designate as urban reserves, pursuant to Subsection 1 of the urban reserve rule.[11]

Metro then proceeded to determine the suitability of adjacent lands, pursuant to Subsection 2 of the urban reserve rule. Metro first engaged in a pre-screening process that eliminated certain adjacent lands from consideration without formal study. On February 8, 1996, Metro designated for suitability study 72 urban reserve study areas (URSAs), containing approximately 23,500 acres adjacent to or within two miles of the metro UGB. At that time Metro expected that approximately 14,500 acres would ultimately be needed for designation as urban reserves. The boundaries of each URSA were generally drawn to correspond to topographic features, such as roads or watersheds, and did not usually conform to tax lot or zoning boundaries. As a result, most URSAs included a mix of resource and

[11]The parties appear to agree that, roughly stated, the appropriate method for estimating the amount of land needed under Subsection 1 is to (1) determine the new households and jobs that must be accommodated by the end of an identified period; (2) subtract from that figure the number of new households and jobs that can be accommodated within the current UGB by the end of that period; and (3) divide the resulting figure by the number of dwelling units and jobs that can be accommodated on each acre to arrive at the number of acres needed for urban reserves.

exception lands. The size of each URSA varied greatly, from as few as 10 acres to as many as 2,166 acres.

To help study the suitability of land within each URSA for inclusion in urban reserves, and the relative suitability of each URSA compared to other URSAs, Metro developed a study model which, in one of the more felicitous phrases of this proceeding, has become known as "URSA-matic." URSA-matic is a computer program that examines various subfactors for each of the five locational factors of Goal 14, assigns numeric scores for each subfactor and factor, and performs computations with those scores, resulting in a composite score that ranks the suitability of each URSA. The subfactors are not an express part of the Goal 14 factors; Metro developed them as a means to measure the suitability of lands for inclusion in urban reserves.

In March 1996, shortly after Metro designated for study the lands within the 72 URSAs, Metro planning staff completed a draft planning document known as the Urban Growth Report (draft Report). The draft Report is an updated version of the data used to develop the 2040 Concept, containing 20-year population, employment and housing forecasts designed to determine whether the metro UGB has a 20-year supply of land, as required by ORS 197.296.[12] The draft Report estimates that the existing UGB does not have a 20-year supply of land. More specifically, the draft Report estimates that the existing UGB has a capacity of 206,600 households through the year 2017, but that housing need in 2017 will be 248,000, for a deficit of 41,400 dwelling units. That figure is different from the capacity figures in the UGM Functional Plan, which estimates that, if target capacities are achieved,

[12]The status of the draft Report is not clear. The draft Report is not a RUGGO or UGM Functional Plan or policy of any kind, but only a compilation of preliminary data and preliminary conclusions regarding the capacity of the current metro UGB. The Metro Council considered the March 1996 Urban Growth Report, amended it slightly, and on October 3, 1996, adopted a resolution accepting the amended draft Report for "further study," requiring that nine additional tasks be completed. Over a year later, on October 23, 1997, and December 18, 1997, the Metro Council adopted two revised, "final" versions of the Urban Growth Report. Those actions are subsequent to the decision appealed in these consolidated cases.

the current UGB can accommodate approximately 243,600 households by 2017, or 37,000 more households than the draft Report estimates.

In September 1996, the Metro Executive Officer recommended that the Metro Council designate approximately 14,000 acres as urban reserves to meet year 2040 urban land needs. The Executive Officer's recommendation was based on the UGB capacity estimates in the UGM Functional Plan. In December 1996, the Metro Council rejected that recommendation, and chose to apply the lower estimate of UGB capacity contained in the draft Report. Accordingly, the Metro Council revisited the initial Subsection 1 estimate of urban land need, and estimated that the land need for urban reserves to 2040 at approximately 18,300 acres.

During work sessions in December 1996, the Metro Council changed the boundaries of a number of URSAs to remove certain lands and to add others, with a net effect of reducing the number of acres under consideration to 20,049. The Metro Council then ordered a reanalysis of the URSA-matic factors to account for the new boundaries and to correct for two computational errors in the initial analysis.

Under the URSA-matic reanalysis, each of the 72 URSAs was generally considered "suitable" for inclusion in urban reserves. Because the 72 URSAs contained more acreage than needed to satisfy the estimated urban land need, the Metro Council set a "minimum qualifying score" of 33 or above, and excluded from further consideration those URSAs that fell below that score. In addition, at some point the boundaries of all URSAs were redrawn to make those boundaries conform to tax lot lines, by including inside the URSA tax lots that were mostly within the URSA boundaries, and by excluding tax lots that were mostly outside the URSA boundaries.

The Metro Council then made final designations of land into urban reserves pursuant to Subsections 3 and 4. The Council designated approximately 15,600 acres of first priority exception lands and approximately 800 acres of first priority "completely surrounded"

resource lands under Subsection 3(a). The Council then proceeded to satisfy the remainder of the Subsection 1 estimated urban land need by designating resource lands under either or both the "specific land need" provision at Subsection 4(a), or the "maximum efficiency" provision of Subsection 4(c). The final decision on March 6, 1997, designated 18,579 acres of land in 54 urban reserve areas.[13]

These appeals followed.

C. Organization of this Opinion

In orders dated August 6, 1998, and October 8, 1998, we organized these consolidated appeals into six reasonably discrete groups for purposes of briefing and oral argument. To reduce the potential for confusion, we continue to follow that organizational principle in this opinion. Accordingly, our discussion is divided into six major sections. Each section contains an introduction describing the parties that submitted briefs and argument with respect to that group, a brief overview of the issues raised in that group, and a supplementary fact statement, if necessary, with facts relevant to the issues raised in that group. With some exceptions, each assignment and subassignment of error is given a number in the format #.#.#.#, where the first number represents the group, the second the assignment of error, the third the subassignment of error, and the fourth and any additional numbers any discrete arguments under each subassignment of error. We refer to these numbers as "section" numbers.

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[13]The record of the challenged decision consists of 44 volumes of documents and numerous oversize exhibits (OE). Documents in the 33 volumes of "Council Meeting Documents" will be cited as CM, followed by the volume number and the page number, e.g. CM 3/1000. Other volumes, the "Growth Management Committee Meeting Documents" (GM), the "Background Documents" (BD), the "legislative" volume (LEG), and the Record Supplement volume (RS) will be cited similarly. Further, in an order dated April 23, 1998, we allowed petitioners in each of these consolidated appeals to submit a single joint copy of the challenged decision as a means of satisfying OAR 661-010-0030(3)(e). That copy of the decision was submitted as Joint Appendix A (Jt App A). We follow the parties in citing to that copy of the decision, rather than to the copy of the decision in the record.

DISCUSSION

GROUP 1

(LUBA Nos. 97-050/053/057)

INTRODUCTION

Petitioners in LUBA Nos. 97-050/053/057[14] challenge Metro's designation of urban reserves as inconsistent with the urban reserve rule, in particular that Metro erred in its designation of resource lands near the City of Hillsboro and in the Stafford triangle area, between the City of Lake Oswego, the City of Tualatin, and the City of West Linn. Intervenor-petitioner Elizabeth Graser-Lindsey challenges Metro's designation of the "Beavercreek" area south of the City of Oregon City. A number of intervenors-respondent defend Metro's decision with respect to particular designations.[15]

1.1 FIRST ASSIGNMENT OF ERROR (LUBA NOS. 97-050/053/057)

Petitioners argue that Metro violated Goal 2 (Land Use Planning) and the urban reserve rule and made a decision not supported by substantial evidence when it determined its urban land need under Subsection 1 of the urban reserve rule by relying on estimates of

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[14]Petitioners in LUBA No. 97-050 are the Washington County Farm Bureau and the Oregon Farm Bureau Federation; in LUBA No. 97-053 the Coalition for a Livable Future, Ecumenical Ministries of Oregon, 1000 Friends of Oregon and Malinowski Farm; in LUBA No. 97-057 the Oregon Department of Agriculture, Oregon Department of Transportation, and Department of Land Conservation and Development. However, petitioners in LUBA Nos. 97-050/053/057 filed three petitions for review in which they make six joint assignments of error. The six assignments of error, with multiple subassignments of error, are divided among the three petitions for review but are mutually incorporated into each petition for review. As a result, each petitioner in LUBA Nos. 97-050/053/057 makes the same arguments under the same assignments of error. Accordingly, we refer jointly to petitioners in LUBA Nos. 97-050/053/057 as "petitioners" without distinguishing among them, unless the context indicates a need for differentiation.

[15]Intervenor-respondent Metropolitan Land Company filed a brief defending Metro's decision with respect to URSA 65. Intervenor-respondent Jim Standring filed a brief defending Metro's decision, especially with respect to URSAs 62 and 63A. Intervenor-respondent D.S. Parklane filed briefs defending Metro's decision and incorporating Metro's responses to petitions for review filed in LUBA Nos. 97-050/53/057 except insofar as those responses are inconsistent with D.S. Parklane's positions taken in LUBA No. 97-048. Intervenor-respondent Heritage Homes Investment Corporation filed a brief defending Metro's decision with respect to URSA 65. Intervenors-respondent Sisters of St. Mary's of Oregon (St. Mary's), Genstar Land Development Northwest and the City of Hillsboro filed briefs defending Metro's decision with respect to URSAs 54 and 55. Intervenor-respondent Joseph E. Hanauer filed a brief defending Metro's decision with respect to URSA 53.

the existing UGB capacity in the draft Report rather than estimates contained in the UGM Functional Plan. As described above, the UGM Functional Plan, developed over several years but adopted in November 1996, contains a "targeted capacities" estimate that, if various required measures are achieved, the existing UGB can accommodate 243,993 new households by the year 2017. The draft Report, by contrast, estimates that the existing UGB can accommodate only 206,600 households, 37,393 households less than estimated in the UGM Functional Plan. Petitioners argue that Metro improperly relied upon the lower figure in the draft Report rather than the higher figure in its acknowledged UGM Functional Plan, with the result that Metro overestimated how much land it needed to designate as urban reserves.

Goal 2 requires generally that planning documents and actions be consistent. City of Portland v. Washington County, 27 Or LUBA 176, 183-86, 189, aff'd City of Portland v. City of Beaverton, 131 Or App 630, 886 P2d 1084 (1994); DLCD v. Clatsop County, 14 Or LUBA 358, 360, aff'd 80 Or App 152 (1986). More specifically, petitioners explain that Goal 2 requires that "special district plans and actions related to land use" must be consistent with "regional plans adopted under ORS chapter 268." As described above, Metro is a special district, and its UGM Functional Plan is a "regional plan" adopted under ORS chapter 268. Accordingly, petitioners conclude, Metro's land use actions must be consistent with its UGM Functional Plan. Petitioners contend that the challenged decision is inconsistent with the UGM Functional Plan because the targeted capacities estimate represents official Metro policy with respect to the capacity of the existing UGB, and the challenged decision's use of the lower draft Report estimates essentially assumes the failure of that policy. Petitioners rely on our decision in City of La Grande v. Union County, 25 Or LUBA 52, 56-57 (1993), a case involving a UGB amendment, for the proposition that a local government cannot rely on population projections different from prior projections, incorporated into its comprehensive plan, to alter its UGB without revising the population projections in the comprehensive plan.

In addition, petitioners contend that the challenged decision violates the Goal 2 requirement that Metro's decisions be supported by an adequate factual base.[16] Petitioners argue that basing an important regional decision on unofficial "preliminary" estimates that the decision maker has accepted only for purposes of "further study" violates the Goal 2 adequate factual base requirement, because no reasonable person would rely on such estimates over the officially adopted estimates in the UGM Functional Plan.

Metro responds that its decision is not inconsistent with the UGM Functional Plan. Metro argues that the "target capacities" in the UGM Functional Plan are not estimates of the actual capacity of the existing UGB for any purpose, including designation of the urban reserves. According to Metro, the targeted capacities represent

> "the most optimistic estimated zoned capacity based on Title 1 [of the UGM Functional Plan] if required changes in city and county comprehensive plans are made; if the changes are made by February of 1999 without time extensions; and, if no exceptions from Title 1 'target capacities' are necessary. The Functional Plan target capacities are aspirational, jurisdictional shares of a target housing capacity roughly estimated as an extrapolation using Urban Growth Report data to accommodate 20 year housing needs within the existing UGB." Metro's Response Brief (LUBA Nos. 97-050/053/057) 45 (emphasis in original; citations omitted).

In other words, Metro contends the UGM Functional Plan estimates are "best case" estimates of housing capacity based on the assumption that required measures to increase density within the UGB are implemented fully, successfully and on time, while the draft Report's estimates, based on an updated version of the same data set, assume that at least some of the Functional Plan's measures to increase density will not be implemented fully, or

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[16]Petitioners' argument presumes that the challenged decision is a legislative rather than a quasi-judicial decision, an issue we address in section 4.2 of this opinion. However, that issue is immaterial to petitioners' challenge in this assignment of error, as we have held that the Goal 2 requirement that decisions be supported by an adequate factual base is equivalent to the requirement, applicable to quasi-judicial decisions, that decisions be supported by "substantial evidence." 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 378, aff'd 130 Or App 406, 882 P2d 1130 (1994). Thus, in either event, the appropriate evidentiary standard of review is whether the decision is supported by evidence a reasonable decisionmaker would rely on. Younger v. City of Portland, 305 Or 346, 752 P2d 262 (1988).

on time. Metro argues that even though the target capacities requirements are mandatory and binding upon all jurisdictions within Metro's boundaries, it is unlikely that those requirements will be implemented completely, given the provisions allowing extensions of time for compliance and allowing exceptions to those requirements.

The challenged decision justifies use of the draft Report's estimates because of

> "the uncertainties of implementing the newly adopted functional plan capacities [and because] population and employment have increased faster than the 2015 forecast which was completed with the 2040 forecast. To the extent that growth may be understated in the 2040 forecasts completed in 1994, more urban land will be needed by 2040. The Metro Council has determined that by using [the draft Report's] conservative estimate of the capacity of the current UGB, designated urban reserves are more likely to meet the need to 2040. If that supply meets the need to 2047, due to the success of the Functional Plan, the purposes of the Urban Reserve Areas Rule will have been met. If the Functional Plan is overwhelmingly successful at increasing the household and employment capacity of the current UGB or if the rate of growth slows, urban reserves may be adjusted at the 15-year review required by Metro Code procedure." Jt App A 17 (footnotes omitted).

Thus, the challenged decision relies on the uncertainty of achieving the UGM Functional Plan's "target capacities" as the primary justification for using the draft Report's estimate, with the secondary justification that actual population growth between 1994 and 1996 was higher than assumed in the UGM Functional Plan. Essentially, the Metro Council reasoned that, given the uncertainty of achieving the UGM Functional Plan's target capacities, the uncertain rate of population growth, and the revised numbers in the draft Report, it is likely that they will need more land than estimated using the UGM Functional Plan estimates.

Petitioners have not demonstrated that the projections in the UGM Functional Plan and in the draft Report are "inconsistent," and thus violate the Goal 2 coordination requirement. The two projections serve different, if overlapping purposes, and, indeed, neither projection is designed or intended to be used to determine the capacity of the existing UGB for purposes of designating of urban reserves. Metro borrowed the UGM Functional

Plan's estimates from their ordinary context, and later borrowed the draft Report estimates from their ordinary context, in both cases because those estimates were the closest approximation available at the time. However, the two projections are not related to each other such that adoption of one necessarily negates or invalidates the other.

Our decision in La Grande is instructive on this point. La Grande relied on our holding in BenjFran Development v. Metro Service Dist., 17 Or LUBA 30 (1988), aff'd 95 Or App 22, 767 P2d 467 (1989), where we determined that once a UGB is initially established, subsequent amendments of the UGB may satisfy the requisite showing of "need" under factors 1 and 2 of Goal 14 by (1) increasing projected populations, (2) amending the economic, employment and other assumptions the local government applied to those population figures in originally justifying the UGB, or (3) doing both. Id. at 42. In La Grande, we observed that, where a city justifies a UGB amendment on the basis of higher population projection than reflected in the initial projections that were used in the comprehensive plan to establish the UGB, the city must amend its comprehensive plan to incorporate the new higher projections. Underlying our conclusion is the recognition that, because both establishment and amendment of a UGB require a demonstration of need under Goal 14, factors 1 and 2, a UGB amendment justified on different population projections than reflected in initial projections or assumptions used to justify establishment of that UGB is necessarily a conclusion that those initial projections, and hence the very basis for the established UGB, are no longer valid. In such circumstances, both Goal 2 and Goal 14 require that the comprehensive plan be amended to correct those projections or assumptions.

The present context is distinguishable. In contrast to the demonstration of need necessary to amend an established UGB under Goal 14, the urban land need determined under Subsection 1 is not dependent on or reflective of any prior determination of need, and thus is not necessarily inconsistent with any prior determination. Accordingly, absent some particularized demonstration that use of the draft Report's estimates undermines

implementation of the UGM Functional Plan, or is otherwise contrary to the UGM Functional Plan, we cannot conclude that the two projections are "inconsistent" within the meaning of Goal 2.

With respect to petitioners' alternative argument that the decision is not supported by an adequate factual base because of Metro's reliance on preliminary rather than final data, petitioners have not shown that the "preliminary" status of the draft Report's data affects its use in the context of determining the urban land need under Subsection 1 and designating urban reserves. The "preliminary" status of the draft Report may well reflect additional processes or tasks that must be performed in order to satisfy its intended purpose, to determine whether the existing UGB complies with ORS 197.296.

The first assignment of error (LUBA Nos. 97-50/053/057) is denied.

1.2 THIRD ASSIGNMENT OF ERROR (LUBA NOS. 97-050/053/057)

Subsection 2 of the urban reserve rule requires a local government engaged in the urban reserve process to "first study lands adjacent to the urban growth boundary for suitability for inclusion within urban reserve areas." OAR 660-021-0030(2). OAR 660-021-0010(6) defines "adjacent" as "[l]ands either abutting or at least partially within a quarter mile of an urban growth boundary." Petitioners in LUBA Nos. 97-053 and 97-050 contend that implicit in these provisions is the requirement that Metro study <u>all</u> adjacent lands for suitability for inclusion within urban reserve areas, and that Metro erred in studying only a subset of adjacent lands. At oral argument, petitioners in LUBA No. 97-057 (the state agencies) departed slightly from this position, arguing that while the urban reserve may not require a local government to study <u>all</u> adjacent lands in every instance, the local government must study <u>enough</u> adjacent lands to ensure that any ultimate urban reserve designations comply with the priority scheme set forth in Subsections 3 and 4. We understand both sets of petitioners to argue that Metro erred in failing to study enough land, particularly more exception land, than it did choose to study.

Petitioners identify a number of adjacent exception areas that Metro failed to study or consider at all. See generally OE-10 (map of exception areas within 15,300 feet of the metro UGB, showing exception areas not studied, studied but not selected, and selected). These include unstudied exception areas that abut the metro UGB, and exception lands that abut URSAs but were not included in those URSAs for study. In addition to unstudied exception lands, petitioners note that Metro failed to study a large number of resource lands adjacent to the metro UGB, which may include second priority "marginal lands" in Washington County as well as fourth priority lands. Petitioners contend that Metro's failure to study these adjacent lands undermined and ultimately allowed Metro to evade the priority designation scheme that is the heart of the urban reserve rule. Petitioners argue that, because Metro ultimately designated approximately 3,000 acres of lower priority resource lands, any unstudied exception areas found to be suitable could have allowed Metro to meet its urban land need without resort to resource lands, consistent with the Goal 14, factor 6 agricultural retention policy incorporated into the urban reserve rule.

Second, petitioners argue that Metro erred in "prescreening" some adjacent lands, excluding them from URSAs and hence a full suitability analysis, based sometimes on a single reason, for example the presence of slopes greater than 25 degrees, rather than on full consideration of all the factors required by Subsection 2. Petitioners contend that if these prescreened lands were subjected to a full suitability analysis, which applies a number of factors, some or all of the excluded lands might have proven to be suitable, and thus increased the inventory of suitable lands to which the Subsection 3 and 4 priorities would apply.

Further, petitioners argue that for many of these prescreened exception lands the reason cited for exclusion was not one of the Subsection 2 factors, but rather one or more considerations completely extraneous to the urban reserve rule. Petitioners cite to several exception areas that were excluded in order to provide "separation between communities," or

to allow a "compact urban form," both considerations not mentioned in the urban reserve rule. Petitioners acknowledge that the concept of "separation of communities" is stated in Objective 22.3.3 of the RUGGOs, but argue that, even if Objective 22.3.3 is a permissible basis to exclude lands from consideration, that objective by its terms applies only at the designation stage, after the suitability analysis has been performed, and then only to select between otherwise suitable lands of the same priority. With respect to the concept of a "compact urban form," petitioners contend that concept has no definition or source in any authority, and even if it did, Metro applied it in an unprincipled, ad hoc fashion.

Petitioners also claim that Metro acted inconsistently by prescreening certain lands, based on a single consideration, while studying other lands with similar characteristics, and even ultimately designating some lands with those characteristics for urban reserves. For example, petitioners note that while Metro prescreened and excluded some lands on the basis of steep slopes, Metro chose URSAs 68 and 69 for study despite the presence of steep slopes, and that Metro ultimately designated as urban reserves URSA 36, which has steep slopes and little buildable land, and URSA 14, which has 100 acres of steeply sloped land. Metro's rationale for designating the steep areas of both URSAs 36 and 14 was to provide future open space and parks. Petitioners suggest that the prescreened lands could have also met such needs, and argue that Metro's inconsistent application of its prescreening criteria illustrate the legal and practical flaws of prescreening lands without a full suitability analysis.

Metro responds that nothing in the urban reserve rule expressly requires that Metro identify and study <u>all</u> adjacent lands, and that such a reading should not be inferred. Metro notes that the definition of "adjacent" lands in OAR 660-021-0010(6) describes the proximate boundaries of adjacent lands, <u>i.e.</u> lands abutting or partially within a quarter-mile of a UGB, but does not describe any outer boundaries. As a result, Metro contends, the total

acreage of all adjacent lands is potentially enormous.[17] It would be futile, Metro suggests, to require local governments to conduct a full suitability analysis for study vast expanses of land where, depending on the size of the urban land need, very little of that land may ultimately be needed as urban reserves.

We agree with Metro that the urban reserve rule does not require a local government to study all adjacent lands. The urban reserve rule does not expressly or implicitly provide that requirement, and we disagree with petitioners in LUBA No. 97-053 to the extent they argue that correct application of the urban reserve rule requires such a study.[18]

The more difficult issue is the extent to which the urban reserve rule compels the local government to study a certain quantity or a certain type of land. It would appear inconsistent with the rule for a local government to study an amount of land less than that needed to satisfy the urban land need. Indeed, because the urban land need is for suitable, developable lands rather than raw acreage, as a practical matter the amount of land studied must be considerably larger than that needed for the urban land need, because only a portion of raw land may be developable.[19] Presumably, that was the reason Metro chose to study

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[17]As discussed below in section 1.7.1, Metro interprets OAR 660-021-0020 as limiting the outer boundary of "adjacent lands" to lands within two miles of a UGB. For the reasons discussed below, we reject Metro's interpretation of OAR 660-021-0020 and determine that the urban reserve rule provides no outer boundary for adjacent lands. However, our determination there merely underscores what we understand to be Metro's main point discussed in this assignment of error, that requiring local governments to study all adjacent lands would require the study of vast, potentially unlimited areas of land even where the urban land need is relatively small.

[18]At oral argument, petitioners in LUBA No. 97-053 refined their position, arguing that Metro must study all lands located around the UGB perimeter, but how far out from the perimeter Metro must go depends on the size of the urban land need. If we understand this refinement correctly, petitioners contend that Metro must adopt study areas that uniformly circle the UGB, but the depth of those areas may vary, depending on the size of the urban land need. Under this refined position, an urban area must grow more or less uniformly in all possible directions. Further, where the urban land need is relatively small and the UGB perimeter relatively large, the result would be very shallow urban reserve areas, which appears inconsistent with at least Goal 14, factor 3. We perceive nothing in the urban reserve rule that requires these consequences.

[19]In addition to environmental and other constraints, Metro discounted the amount of vacant land available for development to account for roads, parks and other public spaces that are not developable for residential or employment purposes.

approximately 23,500 acres of land, even though the initial estimated urban land need was for only 14,500 developable acres.[20]

It would also appear to be inconsistent with the rule for a local government to study a subset of adjacent lands comprised of land types unresponsive to the rule's priority scheme. To take an extreme example, the urban reserve rule plainly would be undermined if a local government chose to study only fourth priority resource lands, and accordingly designated only fourth priority resource lands into urban reserves under Subsection 3(d), on the basis that no higher priority lands existed within the inventory of suitable lands.

While they acknowledge that Metro's inventory in the present case does not reach that extreme, the gravamen of petitioners' argument here is that Metro erred in failing to include <u>enough</u> <u>higher</u> <u>priority</u> lands in the subset of lands it studied because the resulting inventory reduced the amount of suitable higher priority lands to the point where it was ultimately necessary to resort to lower priority lands in a manner that subverts the Subsection 3 priority scheme.

At oral argument, petitioners in LUBA No. 97-057 refined their position to argue, essentially, that where a local government does not study all adjacent lands, the quantity and composition of the lands in the subset of lands studied must be such that the local government will exhaust all eligible higher priority lands in the area before it resorts to lower priority lands under Subsection 3. In other words, a local government cannot study only a subset of eligible higher priority lands where doing so ultimately makes it necessary to resort to lower priority lands. We understand petitioners to contend that, to the extent Metro's failure to study enough higher priority lands and to correctly apply the Subsection 3 priorities <u>creates</u> the very inadequacy that Metro relies upon to justify designation under either

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[20]As noted earlier, when Metro revised the urban land need to 18,300 acres, it did not designate any additional lands for study, but attempted to satisfy the revised urban land need from lands within the existing URSAs, with two exceptions not relevant here.

Subsection 3 or Subsection 4, Metro has effectively subverted the Subsection 3 priority scheme and its decision is inconsistent with the urban reserve rule.

Metro's position in this respect is not markedly different from petitioners'. Metro agrees with petitioners that, given the relative abundance of adjacent first priority lands in the metro region, "the 'first priority' category of lands in [Subsection 3(a)] should be, and was, used to accommodate" the projected urban land need. Metro's Response Brief (LUBA Nos. 97-050/053/057) 3. Further, Metro agrees that "'lower priority' land, as defined by subsection (3), need not be designated if there are adequate, suitable lands in the 'first priority' category of lands in subsection 3(a)." Id. Metro also explains that it attempted to apply the urban reserve rule to create a inventory of sufficient suitable first priority lands so that Metro could designate only first priority land without having to resort to lower Subsection 3 priorities.

Where Metro parts company with petitioners is in its view of the interaction between Subsection 3 and Subsection 4. Metro explains that it "did not designate urban reserves based on a priority category other than subsection (3)(a). However, some lands defined as 'lower priority' in subsection (3) were designated by applying subsection (4)." Id. In other words, Metro asserts that it correctly applied the urban reserve rule by studying enough first priority lands so that it could satisfy its urban land need by designating only Subsection 3(a) first priority lands and lower priority lands under Subsection 4.

As we discuss further in sections 1.5 and 1.6, Metro fails to appreciate that designation of lands under Subsection 4 is expressly predicated on a finding that higher priority lands under Subsection 3 are inadequate to accommodate the urban land need. In turn, that finding entails that the local government has compiled an inventory of suitable lands responsive in quantity to the urban land need and responsive in composition to the Subsection 3 priorities, and has categorized those lands according to their Subsection 3 priorities. In the present case, the limited inventory Metro compiled contained, at best,

approximately 16,000 acres of developable first priority land, and thus, notwithstanding an apparent abundance of other studied and unstudied higher priority lands in the region, Metro's inventory did not contain enough higher priority lands to satisfy the revised urban land need of 18,300 acres without resorting to lower priority lands. Had Metro not designated a significant number of lands under Subsection 4, the limited inventory it compiled would have forced Metro to satisfy the revised urban land need by designating lower priority lands under Subsection 3(d), in which case Metro would have created the inadequacy used to justify those designations.

Nor is Metro assisted by the fact that it designated those lower priority lands under Subsection 4 rather than under Subsection 3(d). First, we conclude in section 1.6.1 that correct application of Subsection 4 requires that the local government categorize the inventory of suitable lands according to the relative priority of its constituent lands. Metro's failure to do so means that its findings regarding the adequacy of higher priority lands, the predicate to designation under Subsection 4, are flawed. Second, and more importantly, we determine in sections 1.6 and 5.3 that Metro erred in a number of respects in designating lower priority land under Subsection 4. For present purposes, it is particularly instructive to examine Metro's designations of lower priority land under the Subsection 4(a) jobs/housing exception, because a number of lower priority lands included in urban reserves were designated, at least alternatively, under the jobs/housing exception. Metro's application of that exception illustrates that Metro indeed created in part the inadequacy used to justify designation under that exception.

As further discussed in sections 1.6 and 5.3, the "jobs/housing" exception essentially allows Metro to redress <u>subregional</u> imbalances between residential and employment uses.[21]

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[21]We use the term "subregional" to mean the "areas of at least 100,000 population served by one or more regional centers" described in Subsection 4(a), in order to avoid using the same term to describe both the metro region and a "region" under that provision.

For example, if the Hillsboro subregion has or is projected to have many more jobs than housing, with the result that too many workers are or will be commuting to Hillsboro from other subregions, and the supply of higher priority land in the Hillsboro subregion is inadequate to allow Metro to ameliorate or make that imbalance more favorable, Metro may designate lower priority lands in the Hillsboro subregion. Thus, the "jobs/housing" exception essentially allows Metro to skew the distribution of urban reserves around the Metro region to help redress subregional jobs/housing imbalances that are not alleviated by the distribution that would occur under a straight application of the Subsection 3 priorities. As discussed in section 1.6 and 5.3, Metro found that both of the requisite circumstances are present in two subregions and accordingly designated over a thousand acres of lower priority resource lands in those subregions pursuant to jobs/housing exception.[22]

However, as our description of the jobs/housing exception makes clear, whether higher priority lands are "inadequate" for purposes of that exception is most accurately stated as whether there is a sufficient quantity of higher priority lands in the subregion at issue. Unlike the Subsection 4(c) exception, discussed in section 1.6.4, the location of higher priority land, at least its location within the subregion or in relation to any other land, is not the focus of the jobs/housing exception. Instead, the focus is on whether there is sufficient higher priority land within the subregion to allow Metro to ameliorate a jobs/housing imbalance within that subregion. Thus, in order to designate lower priority lands in a subregion pursuant to the jobs/housing exception, Metro must find that the quantity of developable higher priority lands in the subregion is inadequate to meet the need for a favorable jobs/housing ratio. We determine, in sections 1.6.2 and 5.3, that Metro failed to do

[22]Metro also used the Subsection 4(a) jobs/housing exception to designate lands in the Clackamas County Stafford triangle area. Our discussion under this assignment of error focuses on Metro's use of Subsection 4(a) in the Hillsboro subregion, although much of our analysis is equally applicable to Metro's application of the jobs/housing exception in Clackamas County.

so, in large part because Metro makes no effort to quantify how many housing units could be developed on higher priority lands in the subregion, either individually or cumulatively.[23]

Accordingly, we disagree with Metro that designation under Subsection 4 obviates the need to compile an inventory of suitable lands that is responsive in size and composition to the urban land need and the Subsection 3 priorities. Nor does designation under Subsection 4 avoid the problems created by the inadequate inventory Metro compiled. Under these circumstances, we conclude that Metro's failure to study enough higher priority lands created in part the inadequacy that Metro relied upon to designate lower priority lands, and further that Metro's application of Subsections 2, 3 and 4 as described above effectively undermines the urban reserve rule's priority scheme and hence the urban reserve rule.

It remains only to address petitioners' additional contentions that Metro erred not only in failing to study enough land but also in prescreening certain lands without a full suitability analysis and for reasons extraneous to the urban reserve rule. It follows from our conclusion that the urban reserve rule does not require local governments to study <u>all</u> adjacent lands that local governments may decline to study or may prescreen certain lands for any or no reason, <u>as long as</u> the local government ultimately studies enough lands, particularly higher priority lands, to avoid undermining the urban reserve rule's priority scheme. We determined above that Metro failed to study enough higher priority land to avoid undermining the urban reserve rule's priority scheme, particularly with respect to those subregions in which Metro designated lower priority land under the jobs/housing exception. However, under our analysis we cannot determine, and need not decide, precisely how much land Metro should

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[23]Moreover, as discussed in section 1.5.2 and 1.5.4, Metro fails to recognize that "higher priority" lands for purposes of Subsection 4 are not limited to first priority exception lands, but also include Subsection 3(b) lands designated as "marginal lands" pursuant to ORS 197.247 (1991) as well as Subsection 3(d) resource lands that may be of lower soil capability (and hence higher priority) than lands being considered for inclusion under Subsection 4. Because Metro failed to study and categorize Subsection 3(b) and Subsection 3(d) lands, Metro did not evaluate those lands to determine whether the quantity of higher priority lands within the Hillsboro subregion are "inadequate" and thus whether Metro may lawfully designate lower priority lands in the subregion pursuant to Subsection 4(a) jobs/housing exception.

have studied. As a result, we do not determine whether Metro's failure to study any particular lands or whether its prescreening of particular lands was error. We only conclude generally that Metro erred in failing to study enough higher priority lands to avoid creating the inadequacies that justified its designation of some lower priority lands.

The third assignment of error (LUBA Nos. 97-050/053/057) is sustained, in part.

1.3 SECOND ASSIGNMENT OF ERROR (LUBA NOS. 97-050/053/057)

Petitioners argue that Metro's decision violates the urban reserve rule by failing to adopt findings explaining why Metro can rely on URSA-matic to determine whether lands within the URSAs are suitable for urban development under Goal 14, factors 3 through 7. As framed by the parties, the threshold issue with respect to this assignment of error is to what extent the rule requires Metro to make such findings.

Petitioners explain that Subsection 5 of the urban reserve rule requires that "[f]indings and conclusions concerning the results" of Metro's consideration under the urban reserve rule "shall be included in the comprehensive plans of affected jurisdictions." Petitioners argue that Metro must make findings explaining how it applied the considerations required by the urban reserve rule, including the pertinent Goal 14 factors.[24] According to petitioners, Metro did not adopt findings adequate to comply with Subsection 5 because Metro did not directly apply the Goal 14 factors when it studied lands for suitability. For most lands, petitioners argue, Metro relied exclusively on URSA-matic to demonstrate suitability and compliance with Subsection 2.[25] Petitioners argue that, if Metro intends to

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[24]Subsection 5 does not specify who must make the requisite findings, merely that such findings must be "included in the comprehensive plans of affected jurisdictions." Subsection 5 could be read to require that the "affected jurisdictions," i.e. the cities and counties within Metro's jurisdiction, must make such findings. However, petitioners assert, and Metro concedes, that the governmental body applying the urban reserve rule, in this case Metro, is obligated to make the findings required by Subsection 5. We assume, without deciding, that the parties are correct.

[25]Petitioners note that Metro did adopt findings directly applying the Goal 14 factors to the St. Mary's property in URSAs 54 and 55. Jt App A 75-85.

rely on a computer model to satisfy its obligation to apply the Goal 14 factors rather than direct application of those factors, it must at the very least adopt findings explaining (1) why URSA-matic is an adequate surrogate for directly considering the Goal 14 factors, and (2) how URSA-matic arrived at the suitability scores Metro relies upon. Absent such findings, petitioners contend, Metro's explanation of how URSA-matic works is insufficient to allow parties to confirm the accuracy of the data Metro relies upon and whether Metro correctly applied the relevant criteria to those data.

Metro agrees with petitioners that Subsection 5 requires Metro to make findings, but argues that Subsection 5 does not, as petitioners appear to imply, require Metro to make specific quasi-judicial-type findings regarding every determination under the urban reserve rule and regarding every property considered or designated under that rule. Instead, Metro contends, Subsection 5 limits the requisite findings to the results of Metro's consideration under the urban reserve rule. Subsection 5 requires only that Metro adopt written findings describing what urban reserve areas are ultimately designated under Subsections 3 and 4. Even if Subsection 5 requires findings with respect to Metro's suitability analysis under Subsection 2, Metro argues, it need only describe the results of that analysis, i.e. what lands are suitable, and need not describe at all how it arrived at those conclusions. Thus, Metro disagrees with petitioners regarding the scope of the requisite Subsection 5 findings and the degree of detail such findings must contain.

The terms and apparent purpose of Subsection 5 limit the scope and the degree of detail required in findings under that provision. Subsection 5 limits the findings requirement to "findings and conclusions concerning the results" of Metro's consideration under the urban reserve rule. OAR 660-021-0030(5) (emphasis added). That qualification is a nullity if Subsection 5 is read to require something approaching quasi-judicial-type findings regarding every step made under the rule and every property considered.

However, Metro's narrow view of Subsection 5 as requiring only a listing of the lands designated is too restrictive. The requirement that Subsection 5 findings and conclusions be "included in the comprehensive plans of affected jurisdictions" suggests that the primary purpose of Subsection 5 is not to assist judicial review, as Metro appears to contend, but rather to develop findings that can form the basis of comprehensive plan language, in order to guide future decisions regarding urban growth boundaries, annexations and the zoning and development of the lands included in urban reserves. Findings limited to what lands were designated would do little to guide local governments in future decisions affecting designated lands. Metro's alternative interpretation, that Metro need only describe the results of the Subsection 2 suitability analysis, i.e. whether certain lands are suitable, suffers from the same flaw. Findings limited to the conclusion that certain lands are "suitable" under Subsection 2 do not inform local governments what considerations under Goal 14, factors 3 to 7, and other Subsection 2 criteria, led to that conclusion. Absent findings that can guide local governments in developing comprehensive plan language directed at those considerations, local governments will make future decisions ultimately leading to the urbanization of lands within urban reserve areas without any planning basis to guide future urbanization, or even indicate why those lands were chosen for future urbanization.[26] Accordingly, we conclude that Subsection 5 requires findings describing the results of Metro's consideration under each of the Subsection 2 criteria, for all lands included within urban reserve areas.

In response to petitioners' specific arguments regarding its reliance on URSA-matic, Metro notes that it made general findings describing URSA-matic and that all the data for each URSA is in the record. Metro argue that its "general findings, decision record, and

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[26]We note that Subsection 5 is similar to language in Goal 14, which requires that in establishing an urban growth boundary under Goal 14, "[t]he results of the above considerations [of Goal 14, factors 1 to 7] shall be included in the comprehensive plan." The textual similarity between Subsection 5 and the quoted provision of Goal 14 argues for functional similarity as well, i.e. that both provisions are intended to develop comprehensive plan language explaining and guiding future urbanization.

argument with citations to the record are more than adequate to satisfy the Rule and allow LUBA to perform its review function." Metro's Response Brief (LUBA Nos. 97-050/053/057) 103. Metro's response alludes to its argument, discussed below at section 4.2, that the challenged decision is a legislative decision and thus Metro need not adopt findings and may support its decision by argument in its brief with citations to the record. See Redland/Viola/Fischer's Mill CPO v. Clackamas County, 27 Or LUBA 560, 564 (1994) (a local government may either make findings supporting a legislative decision or provide in its brief argument and citation to facts in the record adequate to demonstrate that the challenged legislative decision complies with applicable legal standards). As discussed at section 4.2, we agree with Metro that the challenged decision is legislative, but that determination does not assist Metro in the present context, because Subsection 5 requires Metro to adopt findings describing the results of Metro's consideration under each of the Subsection 2 criteria, for all lands included within urban reserve areas. Argument in Metro's brief with citations to the record cannot substitute for the findings required by Subsection 5. See Bernard Perkins Corp. v. City of Rivergrove, ___ Or LUBA ___ (LUBA No. 97-215, July 28, 1998) slip op 18-19 (legislative decisions require findings where local ordinances so provide).

Next, Metro disputes petitioners' premise that Metro used the URSA-matic scores to determine whether certain lands are suitable as measured by the Subsection 2 criteria. Metro explains that the Metro Council found all the study areas "generally suitable" as measured by the Goal 14 factors and that it used the URSA-matic scores, supplemented for some areas by additional evidence, to assess the relative suitability of URSAs compared to other URSAs rather than whether lands within a particular URSA were suitable. The challenged decision states:

> "The URSA study model is a general tool for comparing the relative suitability of the areas studied for inclusion in urban reserves. It was used as a guide for applying the suitability factors and alternative analysis requirements of the Urban Reserve Rule by the Council. Significant testimony and data in

> public hearings indicated that more site specific and detailed analysis than the regionwide application of the suitability factors in the study model could affect the relative suitability of some properties. Therefore, the study model ratings were used as reference material by the Metro Council, not the final determinant of relative suitability." Jt App A 22.

The difficulty with Metro's explanation is that, other than through URSA-matic, Metro has not cited to anything in the challenged decision (or the record) that directly applies the Subsection 2 criteria, specifically Goal 14, factors 3 to 7, to any lands designated as urban reserves, with the possible exception of the St. Mary's property. As far as we can tell, if Metro did not use URSA-matic to apply the Subsection 2 criteria and thus determine suitability, then it failed to apply those criteria at all. A sentence stating that most or all URSAs are "generally suitable" satisfies neither Subsection 2 nor 5. Despite Metro's protestations to the contrary, we can only conclude that URSA-matic was the primary means Metro employed to apply the Subsection 2 criteria and thus determine whether lands are suitable as measured by that criteria.[27] That Metro also used the URSA-matic scores to determine the relative suitability of URSAs obscures but does not eliminate what appears to be the primary function of URSA-matic: applying the Goal 14 factors to determine whether lands within URSAs are suitable for inclusion in urban reserves.

In any case, whether the URSA-matic scores, supplemented with additional evidence, constitute Metro's determinations of suitability, or whether some uncited portion of the record contains the required determinations, we agree with petitioners that Metro has failed to establish that it has developed the findings required by Subsection 5. With a few exceptions, the challenged decision contains no findings addressing the suitability of lands

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[27]Metro's puzzling insistence that URSA-matic was used only to guide the Council and provide relative suitability scores, rather than determine suitability, appears to be related to Metro's view that certain lands required additional "site-specific" evaluation to adjust the relative suitability scores. Metro apparently wanted the flexibility to vary its analysis with supplementary information, at least for selected properties. For example, Metro devotes a third of the 102-page challenged findings to one property, St. Mary's, with ten pages devoted to explaining why St. Mary's should have received higher suitability scores than indicated by URSA-matic. Jt App A 75-85.

within individual urban reserve areas.[28] As discussed above, Subsection 5 requires findings that, at a minimum, describe the results of Metro's consideration of the Subsection 2 criteria with respect to the lands within each urban reserve area designated. Moreover, that description must contain sufficient detail and analysis to fulfill the primary Subsection 5 purpose of providing affected local governments with the information required to guide future decisions regarding the urban reserve area.

Further, we agree with petitioners that if Metro chooses to use a study method that quantifies the Subsection 2 criteria and compiles scores rather than a narrative analysis directly applying those criteria to the lands studied, it must explain why that quantified analysis adequately applies the Subsection 2 criteria, and how the resulting scores are used to determine that lands are or are not suitable for inclusion in urban reserves. The findings generated from such a quantified method of analysis must be adequate to fulfill the Subsection 5 purpose described above.[29]

The second assignment of error (LUBA Nos. 97-050/053/057) is sustained.

1.4 FOURTH ASSIGNMENT OF ERROR (LUBA NOS. 97-050/053/057)

Petitioners argue that the methodology used by Metro to study lands for suitability violates Subsection 2 of the urban reserve rule in several respects.

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[28]The general organization of the challenged findings demonstrates a misplaced focus on lands that are excluded from study or from inclusion in urban reserves, rather than the suitability and designation of lands included in urban reserves. For example, the decision begins with the (unexplained) statement that most if not all the lands within the 72 URSAs are "generally suitable," and then proceeds to exclude certain URSAs and areas within URSAs from further consideration, for a variety of reasons, without ever addressing (except for a few specific lands in the appendices) the suitability of the remaining land. See generally Jt App A 20-30. This emphasis on the exclusion of "unsuitable" or "less suitable" lands contrasts with the nearly complete absence of findings explaining why the lands included in urban reserves are suitable. Accordingly, the challenged findings do little to satisfy the purpose of Subsection 5 to develop comprehensive plan language to be used to guide future planning decisions.

[29]For example, findings limited to a statement that lands within a particular URSA have a suitability score of "50" does little to provide the information and guidance necessary for future planning decisions.

1.4.1 First Subassignment of Error (Segregation of Lands)

Petitioners argue first that Metro erred in designating URSAs that include both first priority exception lands and lower priority resource lands. Petitioners contend that Metro's failure to segregate lands included in URSAs according to their relative priority inflates the relative suitability score of resource lands and deflates the suitability score of nonresource lands in a manner that frustrates objective application of the priority scheme imposed by the urban reserve rule.

The challenged decision states in relevant part:

> "Retention of agricultural land was addressed by rating each study area for exception land, agricultural soils, land uses, including parcelization, and access to irrigation. * * *
>
> "The 'Agricultural Retention' analysis was done on the basis of raw scores for the kinds of lands in the study area. Exception lands received varying points based on parcel size. Farm and forest lands (resource lands) received varying points based on parcel size. Additional points were given for class I-IV soils, available irrigation and for prime or unique agricultural lands. The raw scores were converted to ratings of 1 to 10 with study areas containing less agricultural land receiving a higher rating for future urbanization." Jt App A 20.

Petitioners argue that the quoted statement demonstrates that analyzing the suitability of unsegregated URSAs results in a <u>lower</u> suitability score for exception lands within unsegregated URSAs than if those exception lands had been studied separately in an URSA that contained only exception lands. Similarly, lower priority resource lands received a <u>higher</u> suitability score than if those resource lands had been studied separately in an URSA that contained only resource lands. The only way to avoid this skewing of scores, petitioners posit, is to study exception lands and resource lands separately, either by placing them in separate URSAs or applying separate analyses.

As an example of the consequences of unsegregated analyses, petitioners point to six URSAs that fell below the "minimum qualifying score" and were thus excluded from

consideration.[30] Five of those URSAs contained a high percentage of resource lands, and therefore scored relatively low on Goal 14, factor 6 (Agricultural Retention), which contributed to a relatively low total score. Petitioners suggest that had the exception lands in those URSAs been evaluated separately, they might have scored high enough to achieve the minimum qualifying score and thus been included in urban reserves.

We understand the example provided is intended to illustrate a variant of petitioners' basic theme that, due to exclusions of exception land for various reasons, Metro failed to study enough first priority lands and was thus forced to designate lower priority lands in a manner that evades the rule's priority scheme. In section 1.2 we determined that, while Metro was not required to study all adjacent lands, and thus could decline to study certain adjacent lands, its failure to study enough higher priority lands was inconsistent with the urban reserve rule because it helped create the inadequacies used to justify designations of lower priority land, and thus undermined those priorities. As a consequence of our analysis we held that petitioners' contentions regarding Metro's failure to study or prescreening particular higher priority lands did not provide a basis to reverse or remand the decision.

A similar analysis resolves the present subassignment of error. As Metro points out, the terms of the urban reserve rule do not require a segregated study of exception and resource lands, and petitioners do not articulate any basis for us to conclude that Metro must segregate study lands as a matter of law. As discussed further at section 1.7.2, absent a showing that a higher or lower relative suitability score affects application of the rule's priority scheme or other legal requirements, the fact that differently configured URSAs or a

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[30]After the February 1997 reanalysis, the Metro Council determined that it could satisfy the urban land need without using all of the land within each of the URSAs. The Council accordingly determined a "minimum qualifying score" of 33, and excluded from further consideration six URSAs with scores below 33. CM 13/4009-10. As far as we can tell, a determination that an URSA has not achieved a "minimum qualifying score" is not a determination that lands within that URSA are unsuitable in an absolute sense, only that such lands as a whole are less suitable than lands in other URSAs and accordingly can be excluded from further consideration if not all URSAs are necessary to meet the urban land need.

different application of the URSA-matic factors will result in different relative suitability scores does not in itself provide a basis to reverse or remand the challenged decision.

Nonetheless, petitioners can be understood to argue that unsegregated analysis undermines application of the rule's priority scheme, because it reduces the potential inventory of suitable, higher priority lands and thus creates an inadequate supply of higher priority lands. For instance, if we correctly understand petitioners' example, it tends to show that under a segregated analysis a few more exception lands might have been added to the inventory of suitable lands. However, we perceive no principled basis to distinguish between the additional exception lands that Metro excluded or prescreened and the additional lands that might have been included under a segregated analysis, in terms of the impact of those additional lands on application of the rule's priority scheme. Petitioners have not established that Metro's exclusion of the particular exception lands at issue here was error.

This subassignment of error is denied.

1.4.2 Second Subassignment of Error (Goal 14 Factors)

Petitioners argue that Metro erred in its application of the Subsection 2 criteria to the 72 URSAs studied. Subsection 2 requires that "[i]nclusion of land within an urban reserve area shall be based upon factors 3 through 7 of Goal 14 and the criteria for exceptions in Goal 2 and ORS 197.732." OAR 660-021-0030(2). Further, local governments must "study lands adjacent to the urban growth boundary for suitability for inclusion within urban reserve areas, as measured by Factors 3 through 7 of Goal 14 and by the requirements of OAR 660-004-0010." Id.

1.4.2.1 Exceptions criteria

As an initial matter, petitioners contend that the Subsection 2 analysis Metro adopted, i.e. application of URSA-matic, relies exclusively on the Goal 14 factors, and that Metro failed completely to address the relevant requirements of Goal 2, Part II, ORS 197.732(1)(c) or OAR 660-004-0010(1)(c)(B) in its decision or anywhere in the record. The relevant

1 portions of each of the three sets of criteria set forth identical standards. For clarity of
2 reference, we follow Metro in citing only to OAR 660-004-0010(1)(c)(B), and in referring to
3 the four criteria in that rule as exceptions criteria (i) through (iv).[31] Petitioners argue that, in
4 the context of designating urban reserve areas, the exceptions criteria "require Metro to adopt
5 findings demonstrating that the existing UGB cannot reasonably accommodate the projected
6 need and that the EESE consequences of accommodating the projected need on the selected
7 sites are no more adverse than if the need were accommodated on other non-urban lands."
8 Petition for Review (LUBA No. 97-057) 9.[32]

9 Metro responds that the exceptions criteria (i) through (iv) are each satisfied by
10 application of the Goal 14, factors 3 to 7 incorporated into the URSA-matic analysis. With
11 respect to exceptions criterion (i), Metro notes that OAR 660-004-0010(1)(c)(B)(i) provides

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[31]For ease of reference, we repeat exceptions criteria (i) through (iv):

"(i) Reasons justify why the state policy embodied in the applicable goals should not apply (This factor can be satisfied by compliance with the seven factors of Goal 14.);

"(ii) Areas which do not require a new exception cannot reasonably accommodate the use;

"(iii) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

"(iv) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."

[32]Petitioners do not specify the source of the requirement that Metro must adopt findings with respect to the exceptions criteria. Presumably, petitioners refer to Subsection 5. Metro's response presumes that it can demonstrate compliance with the exceptions criteria by demonstrating that the challenged decision is supported by an adequate factual base, i.e. that Metro can in lieu of findings provide argument in its brief supported by citation to the record demonstrating why the exceptions criteria are met in this case. As our discussion below indicates, consideration of the exceptions criteria within the context of the urban reserve rule is essentially coextensive with consideration of the Subsection 2 Goal 14 factors and designation of land under Subsection 4. Therefore, adequate findings addressing Metro's consideration under Subsection 2 and 4 also suffice to address the exceptions criteria, even if those findings do not mention the exceptions criteria. It follows that Metro's failure to adopt findings specifically addressing the exceptions criteria is not, itself, a basis for reversal or remand.

that exceptions criterion (i) "can be satisfied by compliance with the seven factors of Goal 14." Metro argues therefore that exceptions criterion (i) is satisfied by a showing of compliance with Goal 14, factors 3 to 7. Further, with respect to exceptions criteria (iii) (EESE consequences) and (iv) (compatibility with adjacent uses) Metro contends that these criteria are substantially the same as Goal 14, factors 5 and 7, and thus also satisfied by compliance with those factors. We agree with Metro that compliance with Goal 14, factors 3 to 7, also demonstrates compliance with exceptions criteria (i), (iii) and (iv).[33]

Exceptions criterion (ii) is more problematic. Exceptions criterion (ii) requires a demonstration that "[a]reas which do not require a new exception cannot reasonably accommodate the use." Metro argues that in the urban reserves context this criterion is satisfied by two demonstrations: that the urban land need cannot reasonably be accommodated by either (1) lands inside the metro UGB or (2) exception lands or nonresource lands outside the UGB. According to Metro, the meaning of criterion (ii) in the urban reserves context is illuminated by OAR 660-004-0020(2)(b), which describes the considerations to be addressed in determining whether "[a]reas which do not require a new exception cannot reasonably accommodate the use."[34] Among those considerations are

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[33]Actually, exceptions criterion (iv) is slightly broader than Goal 14 factor 7 in that it addresses the compatibility of the proposed use with <u>all</u> adjacent uses, not just agricultural uses. However, no party argues that Metro's consideration of agricultural incompatibility within the context of the urban reserve rule is insufficient to address exceptions criterion (iv), and therefore we assume, without deciding, that it is.

[34]OAR 660-004-0020(2)(b) provides with respect to exceptions criterion (ii), in relevant part:

> "(B) To show why the particular site is justified, it is necessary to discuss why other areas which do not require a new exception cannot reasonably accommodate the proposed use. * * * Under the alternative factor the following questions shall be addressed:
>
> "(i) Can the proposed use be reasonably accommodated on nonresource land that would not require an exception, including increasing the density of uses on nonresource land? If not, why not?
>
> "(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to nonresource uses, not allowed by the applicable Goal, including resource land in existing rural centers, or by increasing the density of uses on committed lands? If not, why not?

whether the proposed use can be reasonably accommodated on land within a UGB or on nonresource land outside the UGB, including increasing the density of uses on nonresource land. OAR 660-004-0020(2)(b)(B)(i) and (iii).

Metro contends that the first demonstration is satisfied in this case by Metro's determination of the urban land need under Subsection 1 and its general discussion of the UGM Functional Plan requirements that jurisdictions within the metro region increase zoned density within the UGB to maximize the capacity of the UGB. According to Metro, the net effect of these determinations and requirements is that Metro has shown that the urban land need is greater than the UGB can accommodate, even under the increased densities required by the UGM Functional Plan. We agree that this demonstration satisfies the requirement that lands within the UGB cannot reasonably accommodate the urban land need within the specified planning period.

The second demonstration is satisfied, Metro argues, by several determinations Metro made in the course of applying the urban reserve rule. First, Metro notes that it prescreened a number of exception areas from study because, due to environmental or other constraints, those lands were incapable of achieving the desired density of 10 dwelling units per net developable acre, as required by Metro Code (MC) 3.01.012(e)(4). Second, Metro notes that OAR 660-004-0020(2)(b)(B)(ii) requires consideration of whether the proposed use can be reasonably accommodated on resource lands "irrevocably committed" to nonresource uses. Metro argues that, to the extent this consideration is relevant, it is satisfied by Metro's consideration of "completely surrounded" resource lands under Subsection 3(a), which Metro

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"(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

"(C) This alternative areas standard can be met by a broad review of similar types of areas rather than a review of specific alternative sites. * * * Site specific comparisons are not required of a local government taking an exception, unless another party to the local proceeding can describe why there are specific sites that can more reasonably accommodate the proposed use. * * *"

posits are the lands in the present context most analogous to irrevocably committed lands, because such lands are essentially "committed" to nonresource uses by virtue of the surrounding exception areas. Third, and most importantly, Metro argues that the "alternative sites" analysis required by exceptions criteria (ii), as amplified by OAR 660-004-0020(2)(b)(C), is satisfied by the alternative sites analysis Metro conducted when it designated resource land, specifically the St. Mary's property in the Hillsboro subregion, under the Subsection 4(a) jobs/housing exception.

The role that LCDC intended exceptions criterion (ii), and indeed each of the exceptions criteria, to play in the Subsection 2 suitability analysis is not self-evident.[35] Metro recognizes, correctly, that exceptions criterion (ii) requires an alternative sites analysis, and further that an alternative sites analysis is applicable only when the local government is considering the inclusion of lower priority resource land under Subsections 3 or 4. Like Metro, we have difficulty perceiving how local governments are required to apply, or demonstrate compliance with, exceptions criterion (ii) as part of the Subsection 2 suitability analysis. The apparent effect of exceptions criterion (ii) within the context of the urban reserve rule is that resource lands are not "suitable" as long as nonresource lands can reasonably accommodate the particular need at issue. However, the ability of nonresource lands to accommodate either the urban land need or other identified needs cannot be known with any certainty until after application of first Subsection 3 and then Subsection 4. Accordingly, Metro argues that "[t]he analysis required by [S]ubsection (4)(a) is the same as

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[35]Aside from the overlap between the Goal 14 factors and the exceptions criteria, the first sentence of Subsection 2 provides that "[i]nclusion of land within an urban reserve area shall be based upon" the exceptions criteria in Goal 2 and ORS 197.732, while the second sentence of Subsection 2 provides that local governments shall study lands for suitability "as measured by" the exceptions criteria at OAR 660-004-0010. The lack of parallelism in these references implies some difference among the three sets of criteria. However, as noted above, the operative provisions of each set of criteria are identical. Nor is it clear whether LCDC intended some difference between "basing" inclusion of land on the exceptions criteria and "measuring" suitability of lands according to the exceptions criteria. No party has argued that these word choices represent meaningful differences, and accordingly we assume, but do not decide, that no differences are intended.

the analysis required for exceptions rule criterion (ii) of the specific 'proposed use[.]'" Metro's Response Brief (LUBA Nos. 95-050/053/057) 95 (emphasis omitted).

We agree with Metro to the extent it argues that exceptions criterion (ii) can be meaningfully applied only within the context of designating resource land under Subsection 4. We disagree, however, to the extent Metro suggests that the alternative sites analysis required by exceptions criterion (ii) is limited to designations of lower priority land under the Subsection 4(a) jobs/housing exception. As applied in the urban reserves context, exceptions criterion (ii) requires that, prior to including any lower priority land in urban reserves pursuant to Subsection 4(a) to (c), the local government must conduct an alternative sites analysis similar to that described in OAR 660-004-0020(2)(C) sufficient to demonstrate that nonresource lands cannot reasonably accommodate the particular need that justifies the Subsection 4 designation.

Accordingly, we examine the actions Metro cites as responsive to exceptions criterion (ii) to determine whether they demonstrate compliance with that criterion. Metro's first and second responses, to prescreen exception lands and to consider "completely surrounded" resource lands, do not constitute or comply with the alternative sites analysis required by exceptions criterion (ii). Metro's third response, the alternative sites analysis it conducted to justify inclusion of the St. Mary's property in the Hillsboro subregion, is more germane. However, as we note in section 1.6, the "inadequacy" involved in the jobs/housing exception in Subsection 4(a) that Metro relies upon to justify inclusion of resource lands in the Hillsboro subregion and in the Stafford triangle is, by its nature, a matter of the supply of higher priority land in the subregion. As we discuss in section 1.6, Metro's alternative sites analysis conducted for the Hillsboro subregion examines a number of exception areas in the subregion and generally determines that each of those areas are, due to parcelization and partial development, not as "appropriate" as the St. Mary's property and other lower priority lands, because the exception lands are less easily "master-planned" to create the high

densities that Metro prefers, as St. Mary's can easily be. Jt App A 86-101. However, that analysis fails to consider or quantify whether those exception areas can "reasonably accommodate" the need for housing in the Hillsboro subregion.[36] The issue for purposes of exceptions criterion (ii), as well as Subsection 4(a), 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.

It appears that Metro designated four areas of resource lands on the basis of the Subsection 4(a) jobs/housing exception: URSA 53, the St. Mary's property (URSA 54/55), and URSA 62 and 63A, all within the Hillsboro subregion, and URSA 31, within the Stafford triangle. The challenged decision performs an alternative sites analysis only for the St. Mary's property; it is not clear that the decision applies that analysis to the other resource lands in the Hillsboro subregion designated under the jobs/housing exception. However, even if it had applied that analysis to other lands, that analysis would suffer the same flaws identified above. With respect to URSA 31, Metro designated resource lands in that URSA under the jobs/housing exception and two other "specific types of identified land needs," the need for additional lands in the Lake Oswego area in order to (1) provide affordable housing and to (2) accommodate growth, both allegedly necessitated by evidence that Lake Oswego is mostly "built-out" with predominantly higher-priced homes. Metro does not attempt to argue that it performed an alternative sites analysis for the resource lands within URSA 31 regarding any of these identified Subsection 4(a) specific land needs.

Finally, Metro designated nine resource areas under the Subsection 4(c) exception. Jt App A 33-38. As discussed in section 1.6.4, unlike the Subsection 4(a) jobs/housing

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[36]The alternative sites analysis for the St. Mary's property appearing at Jt App A 86-101 presumes that the "specific type of identified land need" is the need for additional residential land pursuant to the jobs/housing exception. Metro makes no attempt to define capability for high density development as a "specific type of identified land need." Even if it had, such an exception might threaten to swallow the rule, in that exception lands are almost by definition less capable of master planning and high densities than resource lands, due to patterns of parcelization and partial development.

exception, Subsection 4(c) is essentially a "locational" exception to the Subsection 3 priority scheme, allowing a local government to designate particular lower priority lands that are located in relation to higher priority designated land such that "[m]aximum efficiency of land uses" requires inclusion of the lower priority land in order to include or provide urban services to the higher priority land. However, although the need at issue is different, and the geographic scope of the analysis under Subsection 4(c) is obviously narrower, the terms and purpose of Subsection 4(c) require a determination that other, higher priority lands are inadequate to meet the need at issue, in short, an alternative sites analysis. We perceive no principled basis to apply the exceptions criterion (ii) alternative sites analysis to designations of land under Subsection 4(a) but not Subsection 4(c). Consequently, we conclude that exceptions criterion (ii) requires Metro to conduct an alternative sites analysis with respect to its designations under Subsection 4(c). Metro has not attempted to argue that it did so.

Accordingly, we conclude that Metro has not demonstrated compliance with the alternative sites analysis required by exceptions criterion (ii).

This subassignment of error is sustained.

1.4.2.2 Goal 14 Factors

Petitioners argue that Metro erred in applying three of the five Goal 14 locational factors: factor 3 (Public Facilities), factor 4 (Maximum Efficiency of Land Uses) and factor 6 (Agricultural Retention). We first address an argument that applies equally to all five Goal 14 locational factors, before turning to petitioners' specific arguments with respect to each factor.

Petitioners challenge Metro's use of the URSA-matic scores and Goal 14 factors to exclude particular URSAs or parts of URSAs on the basis of their relative suitability scores. According to petitioners, the suitability test imposed by the Subsection 2 criteria is not whether a particular property is better than another, but whether each of the areas taken as a whole is urbanizable over the relevant planning period. Petitioners argue that, absent a

specific finding that certain lands are not suitable in the absolute sense under the Goal 14 factors, Metro cannot exclude such lands on the basis of their relative suitability.

Subsection 2 requires a determination whether lands are "suitab[le] for inclusion within urban reserve areas" as measured by Goal 14, factors 3 to 7, not whether lands are suitable relative to one another. We agree with petitioners that because lands are relatively more or less suitable, or that scores on one factor or subfactor are higher or lower than other lands does not, of itself, establish that lands are either suitable or unsuitable.[37]

The necessity of a defined measure of suitability is evident in the manner Metro applied the Goal 14 factors. As petitioners note elsewhere, Metro apparently applied an absolute threshold or defined measure of suitability with respect to at least one Goal 14 factor. The challenged decision explains that several URSAs composed of exception lands were deemed unsuitable because they received a "zero" score for Goal 14, factor 4 (Maximum Efficiency of Land Uses). Jt App A 23. As discussed below in section 1.4.2.2.2, Metro construed Goal 14, factor 4 to focus on the amount of buildable lands an URSA contains after considering various developmental limitations. Metro reasoned that it could "weight" Goal 14, factor 4 to avoid the futility of including in urban reserves areas containing little efficiently buildable land. Jt App A 23. Notwithstanding, several URSAs with Goal 14, factor 4 scores of "zero" were apparently found to be suitable and were ultimately included in urban reserves (e.g. URSAs 4, 67 and 68). CM 13/4013-14. Thus, it appears that in Metro's view some Goal 14 factors have thresholds, while some do not, some factors "weight" more heavily than others, and, even where factors have thresholds, those thresholds need not be applied consistently in determining the suitability of land.

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[37]We do not mean to suggest that local governments cannot assess the relative suitability of proposed lands, and apply those relative rankings in making designations under Subsections 3 or 4. For example, it appears entirely consistent with the urban reserve rule for a local government to apply relative suitability rankings to determine which first priority lands should be included in urban reserves, where the inventory of suitable first priority lands is larger than the urban land need.

We reject the view implicit in Metro's application of the Goal 14 factors. The Subsection 2 requirement that local governments determine the suitability of land entails that some measure of suitability be defined based on the Goal 14 factors and that measure should be applied consistently. We agree with petitioners that a local government must apply each Goal 14 factor equally and include lands in urban reserves only where all of the factors justify that inclusion. Branscomb v. LCDC, 64 Or App 738, 745, 669 P2d 1192 (1983), aff'd 297 Or 142, 681 P2d 124 (1984).[38] Extrapolated to the urban reserve context, Metro must determine with respect to the lands studied that each of the factors is satisfied, i.e. achieve a defined threshold, in order to find that land is "suitable" for inclusion in urban reserves. Conversely, in order to determine that certain lands are not suitable, Metro must determine that those lands fail to achieve at least one of the defined thresholds. Accordingly, we conclude that Metro must define a threshold for each factor, whether expressed as a quantification of some type (as in URSA-matic) or in other terms, and apply those thresholds consistently in determining whether lands are suitable for inclusion in urban reserves.

This subassignment of error is sustained.

1.4.2.2.1 Factor 3: Public Facilities

Goal 14, factor 3 requires consideration of the "[o]rderly and economic provision for public facilities and services." In the context of UGB amendments, we have held that Goal 14, factor 3 requires a demonstration that "public facilities and services can reasonably be provided to the UGB expansion area over the planning period, without leaving the area already included within the UGB with inadequate facilities and services." 1000 Friends of

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[38]In Branscomb, the court held that

> "Goal 14 does not require that factor 6 [Agricultural Retention] be accorded greater weight than the other six factors; it requires only that it be considered along with the others, and if the findings relating to all of the factors justify the proposed UGB, the goal allows the inclusion of agricultural land within the boundary." 64 Or App at 744-45.

Oregon v. City of North Plains, 27 Or LUBA 372, 389, aff'd 130 Or App 406, 882 P2d 1130 (1994).

Metro addressed Goal 14, factor 3 by considering four subfactors that, according to petitioners, improperly emphasize fiscal cost and inadequately account for the future capacity of the transportation infrastructure. The challenged decision describes the four subfactors:

> "(1) Utility feasibility study examines the relative cost of urban water, sewer and stormwater facilities;
>
> "(2) Road network analysis looks at the current network of local and regional roads and compares it to future needs;
>
> "(3) Traffic congestion analysis considers likely improvements to the road system and then rates the resulting road system and its congestion for each site;
>
> "(4) School analysis determines the distance to existing public schools and vacant school-owned lands." Jt App A 18.

Metro relied upon a 1996 study (the KCM study) to develop data to score for factor 3. The "most important conclusion" of the study is that all of the URSAs are serviceable and that, while there are cost differences among them, none of the servicing costs are so significant that some URSAs should be eliminated from further consideration. BD 3/559.

Petitioners explain that under the first subfactor Metro analyzed the cost of providing sewer, water and storm drainage systems to each URSA, and ultimately excluded exception lands within some URSAs (e.g. URSA 1) that showed an "above average [utility] cost," while designating other lands that also showed an "above average [utility] cost" (e.g. URSAs around the City of Wilsonville). Jt App A 25. Petitioners contend that the first subfactor improperly focuses on cost rather than the feasibility of providing public facilities, and thus Metro's determination that certain areas are not suitable based on above average utility costs is contrary to Goal 14, factor 3 and, given that the KCM study found all areas "serviceable," not supported by an adequate factual base. Further, petitioners argue that by excluding URSAs from further study or designation based on a single component of one factor Metro

improperly weighed the economics of providing public facilities over all other Goal 14 factors. Branscomb, 64 Or App at 745. We understand petitioners to argue that each Goal 14 factor must be given equal weight, and that Metro thus erred in effectively giving greater weight to one factor over the other factors.

With respect to the second and third subfactors, which address the adequacy of the existing transportation system, petitioners argue that those subfactors demonstrate only future demand or need for transportation facilities and do not address the relevant inquiry, whether needed transportation facilities can or cannot "reasonably be provided * * * over the planning period." North Plains, 27 Or LUBA at 389.

Metro agrees with petitioners that the focus of Goal 14, factor 3 is the feasibility of providing public facilities and services to proposed urban reserves within the period used to calculate the urban land need. Metro also agrees that the KCM study established that all of the URSAs are "serviceable" and that none of the servicing costs are so significant as to disqualify any URSAs from further consideration. Metro contends this evidence is sufficient to show that it is feasible to provide future urban services to all of Metro's designated urban reserves. According to Metro, it went further than Goal 14, factor 3 requires and assessed the relative costs of providing future urban services, as well as the extent of needed transportation improvements and the need to provide new schools, and excluded some lands on the basis of relatively higher costs to provide future urban services.

We agree with petitioners and Metro that, as an evidentiary matter, the KCM study suffices to establish that public facilities and services can reasonably be provided to each of the URSAs over the relevant planning period. However, that evidence would seem to establish that, to the extent measured by Goal 14, factor 3, lands within each of the URSAs are "suitable." The main difficulty, as petitioners point out and we address in section 1.4.2.2, is in Metro's use of the relative cost differences among URSAs to exclude certain lands (e.g. in URSA 1) as "unsuitable," in the absence of findings or a conclusion that a certain level of

cost renders the provision of public facilities and services to an area unreasonable or unfeasible, and thus unsuitable in an absolute sense.

We do not necessarily agree with petitioners that Metro misconstrued Goal 14, factor 3 by evaluating cost and the need for transportation improvements in determining whether facilities and services can be reasonably provided within the relevant period. Financial cost is a relevant consideration under Goal 14, factor 3, given that it is concerned with the "economic provision" of facilities and services. Moreover, cost can be an indicator of other considerations affecting the feasibility of providing urban infrastructure and services. Nor do we agree that a finding of unsuitability based on failure to satisfy a single factor violates the requirement, stated or implied in Branscomb, that all factors be considered and weighed equally. It seems entirely consistent with Branscomb and the urban reserve rule for a local government, once it has defined a threshold for each factor, to find that certain lands are unsuitable based on failure to satisfy a single factor. However, in the absence of such thresholds, we agree with petitioners that the relative cost differences Metro relied upon to exclude certain lands are not a basis to determine that that land is unsuitable.

This subassignment of error is sustained in part.

1.4.2.2.2 Factor 4: Maximum Efficiency of Land Uses

Goal 14, factor 4 requires consideration of the "[m]aximum efficiency of land uses within and on the fringe of the existing urban area." This Board has held that factor 4 requires "the encouragement of development within urban areas before the conversion of urbanizable areas." North Plains, 27 Or LUBA at 390 (quoting Turner v. Washington County, 8 Or LUBA 234, 257 (1983)). Petitioners argue that, in the context of the urban reserve rule, factor 4 encourages urbanization of partially developed exception lands within and on the fringe of the UGB before conversion of resource lands. Petitioners contend that Metro's application of factor 4 fails to encourage urbanization of partially developed exception lands before resource lands.

Metro applied factor 4 by calculating the percentage of each URSA considered "efficient" for urban development, considering slope, parcel size and level of existing development, and the percentage of each URSA that was considered to be buildable (i.e. was not steeply sloping land, wetlands, floodplains, or other environmentally-constrained lands). Higher factor 4 suitability scores reflect relatively fewer development constraints and relatively more buildable land.

According to petitioners, Metro failed to consider or excluded a number of areas of nonresource land on the basis of factor 4. For example, part of URSA 49 was excluded because of slopes that made it "difficult to build," and a number of other exception areas were not considered because parcelization and existing development made those lands less efficient to develop. Jt App A 26, 86-99. Petitioners argue that Metro did not find that these areas were "unsuitable," only that the density of housing that could be built or the number of developable acres was relatively low compared to other URSAs. Further, petitioners contend that Metro's failure to consider or include partially developed exception areas on the basis of factor 4 is contrary to the urban reserve rule because it improperly favors resource lands, which tend to be large, undeveloped blocks of land in single ownership, over exception areas, which tend to consist of smaller, partially developed parcels in multiple ownership.

Metro responds that factor 4, as it has been construed in the UGB amendment context, is not readily applicable to the urban reserve context, because it is impossible for local governments to determine the capacity or availability of buildable land within the UGB by the time urban reserves are needed 30 to 50 years in the future. Metro posits that factor 4 should be construed in the present context as requiring only that the local government determine whether there is a 20-year supply of land within the UGB and, if there is not, that the local government consider methods of increasing the existing UGB capacity before allowing urbanization of land outside the UGB. Metro contends that it has already adopted in the UGM Functional Plan methods to maximize the existing UGB capacity, and that this

alone suffices to show compliance with factor 4. Metro argues that its factor 4 analysis of the relative development efficiency and supply of buildable lands goes far beyond what factor 4 requires.

Metro's limited view of what factor 4 requires minimizes any role that factor plays in determining the suitability of lands for purposes of the urban reserve rule, and essentially nullifies that factor. Under Metro's view, factor 4 comes into play only if the UGB does not contain a 20-year supply of land, and then only to require the local government to consider efforts to increase UGB capacity. However, under that view, factor 4 does nothing to determine which lands are suitable for inclusion in urban reserves. That view is further misdirected given that urban reserves are designed to meet urban land needs 10 to 30 years beyond the 20-year capacity of an urban growth boundary. Metro's view focuses on the maximum efficiency of land uses within the UGB, and only indirectly considers the efficiency of land uses "on the fringe of the existing urban area," including the lands outside the UGB that are the focus of the urban reserve rule.

Factor 4 as applied in the urban reserve context is best understood as encouraging urbanization of lands proximate to existing urbanization over more distant lands, and, as petitioners note, as encouraging urbanization of partially developed lands over undeveloped lands. Urbanization of lands proximate to existing urbanization avoids inefficient leapfrog or isolated development, while urbanization of partially developed lands is more likely to maximize the efficiency of land uses because it directs future urbanization onto areas that are already partially urbanized. This view is also consistent with one of the major themes of the urban reserve rule, to direct urbanization onto exception lands before resource lands.

The subfactors Metro chose for factor 4 reflect Metro's preference for large parcel sizes and relatively high percentage of buildable lands, presumably on the grounds that such areas are more likely to allow a relatively high density of urban development, consistent with the UGM Functional Plan and RUGGOs. As discussed in several sections of this opinion,

Metro may apply the objectives and policies in its RUGGOs to urban reserve decisions as long as application of those RUGGOs is consistent with the urban reserve rule. However, we agree with petitioners that Metro's exclusive focus in applying factor 4 to favor lands capable of relatively dense urban development is not responsive to factor 4, and undermines the urban reserve rule to the extent it directs urbanization away from partially developed lands.

This subassignment of error is sustained.

1.4.2.2.3 Factor 6: Retention of Agricultural Lands

Factor 6 encourages the retention of agricultural land, with class I soils being the highest priority for retention and class VI soils being the lowest priority for retention. Metro scored factor 6 according to various subfactors, including soil class, parcel size, access to irrigation, and whether the land was vacant or being actively farmed. The scores were then converted to ratings, with areas containing less agricultural land receiving a higher rating for future urbanization. Petitioners argue that Metro's use of these subfactors is inconsistent with factor 6 and fails to correctly apply the priorities factor 6 establishes. According to petitioners, factor 6 imposes a strict hierarchy linked solely to soil classification, and does not provide any basis to accord less protection to agricultural land that is not in large parcels, is unirrigated, or is vacant rather than being actively farmed.

Metro responds that in the context of the urban reserve rule, factor 6 is satisfied by considering the impacts of future urban use on resource land studied compared to other resource lands. Metro argues that it accomplished this comparison by scoring the relative agricultural merit of resource land in URSA-matic, supported by evidence in the record showing soil classes and other agricultural considerations for studied resource lands.

Subsection 2 does not limit the points of analysis Metro may apply to those provided in the urban reserve rule in determining whether lands are suitable. Thus Metro may apply such additional points of analysis as long as they are consistent with and do not undermine the urban reserve rule. However, we agree with petitioners that the focus of factor 6 is the

capability of agricultural land, as measured by the soil capability classes, rather than the actual productivity of agricultural land, which may vary depending upon parcelization patterns, current access to irrigation, and the current use of the land. Under Metro's approach, higher capability lands that are currently unproductive may be deemed suitable and subject to designation, while lower capability lands that are currently in production may be deemed unsuitable, a result contrary to factor 6 and inconsistent with application of the urban reserve rule's priority scheme. Accordingly, we agree with petitioners that Metro misconstrued factor 6.

This subassignment of error is sustained.

1.4.2.2.4 Factor 7: Compatibility with Agricultural Activities

Goal 14, factor 7 requires a determination concerning the compatibility of the proposed UGB expansion with nearby farming activities. North Plains, 27 Or LUBA at 391. Petitioners contend that Metro erred by considering compatibility with farming activity only in areas where "farming is the most dominant activity," which, petitioners argue, is contrary to the terms of factor 7. Jt App A 20.

Metro does not respond directly to petitioners' argument regarding its alleged focus on "dominant" farm activity, but explains that its URSA-matic analysis determined generally what lands surrounding URSAs are in agricultural use, and measured the proximity of an URSA to those agricultural uses. Metro argues that nothing more is required to satisfy factor in the context of the urban reserve rule, where the specific urban uses to be developed within the URSAs may not be known for another 30 to 50 years.

Within the context of UGB amendments, factor 7 requires the local government to identify the proposed urban use and the type of nearby agricultural activity, and demonstrate that those uses are compatible. North Plains, 27 Or LUBA at 391; La Grande, 25 Or LUBA at 62. Metro argues that the proposed urban use cannot be known with certainty, but explains that it anticipated most lands within urban reserves would be used to supply needed

housing pursuant to the 2040 Concept. Metro does not argue that it identified the types of nearby agricultural activity, and apparently concedes that its general identification of lands in agricultural use was limited to areas where farming was the "dominant" activity.

We agree with petitioners that Metro misconstrued factor 7 by limiting its analysis to areas where farming is the "dominant" activity. Further, despite the difficulties Metro notes in determining the exact nature of future urban uses and future agricultural activity, that uncertainty does not relieve Metro of its obligation to use available knowledge and reasonable projections to estimate whether likely future urban uses and likely types of future agricultural activity will be compatible.

This subassignment of error is sustained.

1.4.3 Third Subassignment of Error

Petitioners argue that Metro erred in excluding suitable adjacent exception areas from designation under the Subsection 3 priorities on grounds not found in the urban reserve rule. According to petitioners, Metro justified the exclusion of large areas of exception lands in order to maintain "separation of communities" between municipal jurisdictions. Metro also excluded certain studied exception lands in order to create a "logical" urban reserve area boundary. Petitioners contend that neither justification is consistent with or permissible under the urban reserve rule.

1.4.3.1 Separation of Communities

Metro excluded 500 acres of exception land from URSA 1 to maintain "separation between the Metro UGB and the Sandy UGB." Jt App A 24-25. The "separation of communities" concept is based on RUGGO Objective 22.3.3, which provides that "[l]ands of lower priority in the LCDC Rule priorities may be included in urban reserves if needed for physical separation of communities inside or outside the UGB to preserve separate community identities." Petitioners explain that Metro requested that LCDC amend the urban reserve rule to allow "separation of communities" as a basis to designate land of lower

priority if land of higher priority was inadequate to maintain separate communities. According to petitioners, LCDC rejected Metro's request on the grounds that the separation of communities objective could be satisfied without altering the urban reserve rule's priority scheme. Petitioners contend that Metro applied Objective 22.3.3 in a manner that achieves the same result that LCDC rejected. Petitioners argue that Metro applied Objective 22.3.3 to exclude certain higher priority lands, with the effect that Metro was forced to include lower priority lands to replace the excluded lands. According to petitioners, Metro can apply Objective 22.3.3 consistently with the urban reserve rule only in choosing between two otherwise suitable exception areas. Metro cannot, petitioners argue, use objective 22.3.3. as a basis to exclude otherwise suitable exception areas where that exclusion results in an increased need to designate resource lands as urban reserves.

Metro responds, first, that petitioners' challenge amounts to a collateral attack on Objective 22.3.3, which along with other provisions of Metro's RUGGOs, was acknowledged by LCDC as in compliance with applicable statewide planning goals and implementing rules, including the urban reserve rule. Metro attaches to its brief a copy of LCDC's compliance order.[39] However, that compliance order demonstrates that LCDC understood that Objective 22.3.3 was intended to maintain separation between two sets of specified Metro jurisdictions, not between the Metro UGB and a geographically distant community, like Sandy or

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[39]The cover letter to the compliance order states, in relevant part:

> "On May 30, 1996 the [LCDC] voted to acknowledge the Metro [RUGGOs] and authorized the director to sign an acknowledgment order following resolution of a single issue. The matter at issue concerned a Metro objective to preserve separation of communities in those locations where a break occurs in the Metro urban growth boundary. More specifically, according to the RUGGOs, community separation is to be preserved between Tualatin and Wilsonville and between Cornelius and Hillsboro.
>
> "On November 1, 1996 the Commission accepted and approved a staff report which concluded that this regional objective could be satisfied when designating urban reserve areas without encroaching upon land protected under Goal 3, Agriculture and Goal 4, Forestry. Based on this new information, neither the Urban Reserve Rule [n]or the RUGGOs require any change. Acknowledgment of the RUGGOs is therefore complete." Metro's Response Brief (LUBA Nos. 97-050/053/057) App 3.

Woodburn, that is not part of Metro's jurisdiction. Further, the compliance order shows that LCDC contemplated that Objective 22.3.3 would be applied without resulting in the designation of resource land. Accordingly, LCDC's acknowledgment of Objective 22.3.3 has no significance with respect to petitioners' challenge, which is that Metro misapplied that objective to separate the Metro UGB and a jurisdiction not part of the Metro region, and that Metro applied that objective in a manner that resulted in designations of resource land. Petitioners' challenge is not a collateral attack on the LCDC's acknowledgment of Objective 22.3.3.

Second, Metro suggests that Objective 22.3.3 represents one of the "[s]pecific types of identified land needs" mentioned in Subsection 4(a) and thus, even assuming Metro applied Objective 22.3.3 in order to designate resource lands, that action is allowed by Subsection 4(a). However, the challenged decision does not apply Objective 22.3.3 as a "[s]pecific type of identified land need," and thus we need not address Metro's argument that it could have done so.

Third, Metro reiterates that it designated only first priority lands and lands under Subsection 4, and argues that, because no lower priority lands were designated under Subsection 3(b) to (d), the exclusion of exception lands on the basis of Objective 22.3.3 could not and did not result in the designation of lower priority lands. In other words, Metro argues, even assuming that the exception lands excluded on the basis of Objective 22.3.3 were included in urban reserves, they would have, at most, displaced only other exception lands or completely surrounded resource lands within the first priority without resulting in the designation of lower priority lands.

We agree with petitioners that application of Objective 22.3.3 to exclude suitable first priority lands from designation is inconsistent with the urban reserve rule. Subsection 3 provides that "[l]and found suitable for an urban reserve may be included within an urban reserve area <u>only</u> according to the [Subsection 3(a) to (d)] priorities[.]" OAR 660-021-

0030(3) (emphasis added). Under the terms of Subsection 3, once a local government has applied Subsection 2 and determined the inventory of suitable adjacent lands, land may be included in urban reserves only according to the Subsection 3 priorities. If a local government can apply criteria extrinsic to those priorities to the inventory of suitable lands in order to exclude certain lands, then the content of that inventory is altered in ways that may, in particular cases, allow designation of lands in violation of the Subsection 3 priorities.

We understand Metro to argue that, however such extrinsic criteria could be applied in ways that violate the Subsection 3 priorities, in the present case application of Objective 22.3.3 did not result in designation of any lower priority lands, for the reasons described above, and thus at most is harmless error. However, Metro has not shown that the 500 acres in URSA 1 would simply "displace" other first priority exception lands or completely surrounded resource lands, and thus that excluding those lands was harmless error in this case. As petitioners point out elsewhere, the Metro Council revised the size of its urban land need and determined it needed an additional 3,000 acres, but did not go back and expand the size of lands studied to meet that increased need. As a result, Metro was forced to include nearly all the suitable exception lands it had studied, making up the difference with completely surrounded resource lands and designations of resource land under Subsection 4. We determine in section 1.5.1 that Metro erred in including in urban reserves approximately 800 acres of resource lands as first priority "completely surrounded" lands. Under these circumstances, we cannot conclude that the exclusion of 500 acres of exception lands in URSA 1 would still allow Metro to meet its urban land need solely from first priority lands and designations under Subsection 4 without recourse to lower priority lands under Subsection 3(b) or (d). Metro's application of Objective 22.3.3 to exclude suitable lands from designation was not harmless error.

This subassignment of error is sustained.

1.4.3.2 Logical Boundaries

Petitioners also contend that Metro erred in excluding large areas of exception lands because inclusion of such lands would not result in "logical boundaries." Petitioners argue that Metro provides no definition of a "logical boundaries" and does not cite any authority for application of that concept under the urban reserve rule. Even if such authority existed, petitioners argue, Metro applied the concept in an unprincipled, situational fashion.

Metro's responses are similar to those above with respect to application of Objective 22.3.3. Our reasoning with respect to Objective 22.3.3 applies with equal force to Metro's exclusion of suitable exception land under its "logical boundaries" rationale.[40]

This subassignment of error is sustained.

The fourth assignment of error is sustained, in part.

1.5 FIFTH ASSIGNMENT OF ERROR (LUBA NOS. 97-050/053/057)

Petitioners argue that Metro misconstrued and erred in applying the prioritization scheme in the urban reserve rule when it (1) included resource lands that are not "completely surrounded" as described in Subsection 3(a); (2) failed to identify and prioritize marginal lands described at Subsection 3(b); (3) misapplied the criteria for "secondary" lands described in Subsection 3(c); and (4) failed to identify and prioritize among resource lands based on soil capability as required by Subsection 3(d).

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[40]The practical effect of our conclusion that Metro erred in applying extrinsic criteria to exclude suitable lands from designation in urban reserves, in light of our conclusion in section 1.2 that Metro may decline to study lands for any reason, including "separation of communities" or "logical boundaries," means that Metro may apply policies in its RUGGOs or other criteria extrinsic to the urban reserve rule in determining which lands to study and the boundaries of study areas, but may not apply those policies to exclude suitable land at a later stage of the urban reserve decision process. However inconsistent that result seems, it is based on, if not compelled by, the language of the urban reserve rule, which does not require that the local government study all adjacent lands and does not limit the points of analysis under Subsection 2 to the criteria listed there, but which does require that suitable lands be included in urban reserves only according to the priorities established in the rule.

1.5.1 Completely Surrounded Lands (OAR 660-021-0030(3)(a))

The priority scheme set forth in the urban reserve rule requires that first priority for designation as urban reserves goes to exception areas or nonresource lands. However, Subsection 3(a) allows certain resource lands to be included among first priority lands:

> "First priority may include resource land that is completely surrounded by exception areas unless these are high value crops areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture[.]" (Emphasis added).

Petitioners contend that Metro misinterpreted Subsection 3(a) to include resource lands in the first priority for designation where such lands were mostly, but not completely surrounded by exception lands. Petitioners argue that "completely surrounded by exception areas" means what it says: that certain resource lands sharing 100 percent of their boundaries with exception areas may be included in the first priority. Petitioners then discuss Metro's application of Subsection 3(a) with respect to URSAs 31, 32 and 33 within the Stafford triangle, arguing that Metro erred by including resource lands within those URSAs that are not "completely surrounded" by exception areas.[41]

The challenged decision states:

> "The 'completely surrounded' standard is interpreted to mean that resource lands enclosed by areas of exception lands or urban land (inside the UGB) would qualify if that land is not predominantly 'prime or unique' agricultural land.[42] Where one side of the urban reserve is adjacent to the UGB, the side of the urban reserve adjacent to the UGB is considered surrounded by

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[41]Petitioners also assign error to Metro's alternative finding that URSAs 53, 54, 55 and 65 are "completely surrounded" by exception areas and thus first priority land. In its brief, Metro concedes that these URSAs are not "completely surrounded" by exception areas, and that its alternative finding to that effect is error. Metro argues that its error with respect to URSAs 53, 54, 55 and 65 is harmless because those URSAs were designated alternatively on other, correct bases.

[42]No party questions or assigns as error Metro's determination that Subsection 3(a) excludes from the "completely surrounded" standard only resource land that is predominantly prime or unique agricultural land, even though Subsection 3(a) does not contain that language. Metro's determination may be based on the definition of "high value farmland" at OAR 660-033-0020(8)(a), which refers to "land in a tract composed predominantly of soils" that are, inter alia, classified prime or unique. It may also be based on a definition of prime or unique agricultural land adopted by the United States Department of Agriculture that is not before us.

> 'exception areas' for purposes of the urban reserve rule.[43] Moreover, the specific reference in the Urban Reserve Rule to 'exception areas,' rather than parcels of exception land, makes it clear the rule does not require that each parcel of resource land in an area surrounded by exception land * * * be surrounded by parcels of exception land to be designated as first priority urban reserves. The use of the term 'exception areas' recognizes that resource land, completely surrounded by exception areas, is disproportionately and severely impacted by urbanization. Therefore, value as agricultural land is severely compromised by existing urbanization. Accordingly, the existence of relatively small, intervening parcels of EFU zoned land between a particular designated urban reserves and an enclosing exception area, does not foreclose first priority status for that urban reserve." Jt App A 31.

The challenged decision then applies Metro's interpretation of Subsection 3(a) to resource lands in URSAs 31, 32 and 33 and determines that those lands are "completely surrounded" by exception lands, notwithstanding that those lands border other resource lands on at least one side and thus are not completely bordered by exception areas on all sides. Jt App A 31-32.[44] At oral argument, Metro characterized its interpretation of Subsection 3(a) as allowing inclusion of resource land "sufficiently" surrounded by exception areas so that existing or future urbanization severely compromises the agricultural value of that land.

With respect to URSA 31, the challenged decision offers an alternative justification: that the entire perimeter of the Stafford triangle, viewed as a whole, consists of urban lands and exception lands that surround a core of resource lands, some within URSAs 31, 32 and 33, and some outside any URSA. The decision notes that <u>all</u> of the resource land in the Stafford triangle, viewed as a whole, is completely surrounded by urban and exception areas, and concludes therefore that the subset of resource lands in URSA 31 is also "completely

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[43]No party questions or assigns as error Metro's interpretation that areas within the UGB are considered "exception areas" for purposes of the "completely surrounded" standard. Again, we express no opinion whether Metro's interpretation of Subsection 3(a) in this respect is consistent with the terms of the urban reserve rule.

[44]URSA 31 has 615 acres of resource land that borders an area of resource land outside any URSA to the south and east. URSA 32 is between URSA 31 and the metro UGB and contains 76 acres of resource land that borders the resource land in URSA 31. URSA 33 contains 72 acres of resource land that borders the resource land in URSA 31.

surrounded," even though there exists intervening resource land between URSA 31 and surrounding exception areas. Jt App A 32.

Metro and intervenors-respondent Halton defend Metro's rationale in several ways, the principal theme of which is that Subsection 3(a) allows Metro to study and select a subset of resource lands for inclusion as first priority lands, as long as that subset is part of a larger area of resource lands that itself is "completely surrounded" by exception areas.[45]

Both Metro and Halton emphasize that Subsection 3(a) provides that Metro "may" include suitable lands in urban reserves, which entails that Metro need not include all lands studied within any particular URSA. We understand respondents to argue that Metro could have studied all the resource lands in the Stafford triangle and selected only a subset of those lands as completely surrounded lands, consistently with Subsection 3(a). If so, respondents reason, Subsection 3(a) also allows Metro to study only a subset of all resource lands in the Stafford triangle and select only that subset as urban reserves.

Further, both Metro and Halton note that Subsection 3(a) speaks of resource lands completely surrounded by exception areas, not individual parcels or lots of exception land. Halton argues that use of the broader term "areas" indicates a broad focus on a larger geographic "area" rather than a narrow focus on whether every lot or parcel bordering the

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[45]Metro and Halton also argue that petitioners in LUBA Nos. 97-050/053/057 have "conceded" or waived their right to challenge Metro's interpretation of the "completely surrounded" standard by failing to assign error to Metro's determination that resource lands in URSAs 69 and 70 are "completely surrounded" by exception areas, even though those lands are not 100 percent enclosed by such areas. Halton goes so far as to suggest that petitioners' inconsistent stance merits sanctions, characterizing petitioners' selective argument as "akin to harassment." Halton's Response Brief 16 (citing ORCP 10 C(2), but presumably referring to ORCP 17 C(2)). However, neither Metro nor Halton cites to any authority for the proposition that a party is required to challenge every instance of a local government's alleged misapplication of a standard in order to challenge that misapplication generally or with respect to certain properties, and we are aware of none.

In addition, Metro takes issue with a position it perceives in petitioners' arguments: that Subsection 3(a) contains sub-priorities, that is, local governments must exhaust first priority exception lands before they designate any first priority "completely surrounded" resource lands under Subsection 3(a). Metro argues that both bases for inclusion in Subsection 3(a) are coequals, without priorities. It is not clear that petitioners actually advance the position Metro ascribes to them. To the extent they do, we agree with Metro that Subsection 3(a) contains no subpriorities and that local governments need not exhaust exception lands before considering "completely surrounded" resource lands under Subsection 3(a).

resource land is part of an exception area. That broader focus is satisfied, Halton suggests, as long as within the general "area" there are exception lands that, even at some distance, completely surround the resource lands under consideration.

We reject the decision's first interpretation of Subsection 3(a) as facially inconsistent with the terms of that provision. The modifier "completely" surrounded cannot be plausibly construed to mean "mostly" or "sufficiently" surrounded. The decision's alternative reasoning regarding URSA 31, as amplified by Halton, is more plausible in that it is not facially inconsistent with Subsection 3(a). However, one difficulty with that reasoning is that it assumes Metro could have studied the entirety of the resource lands in the Stafford triangle, and that all those lands, considered together, would qualify as "completely surrounded" lands. The record reflects that much of the intervening resource land outside URSA 31, as well as some of the resource land within URSAs 31 and 33, is comprised of prime and high value farm soils. OE-11; OE 112196-419. Even assuming that Subsection 3(a) properly applies only to resource land that is "predominantly" composed of prime or unique soils, see n 40 above, neither Metro nor Halton have established on this record that all of the resource lands within the Stafford triangle, if considered together, would qualify under Subsection 3(a).

Nor are we persuaded by Halton's textual argument that Subsection 3(a)'s reference to exception "areas" rather than lots or parcels denotes a broader scope focused on the general "area." The term "area" in Subsection 3(a) is part of the term of art "exception area," defined at OAR 660-021-0010(4) as "[r]ural lands for which an exception to Statewide Planning Goals 3 and 4, as defined in OAR 660-004-0005(1), has been acknowledged." Subsection 3(a) does not use the term "area" in its layman's sense of a relatively undefined geographic region, as Halton appears to contend, but rather in its technical and geographically precise sense as defined in OAR 660-021-0010(4) and 660-004-0005. We conclude that Subsection

3(a) requires that resource lands included under that provision be bordered on all sides by rural lands for which an exception to Goals 3 or 4 has been taken.

This subassignment of error is sustained.

1.5.2 Marginal Lands (OAR 660-021-0030(3)(b))

The urban reserve rule provides that if land of higher priority is inadequate to accommodate the amount of land estimated to be needed, second priority for designating urban reserve areas goes to land "designated as marginal land pursuant to ORS 197.247 [(1991)]." Petitioners argue that Metro misconstrued and misapplied Subsection 3(b) in two respects.

First, petitioners note that the term "marginal land" as used in Subsection 3(b) refers to a classification of lands pursuant to <u>former</u> ORS 197.247, a statutory provision adopted in 1983 and repealed in 1993. Or Laws 1993, ch 792, § 55. During that period, only Washington County and Lane County exercised the option to designate certain lands as "marginal lands."[46] It appears that Washington County designated approximately 41,000 acres of land as AF-20, a zone that identifies potential marginal lands. Further, the county established a case-by-case process for the actual determination and designation of lands as "marginal" under <u>former</u> ORS 197.247 (1991). While that statute was repealed in 1993, ORS 215.316 recognizes the continuing validity of marginal lands designated by Washington County. Petitioners argue that Metro failed to recognize the effect of ORS 215.316, and treated Washington County as containing no "marginal lands" for purposes of Subsection 3(b). As a result, petitioners contend, Metro failed to consider whether any marginal lands in Washington County are suitable and should be designated prior to lands of lower priority.

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[46]Under ORS 197.247 (1991), a county can designate as marginal land only land that meets the following criteria: (1) the land was not managed during three of the last five years as part of a farm or forest operation earning a certain gross annual income; (2) the land also meets one of three tests, either (a) most of the land and surrounding lands consist of lots or parcels less than 20 acres in size; (b) the land is located in area of not less than 240 acres, at least 60 percent of which is composed of lots or parcels less than 20 acres in size; or (c) the land is composed predominantly of relatively poor quality agricultural or forest soils.

Second, petitioners contend that Metro erred in applying Subsection 3(b) to justify designation of resource land in Clackamas County, which is not one of the two counties that contain "marginal lands" as that term is used in Subsection 3(b). Petitioners argue that Metro describes certain farm land in Clackamas County as "marginal," based on a layman's use of that term in a document entitled "Urban Fringe Development Capacity Analysis" (Urban Fringe Analysis), and thereby justifies designation of that land under Subsection 3(b). Jt App A 32-33.

With respect to petitioners' first argument, Metro responds that because the marginal lands authority was repealed, no such category of lands exist, and thus Metro did not err in failing to consider marginal lands. Further, Metro disputes that there is any evidence in the record that Washington County has designated marginal lands, or if so, that any marginal lands exist in "adjacent" lands eligible for urban reserves. Finally, Metro contends that even if such marginal lands exist adjacent to the metro UGB, Metro did not err in failing to consider them, because it studied and ultimately designated sufficient first priority land to avoid having to resort to lower Subsection 3 priorities.

With respect to petitioners' second argument, intervenor-respondent Halton argues that the term "marginal lands" used in Subsection 3(b) is not limited to lands classified pursuant to ORS 197.247 (1991), but also includes any land that has been legislatively determined to be "marginal" in the general sense that it is relatively unproductive. Halton notes that in 1996 LCDC readopted the urban reserve rule, including Subsection 3(b), even though ORS 197.247 had been repealed. Halton cites this fact as evidence that LCDC did not intend to adhere to the statutory sense of "marginal land" but retained Subsection 3(b) in order to prioritize land according to relative productivity. Finally, Halton emphasizes that LCDC acknowledged the Urban Fringe Analysis, which determined that the Stafford triangle area is "marginal." We understand Halton to suggest that LCDC's acknowledgment of the

Urban Fringe Analysis indicates LCDC's agreement with Halton's view that Subsection 3(b) is not limited to lands classified pursuant to ORS 197.247 (1991).

However, Metro and Halton fail to recognize the effect of ORS 215.316, which, as petitioners point out, allows counties that have classified lands under ORS 197.247 (1991) to continue those classifications notwithstanding repeal of that statute. Thus, Subsection 3(b)'s plain reference to "land designated as marginal land pursuant to ORS 197.247" means that and nothing more. We reject Halton's argument that Subsection 3(b) refers broadly to relatively unproductive agricultural lands instead of or in addition to lands designated pursuant to ORS 197.247 (1991). Halton's argument that its broader view of Subsection 3(b) is necessary to prioritize relatively unproductive agricultural land ignores the role played by Subsection 3(d), which explicitly prioritizes resource lands based on soil capability.

Further, Metro's response that the record contains no evidence that Washington County has classified lands under ORS 197.247 (1991) is misdirected. Volume III of the Washington County Comprehensive Plan, Rural/Natural Resources Plan Element, describes the county's implementation of ORS 197.247 (1991) and the process by which lands are designated as marginal lands.[47] As described above, the county designated approximately 41,000 acres of AF-20 lands as "potential" marginal lands, and allowed actual designation of particular lands as marginal pursuant to a quasi-judicial plan amendment process. Metro is undoubtedly correct that the record does not contain the decisions allowing designation of certain lands as marginal. However, it is Metro's responsibility to ensure that lands studied and included in urban reserves are characterized accurately according to the Subsection 3 priorities. Just as Metro must affirmatively determine that certain lands are exception lands, and certain other lands are resource lands with a particular soil capability and hence priority,

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[47]At oral argument, Metro represented that the Rural/Natural Resources Plan Element was part of the record. If so, we do not find it. However, we may, and do, take official notice of the Element under OEC 202(7) as part of the county's comprehensive plan.

Metro must also affirmatively determine whether any lands studied have been designated as marginal lands. Metro's failure to do so results in the mischaracterization of such lands as fourth priority lands.[48]

We also reject Metro's final response, that it did not need to characterize marginal lands as such because it studied and ultimately designated a sufficient quantity of first priority lands. We determined in section 1.2 that the urban reserve rule does not require Metro to study all adjacent lands around the metro UGB. We held that Metro may study a subset of adjacent lands as long as that subset contains a quantity of lands to meet the Subsection 1 urban land need, and as long as that subset contains types of lands responsive to the Subsection 3 priorities, sufficient to ensure that Metro's selective application of Subsection 2 does not create the "inadequacy" that justifies inclusion of lower priority land. Metro is correct, then, that the urban reserve rule does not require it to study all or any particular amount of adjacent marginal lands in Washington County, as long as Metro's failure to do so does not result in designation of lands lower in priority than marginal lands. We understand Metro to argue that, because it designated only first priority Subsection 3(a) lands and lower priority lands under Subsection 4, and did not designate any lands pursuant to Subsection 3(b) or 3(d), its failure to study or characterize accurately the marginal lands it may have studied did not result in designations of lands lower in priority than marginal lands.

We disagree. We determine in section 1.6.1 that Metro erred in designating fourth priority lands under Subsection 4 without determining whether lands intermediate in priority between designated first priority lands and the fourth priority land under consideration are adequate to accommodate the Subsection 4 need. Such intermediate priority lands include

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[48]Indeed, the challenged decision recognizes the linkage between AF-20 zoning and marginal lands, justifying inclusion of some of the resource land in URSA 65 because it is zoned AF-20, and quoting the Washington County Code to the effect that AF-20 lands are so designated to indicate that they "may be of 'marginal' use for agricultural and forestry purposes * * *" Jt App A 37 (quoting uncited provision of the Washington County Code).

second priority marginal lands as well as lower capability/higher priority resource lands. Metro cannot conduct that inquiry consistent with the urban reserve rule unless it determines which lands are second priority marginal lands and which are fourth priority lands. Accordingly, Metro cannot establish that its failure to identify marginal lands did not result in the designation of lower priority lands inconsistently with the Subsection 3 priority scheme.

This subassignment of error is sustained.

1.5.3 Secondary Lands (OAR 660-021-0030(3)(c))

Subsection 3(c) of the urban reserve rule provides that if land of higher priority is inadequate to accommodate the amount of land estimated to be needed, then "third priority goes to land designated as secondary if such category is defined by [LCDC] rule or by the legislature." OAR 660-021-0030(3)(c). Petitioners note that since adoption of the urban reserve rule, the legislature has expressly prohibited LCDC from defining any category of secondary lands. ORS 215.304(1). Petitioners thus argue that no category of "secondary lands" exist and that Metro erred to the extent it relies on a "secondary lands" category to justify the designation of resource lands. Petitioners note that Metro relied upon Subsection 3(c) as an alternative basis for designating resource land in URSAs 31, 32, 33 and 65.

Metro agrees with petitioners that no "secondary lands" category exists, but denies that it designated any lands pursuant to Subsection 3(c). Metro defers to intervenor-respondent Halton any defense of Metro's alternative basis for designating URSAs 31 and 65 as "secondary lands." For its part, Halton argues that a "secondary lands" category exists, notwithstanding ORS 215.304(1), because LCDC created that category in the urban reserve rule pursuant to its general agency authority to adopt rules designed to protect the best farmland. Halton notes that LCDC failed to delete Subsection 3(c) when it amended the urban reserve rule in 1996, and argues that that failure indicates LCDC's intent to offer less protection to relatively unproductive agricultural land by means of a higher priority

"secondary lands" category. Accordingly, Halton concludes, Metro properly designated certain resource lands as less productive, "secondary" lands.

Halton's argument is facially inconsistent with the urban reserve rule. The effect of ORS 215.304(1) aside, it is undisputed that neither LCDC nor the legislature has "defined" a category of secondary lands, as Subsection 3(c) requires. No such definition exists within the urban reserve rule. Even if such a definition could be implied along the lines Halton suggest, it is undisputed that no local government has "designated" any secondary lands. Finally, Halton's argument that a category of "secondary lands" must exist in order to implement the protection for quality farmland represented by Subsection 3's priority scheme ignores the role played by Subsection 3(d), which expressly allows prioritization according to soil capability.

In short, we agree with petitioners and Metro that no "secondary lands" category within the meaning of Subsection 3(c) exists, and thus Metro could not lawfully designate any lands under Subsection 3(c). We disagree with Metro that it did not designate any lands pursuant to Subsection 3(c). The findings with respect to URSAs 31, 32, 33 and 65 clearly purport to designate land under that provision.[49]

This subassignment of error is sustained.

1.5.4 Soil Capability (OAR 660-021-0030(3)(d))

The urban reserve rule provides that if lands of higher priority are not adequate to accommodate the amount of land estimated to be needed, then the fourth priority "goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class." OAR 660-021-0030(3)(d).

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[49]See Jt App A 32, 33 and 36. For example, with respect to URSA 32 the challenged decision finds that resource land within that URSA "would be included in urban reserves as 'secondary' land as lower priority lands that are included before other resource lands." Jt App A 32.

Petitioners argue that Subsection 3(d) requires Metro to evaluate the relative capability of resource lands considered for designation and compare them to other resource lands to determine whether other resource lands of lesser quality could satisfy the need or other basis justifying designation of resource lands. That is, petitioners read Subsection 3(d) as requiring prioritization of resource lands based on capability not only within "fourth priority" lands designated under Subsection 3(d) but also for resource lands ultimately designated under other provisions of the urban reserve rule. For example, petitioners argue that Metro designated resource lands in URSAs 53, 54, 55, 62 and 63A pursuant to a Subsection 4(a) "specific land need" exception in the Hillsboro area. According to petitioners, both Subsection 3(d) and Subsection 4 require Metro to evaluate whether resource lands of lesser quality than those designated could satisfy the Subsection 4(a) specific land need in the Hillsboro area. Petitioners note that in applying Subsection 4(a) Metro evaluated alternative sites to demonstrate that resource lands in those URSAs were needed to meet Hillsboro's specific land need, but Metro evaluated only exception areas as alternative sites; it did not evaluate other resource lands that might have a lower soil capability and thus a higher priority for urbanization under Subsection 3(d) than the lands ultimately designated.

Metro repeats its argument that it did not designate any resource lands pursuant to Subsection 3(d) and thus need not determine the soil capability of resource lands and their relative priority under Subsection 3(d), either alone or in applying Subsection 4(a). Further, Metro argues that the sub-priorities required by Subsection 3(d) apply only to resource land designated under Subsection 3(d) and do not apply to resource land designated under Subsection 4.

Our analysis under this subassignment of error draws from our discussion at Subsection 1.5.2, with respect to marginal lands. As we stated there, correct application of Subsection 4 requires that Metro categorize suitable lands according to their Subsection 3

priorities. It follows that Metro must also categorize suitable resource lands according to their Subsection 3(d) sub-priorities. Such sub-priorities are as much a part of the Subsection 3 priority scheme as any of the ordinal priorities. Subsection 4 requires an evaluation of whether "higher priority" land is inadequate to accommodate the Subsection 1 urban land need, and thus whether "lower priority" land under Subsection 3 may be included. As a specific instantiation of that evaluation, Subsection 4(a) requires an evaluation of whether "[s]pecific types of identified land needs" cannot be "reasonably accommodated on higher priority lands" and thus whether lower priority lands may be included. In either case, the terms "lower priority" and "higher priority" lands expressly invoke the Subsection 3 priority scheme. Applying Subsection 4 without regard to the Subsection 3 priority scheme allows urban reserves designations that fundamentally undermine that priority scheme. For example, under Metro's view of the interaction between Subsection 3 and Subsection 4, the most productive resource land (and hence the lowest priority land) may be designated as urban reserves ahead of suitable, higher priority resource lands, marginal lands and exception lands without regard to whether those higher priority lands could reasonably accommodate the Subsection 4 need. Metro's interpretation of the urban reserve rule to allow that result is contrary to the terms and the purpose of the urban reserve rule.

This subassignment of error is sustained.

The fifth assignment of error (LUBA Nos. 97-050/053/057) is sustained.

1.6 SIXTH ASSIGNMENT OF ERROR (LUBA NOS. 97-050/053/057)

Petitioners contend Metro erred in a number of respects in designating resource lands in urban reserve areas under the exceptions to the priority scheme set out in Subsection 4 of the urban reserve rule. We repeat the text of OAR 660-021-0030(4), which provides:

> "Land of lower priority under [Sub]section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in [Sub]section (1) of this rule for one or more of the following reasons:

"(a) Specific types of identified land needs including the need to meet favorable ratios of jobs to housing for areas of at least 100,000 population served by one or more regional centers designated in the regional goals and objectives for the Portland Metropolitan Service district or in a comprehensive plan for areas outside the Portland area, cannot be reasonably accommodated on higher priority lands; or

"(b) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or

"(c) Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands."

Petitioners argue that Metro designated approximately 3,000 acres of resource land pursuant to one or more of the three exceptions at Subsection 4. Petitioners first challenge Metro's recourse to Subsection 4, arguing that Metro erred in reaching that provision before exhausting lands available under the priority scheme in Subsection 3. Petitioners also challenge Metro's application of each of the three exceptions in Subsection 4.

1.6.1 Recourse to OAR 660-021-0030(4)

Petitioners first argue that Metro misconstrued and misapplied the urban reserve rule in concluding that it could invoke the exceptions in OAR 660-021-0030(4). Petitioners explain that in September 1996 the Metro Executive Officer recommended that the Metro Council designate 13,893 acres of first priority lands, identified under Subsection 3(a). However, in December 1996 the Metro Council rejected that recommendation because, as described in section 1.1, data from the draft Report indicated that an additional 3,000 acres would be needed to meet the urban land need. Petitioners argue that, instead of determining whether those additional 3,000 acres could be satisfied from exception lands or other first priority lands under Subsection 3(a), or from marginal lands under Subsection 3(b), or from resource lands, prioritized by soil capability, under Subsection 3(d), Metro jumped immediately to consideration of whether the additional acreage could be identified under the exceptions at Subsection 4. Petitioners contend that Metro's approach undercuts the

Subsection 3 priority scheme and is contrary to the terms of Subsection 4, because Metro failed to determine that lands identified under Subsection 3 were "inadequate to accommodate" the urban land need.

Further, petitioners argue that Metro erred by failing to offset any lands added under Subsection 4 with corresponding reductions of lands elsewhere. We understand petitioners to contend that the urban reserve rule requires that a local government first identify sufficient lands under Subsection 3 to meet the urban land need, i.e. in this case some 18,500 acres. Second, if and only if some of that 18,500 acres are found to be inadequate for any of the reasons stated in Subsection 4, the local government can include lower priority lands that would otherwise not be designated, as long as it makes corresponding reductions in the land identified under Subsection 3, so that the local government does not end up designating additional land above the estimated urban land need. In other words, petitioners argue that land designated under Subsection 4 must substitute for higher priority lands identified under Subsection 3.

Metro responds that Subsection 4 is a separate part of the urban reserve rule that is limited only by its own terms, and that "Subsection 4 is applied regardless of the Subsection 3 priorities, unless priority is part of one of the 'reasons' as in [Subsection] 4(a)." Metro's Response Brief (LUBA Nos. 97-050/053/057) 145 (emphasis omitted). We understand Metro to contend that Subsection 4 allows Metro to designate any land it chooses without regard to the Subsection 3 priorities, as long as it finds that one of the "reasons" provided in Subsection 4(a) to (c) is satisfied. Metro appears to concede that Subsection 4(a) invokes the Subsection 3 priorities in some manner, at least to the extent of requiring an alternative sites analysis to demonstrate that the Subsection 4(a) need cannot be reasonably accommodated on first priority exception lands. However, Metro disputes that even Subsection 4(a) requires it to consider the adequacy of land intermediate in priority between first priority lands and the land under consideration. In other words, Metro argues that it can select a particular site

composed of fourth priority resource lands, and include it in urban reserves for one of the reasons provided in Subsection 4, without considering whether there are suitable undesignated intermediate priority lands that can accommodate the Subsection 4 need.

We agree with petitioners that Metro's interpretation of Subsection 4 is not supported by the text of that provision and is contrary to and tends to undermine the Subsection 3 priority scheme. First, the predicate to including "[l]and of lower priority under [Sub]section 3" for any of the three Subsection 4 exceptions is a finding that "land of higher priority is found to be inadequate to accommodate" the urban land need for any of the three reasons provided in Subsection 4(a) to (c). Subsection 4 does not limit the scope of this required finding to first priority lands or whatever arbitrary cutoff a local government reaches before it decides to resort to Subsection 4. Instead, Subsection 4 refers to "[l]and of lower priority under [Sub]section 3" and "land of higher priority," which is a plain invocation of the Subsection 3 priority scheme in its entirety. Second, under Metro's interpretation, a local government that fails to consider the adequacy of lands intermediate in priority between first priority lands and the lower priority land under consideration is essentially creating the inadequacy that justifies application of Subsection 4. Doing so undermines and hence is inconsistent with the urban reserve rule priority scheme.

Accordingly, we conclude that correct application of Subsection 4 requires the local government to categorize the inventory of suitable lands according to their Subsection 3 priorities and subpriorities, and then, in considering a specific site under one of the Subsection 4 exceptions, determine that no higher priority land is adequate to meet the particular Subsection 4 need. As noted elsewhere, in the present case Metro designated fourth priority lands under Subsection 4(a) and (c) without determining whether higher priority lands, including first priority, second priority or lower capability fourth priority lands, are adequate to meet the Subsection 4 need.

Further, petitioners are correct in their conceptualization of how the urban reserve rule requires Subsections 3 and 4 to be applied: once the local government has categorized the inventory of suitable lands according to the Subsection 3 priorities, it can then apply Subsection 4 and "substitute" lower priority lands for higher priority lands. While Metro did not "add" lands above the amount needed to accommodate the revised urban land need, its failure to follow the process described in the preceding paragraph resulted in an application of Subsection 4 that violates the urban reserve rule.

This subassignment of error is sustained.

1.6.2 Identified Land Needs (OAR 660-021-0030(4)(a))

According to petitioners, Metro designated approximately 1,300 acres of resource land pursuant to the jobs/housing exception provided in Subsection 4(a). Petitioners argue that Metro misconstrued and misapplied that exception in a number of respects.

The parties appear to agree that the jobs/housing exception is designed to alleviate subregional imbalances between jobs and housing, by locating jobs near housing and vice versa with the apparent ultimate goal of reducing commuting and vehicle miles traveled (VMT). Petitioners and Metro appear to agree that Subsection 4(a) requires Metro to (1) define "areas of at least 100,000 population" served by one or more regional centers[50] in RUGGOs where it would apply the jobs/housing exception; (2) project the ratio of jobs to housing for the period the urban reserves are intended to supply; (3) define "favorable ratios" of jobs to housing; (4) determine in each area whether there are enough suitable lands of higher priority to achieve a favorable ratio; (5) if not, determine whether there are alternative means to achieve a favorable ratio; and (6) only if there are not such means, include lands of

[50]Metro explains that the RUGGOs define six "regional centers" in the metro region, one of them being the Hillsboro subregion. According to Metro, a "regional center" is an urban concentration accessible to hundreds of thousands of people, as distinct from the "central city" (downtown Portland), which is accessible to millions, and "town centers," which are accessible to tens of thousands of people.

lower priority in order to achieve a more favorable ratio. The parties differ over whether Metro's decision satisfies this process.

The challenged decision applies the jobs/housing exception to resource lands in URSAs 53, 54, 55, 62 and 63A, in the Hillsboro subregion, and to resource lands in URSA 31 in the Stafford triangle.

1.6.2.1 Failure to Define Areas of at least 100,000 Population

In applying the jobs/housing exception to resource land in URSAs 54 and 55, specifically the St. Mary's property,[51] the challenged decision identifies the pertinent "area" as the "Hillsboro Regional Center," consisting of the Forest Grove, Hillsboro and Orenco town centers, as depicted on the "Town and Regional Centers Map." BD 4/1059. However, the decision also relies on an alternative jobs/housing analysis that uses a slightly larger area with different but undefined boundaries. Petitioners argue that the urban reserve rule requires Metro to divide the metro region into areas of 100,000 or more population, with each area served by at least one regional center designated in the RUGGOs, and with the boundaries of each area well-defined and consistently applied. According to petitioners, the rule does not allow Metro to apply "multiple, inconsistent and overlapping Regional Center Areas, with different versions for each particular property" considered under Subsection 4. Petition for Review (LUBA No. 97-057) 31. Petitioners note that the alternative analyses achieve different results for the Hillsboro subregion in 2015, and argue that those different results demonstrate that the "jobs/housing imbalance" Metro identifies is in part a product of how Metro defines the "area." Further, petitioners note that the closest town center to the St.

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[51]At oral argument, Metro explained that in applying the jobs/housing exception, and indeed every exception in Subsection 4, it generally relied upon developers, property owners or other interested parties to approach Metro with proposals to include specific parcels or sites in urban reserves on one of the grounds provided in Subsection 4, rather than, for example, defining subregions for the metro region as a whole and determining whether lower priority lands should be included in various subregions to balance housing and employment lands. As a result, the jobs/housing analyses in the challenged decision are written from the point of view of justifying the designations of particular resource lands.

Mary's property is actually the Aloha town center, which has a very low jobs/housing ratio for 2040. Had Metro included the Aloha town center in the area, petitioners suggest, the projected "jobs/housing imbalance" for the Hillsboro subregion might not exist.

Metro responds, and we agree, that nothing in the rule prohibits Metro from adopting alternative analyses, and that the alternative analyses Metro adopted are not inconsistent. Petitioners concede that Subsection 4(a) does not proscribe how Metro defines "areas" under the jobs/housing exception, except that each area must contain at least 100,000 in population and be served by one or more regional centers. Petitioners have not demonstrated that the urban reserve rule requires Metro to adopt a single set of defined areas, or to define an area to achieve a balanced jobs/housing ratio.

This subassignment of error is denied.

1.6.2.2 Failure to Analyze Jobs/Housing beyond 2015

According to petitioners, Metro used the wrong time frame in applying the jobs/housing exception to the Hillsboro subregion, because it focused primarily on the jobs/housing imbalance up to the year 2015 rather than, as petitioners contend it must, through the period of time the urban reserves are intended to supply, i.e. 10 to 30 years beyond the time frame used to establish the urban growth boundary. Petitioners cite to evidence that the jobs/housing imbalance for the Hillsboro subregion will become substantially more "favorable" by the year 2040 due to infill and redevelopment. Further, petitioners argue that Metro's analysis fails to account for infill and redevelopment within the existing UGB.

Metro responds, and we agree, that nothing in the urban reserve rule prohibits a local government from considering jobs/housing imbalances that arise before the time frame for which urban reserves are intended to apply. We also agree with Metro that its jobs/housing analysis considers the effect of the density provisions of the UGM Functional Plan, and that

doing so suffices to account for the effect of infill and development on the projected jobs/housing imbalance for the Hillsboro subregion.

This subassignment of error is denied.

1.6.2.3 Hillsboro Jobs/Housing Ratio

Petitioners explain that Metro defined a "favorable" jobs/housing ratio for the entire metro region as one unit of housing for every 1.47 jobs, a figure derived after excluding the central city/downtown Portland area, which by its nature is "jobs rich" and has a large jobs/housing imbalance. Petitioners argue first that Metro erred in considering Hillsboro under the same jobs/housing ratio as the rest of the metro region, minus downtown Portland, because doing so fails to account for Hillsboro's role as a regional employment center. In other words, Petitioners argue that Hillsboro is more similar to downtown Portland because of its role as an employment center and its access to transit than it is to other areas of the metro region, which are generally either "housing rich" or balanced, and thus Metro should have determined a "favorable" jobs/housing ratio for Hillsboro separately from the rest of the region.

Second, petitioners contend that Metro erred in failing to consider the wages of regional employment in relation to the cost of housing in establishing a favorable jobs/housing ratio, which, according to petitioners, is necessary to achieve the purpose of the jobs/housing exception to reduce VMTs. In other words, petitioners argue that Metro must consider whether the types and cost of housing to be constructed in the Hillsboro subregion correspond to the types and cost of housing likely to be demanded by those employed in the subregion, to encourage residence near jobs and thus contribute to reducing VMTs.

The challenged decision addresses petitioners' arguments as follows:

> "The Council disagrees that, because Hillsboro is a designated employment center, it should have a jobs-housing imbalance somewhat more like the Portland Central Business District. There are a number of reasons why Portland, as the business hub of the region, can maintain a jobs-housing imbalance, while it is not appropriate for a suburban employment center to do

> so. For example, Portland has far more mass transit and other transportation facilities available to serve it than does Hillsboro. More importantly, the Council finds it is a more appropriate application of the urban reserve rule to try and achieve a consistent jobs-housing ratio throughout the suburban areas of the region; allowing a large jobs-housing imbalance to develop in the Hillsboro region will increase VMTs, which will in turn create other transportation inefficiencies and imbalances.
>
> "Moreover, the Council disagrees that it is necessary, when applying the jobs-housing balance provisions * * * to consider the relationship between wage scales and housing prices. The primary purpose of the [jobs/housing exception] is to reduce VMTs, which can be achieved by providing sufficient residential land in the urban reserves so that additional housing units can be built in proximity to the jobs expected to be created in the Hillsboro regional area, thereby improving the jobs-to-housing ratio." Jt App A 49.

Metro explains that the challenged decision adequately describes why Hillsboro was not considered similarly with downtown Portland as a separate, permanently imbalanced subregion, and further that nothing in the urban reserve rule requires Metro to consider wages in relation to housing costs. We agree with Metro that the rule does not <u>require</u> it to consider wages in relation to housing costs. However useful such consideration might be, petitioners have not established that consideration of wages in relation to housing costs is required by or is essential to the jobs/housing exception.

This subassignment of error is denied.

1.6.2.4 Failure to Adequately Examine Alternatives

Petitioners and Metro appear to agree that, once Metro has determined that a jobs/housing imbalance exists in a subregion, it may include lower priority lands in urban reserves under Subsection 4(a) only after finding that higher priority lands in the subregion, including lands already within the UGB, cannot reasonably accommodate the identified land need, <u>i.e.</u> meet a favorable jobs/housing ratio. Petitioners argue that Metro's alternative sites analysis failed to satisfy Subsection 4(a), because it (1) failed to consider whether higher priority exception lands, considered cumulatively, can accommodate the Subsection 4(a) land need; (2) failed to adequately consider using land already within the UGB to meet that need;

and (3) failed to consider eliminating or reducing the amount of employment lands within urban reserves in order to avoid worsening the jobs/housing imbalance.

1.6.2.4.1 Cumulative Analysis

In the challenged decision, Metro engages in an alternative sites analysis for the St. Mary's property, examining a dozen exception areas within or adjacent to the Hillsboro subregion that total approximately 1,417 acres. Petitioners argue that, although Metro's analysis claims at least at one point that its focus is on whether these exceptions lands, considered cumulatively, can reasonably accommodate enough housing units, it is clear that the real focus of Metro's analysis is whether any individual exception area is capable, like the St. Mary's property, of being developed at the 2040 Concept densities of 10 dwelling units per net developable acre. For each exception area, the analysis concludes that the individual exception area is not a "reasonable alternative" to the St. Mary's property, primarily because existing parcelization and partial development discourages development at the densities required by the 2040 Concept.[52]

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[52]The findings for Exception Area #47, which Metro cites in its brief as an example, are typical:

> "The parcel described by DLCD is * * * located near the intersection of Evergreen Road and Glencoe Road. The exception area is presently zoned AF-5. When Washington County approved the entire exception area, it included 32 parcels in 29 different ownerships with an average parcel size of 3.99 acres. The County found that 71% of the parcels in the area are already committed to residential use.
>
> "* * * * *
>
> "There is limited potential for providing needed housing in exception area #47. The exception area is highly parcelized and the lots are predominantly in separate ownership. This situation inhibits the city's ability to consolidate parcels into larger blocks of land which could provide housing densities consistent with the 2040 Growth Concept and the RUGGO[s]. This factor alone makes exception area #47 an unsuitable alternative to St. Mary's or the other proposed urban reserves in the Hillsboro regional center area. In addition, because there has been no significant change in the exception area since it was approved by Washington County, ownership patterns are stable which means infill and redevelopment are unlikely. Thus, exception area #47 * * * has almost no potential for providing housing to satisfy the region's special land need and is not a suitable alternative to the St. Mary's property. The number of units that could reasonably be expected to develop on this land is very low; the land is not a reasonable alternative site to St. Mary's or other urban reserves for addressing the jobs-housing imbalance in the region." Jt App A 87.

However, petitioners note, Metro's analysis never considers whether these exception areas, considered cumulatively, can reasonably accommodate enough housing units to meet a favorable jobs/housing ratio in the Hillsboro subregion. Further, petitioners argue that Metro's emphasis on the relative capability of exception lands to develop at 2040 Concept densities, and its exclusion based on considerations not found in the urban reserve rule, such as the shape of the UGB or separation of communities, is contrary to the urban reserve rule. Petitioners contend that, even though these exception lands may not individually achieve the 2040 Concept of 10 dwelling units per net developable acre, even if they develop at half the recommended 2040 density the 1,417 acres of exception lands examined by Metro would yield approximately 8,000 new housing units, twice as many as the 4,000 housing units St. Mary's would produce if master-planned and developed at 2040 densities. "No doubt," petitioners argue, "large flat agricultural tracts such as the St. Mary's property are easier to develop for urban uses than rural residential areas. But that is not the test under the Urban Reserve Rules." Petition for Review (LUBA No. 97-057) 50.

Metro does not respond directly to petitioners' argument that it must consider whether higher priority lands can cumulatively accommodate the Subsection 4(a) land need. Instead, it argues that the Metro Council properly considered whether each exception area it examined is capable of providing enough housing density to accommodate Hillsboro's need consistent with the 2040 Concept or other RUGGO policies. Metro submits that its alternative sites analysis is more than sufficient to satisfy exceptions criterion (ii) and Subsection 4(a). Intervenors-respondent Sisters of St. Mary's of Oregon and Genstar Land Company Northwest (collectively, Genstar) echo Metro's response, adding that Metro properly considered a number of factors, not just whether the exception lands could provide enough housing units, in determining that none of the proposed exception areas is a "reasonable alternative" to St. Mary's. In particular, Genstar emphasizes the basic theme in Metro's analysis, that it is appropriate to consider whether these exception areas can be

developed in accord with the density provisions of the 2040 Concept to the same extent as can St. Mary's.

We agree with petitioners that the Subsection 4(a) jobs/housing exception requires an analysis of whether higher priority lands, considered cumulatively, can reasonably accommodate the quantity of housing units or jobs needed to meet the identified need.[53] As we explained in section 1.1, the jobs/housing exception allows the local government to skew the distribution of housing or jobs around the region to redress jobs/housing imbalances created or unalleviated by the distribution resulting from straightforward application of the Subsection 3 priorities. Accordingly, the focus of the jobs/housing exception is on the quantity of, in this case, housing units in the Hillsboro subregion needed to meet a favorable jobs/housing ratio, and whether that quantity can be produced from higher priority lands than the land under consideration. Lower priority lands can be included under the jobs/housing exception only if the alternative sites analysis shows that suitable higher priority lands, considered cumulatively, cannot provide enough housing units to meet the favorable jobs/housing ratio. Metro's approach misconstrues Subsection 4(a) and is inconsistent with the urban reserve rule's priority scheme, because it inverts the requisite inquiry from whether higher priority lands can reasonably accommodate the land need to whether higher priority lands individually are as good as the lower priority land under consideration, as measured by several considerations extraneous to the jobs/housing exception and the rule. In other words, the issue is not, as Metro's analysis frames it, whether individual higher priority lands are "reasonable alternatives" to the St. Mary's property, but whether any and all lands higher in priority than St. Mary's can reasonably accommodate the specific land need, in this case a

[53]Petitioners limit their argument to whether the alternative sites analysis must consider first priority exception lands, and do not appear to contemplate that Subsection 4(a) requires a broader analysis of all "higher priority" lands, which may in specific instances include first priority exception lands, second priority marginal lands, or fourth priority resource lands with lower capability soils, depending upon the land under consideration.

certain quantity of additional dwelling units. It is undisputed that flat, single-ownership resource lands like St. Mary's are easier to develop and can almost certainly be developed at higher densities than parcelized, partially developed lands such as exception areas. But those considerations are not reflected in the jobs/housing exception and, if applied as the primary focus of that exception, tend to direct urbanization toward undeveloped resource lands and away from partially developed lands, contrary to one of the major themes of the urban reserve rule.[54]

This sub-subassignment of error is sustained.

1.6.2.4.2 Lands Already Within the UGB

In addition to considering exceptions lands outside the UGB, Metro's alternative sites analysis considered rezoning land within the UGB to accommodate the land need. The analysis took into account the increased densities resulting from implementation of the UGM Functional Plan's policies, and also considered the effect of rezoning a vacant 200-acre industrial parcel (the Seaport property) to residential uses. The analysis concluded that an additional 21,500 housing units could result from achievement of the densities required by the UGM Functional Plan, including 1,600 to 1,800 housing units from the Seaport property, if rezoned. Jt App A 100. However, the analysis found that Metro needs to accommodate at least an additional 14,600 housing units than could be accommodated within the UGB to achieve a jobs/housing ratio closer to the favorable ratio. Id. Thus, the analysis concluded

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[54]We do not mean to suggest that Metro cannot consider the ability of lands to meet the density provisions of the 2040 Concept and other applicable RUGGOs in including lands under Subsection 3 and 4. For example, we perceive no violation of the urban reserve rule in selecting lands within a particular priority category on the basis of considerations extraneous to the rule. However, Metro cannot apply those considerations in a manner that effectively trumps or alters the urban reserve rule's priority scheme. At many points in its brief, Metro stresses that the 2040 Concept and its RUGGOs are acknowledged as complying with all applicable goals and rules, including the urban reserve rule. However, that acknowledgment does not function to bless all applications of Metro policies in specific land use decisions. Acknowledgement implies that Metro's RUGGOs and other policies can be applied consistently with the urban reserve rule, but it does not allow Metro to apply those policies in ways contrary to the rule. See Oregonians in Action v. LCDC, 121 Or App 497, 502, 854 P2d 1010 (1993) (that a plan is acknowledged does not mean it has been or will be implemented in a way that is consistent with the goals).

that increased density within the UGB and rezoning the Seaport property would not "obviate the need to include the St. Mary's property in the urban reserves[.]" Id.

Petitioners fault this analysis, arguing that it is not clear that Metro fully considered whether infill and redevelopment could meet the Subsection 4(a) need. More importantly, petitioners contend that the entire jobs/housing imbalance appears to be the result of Metro's own planning decisions. Petitioners argue that much of the jobs/housing imbalance in the Hillsboro subregion projected to develop by 2015 appears to be the result of an additional 25,000 jobs that Metro projects will be created over that period. Petitioners speculate that these additional jobs may result from application of the 2040 Concept, and argue that Metro must explain the source of these additional jobs and, if its policies play a role in creating them, whether that result could be changed by Metro to keep the jobs/housing imbalance from developing.

Metro responds, and we agree, that its analysis of alternative sites within the UGB does not require remand for either of the reasons cited by petitioners. Neither exceptions criterion (ii) nor Subsection 4(a) require Metro to go beyond considering increasing the density and rezoning land within the UGB in order to determine whether land within the UGB can reasonably accommodate the Subsection 4(a) land need. The requirements of the UGM Functional Plan and Metro's consideration of rezoning the Seaport property are adequate to satisfy both criteria, and Metro need not consider, or require Hillsboro to consider, changing its economic policies to reduce job creation as a means of satisfying those criteria.

This sub-subassignment of error is denied.

1.6.2.4.3 Reducing Employment Lands in Urban Reserves

Petitioners contend Metro erred by assuming that all urban reserves will develop at the same mix of land uses and densities as its outer neighborhood design type (10 dwelling

units per acre and 1.8 jobs per acre).[55] This assumption, according to petitioners, means that urban reserves in the Hillsboro subregion will include a certain amount of employment lands, resulting in additional jobs and thus worsening the jobs/housing imbalance. Petitioners argue that Metro must explain why it could not have eliminated or reduced the amount of employment lands in urban reserves in order to avoid worsening the jobs/housing imbalance and thus requiring more lower priority lands to be included than would be otherwise required.

Metro and several intervenors-respondent argue, and we agree, that nothing in the urban reserve rule requires a local government to dedicate most or all lands in urban reserves for residential uses in order to reduce the amount of lower priority lands included under Subsection 4(a).

This sub-subassignment of error is denied.

This subassignment of error is sustained, in part.

1.6.2.5 Failure to Impose Conditions

Petitioners argue that Metro erred in failing to impose conditions or other mechanisms to ensure that lands added to improve the jobs/housing imbalance will actually serve that purpose. Petitioners point out that much of the justification for including the St. Mary's property and other resource lands under the jobs/housing exception is that such lands can be master-planned and developed at relatively high densities. Petitioners cite to several cases where this Board has held that, in bringing land within the UGB on the basis of a particular justification, the local government must ensure through conditions or other means that actual development of the land is consistent with that justification. Concerned Citizens

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[55]The challenged decision actually uses the figure of 4.1 jobs per net acre. Metro concedes that this figure is erroneous, and that the correct figure required by its outer neighborhood design type is 1.8 jobs per acre. We use the correct figure, and ignore the erroneous reference in the findings, because it does not disturb our consideration of petitioners' main point, which is that the jobs allocated to urban reserves, at whatever level, will worsen the jobs/housing imbalance.

v. Jackson County, 33 Or LUBA 70, 109 (1997); DLCD v. City of St. Helens, 29 Or LUBA 485, 498, aff'd 138 Or App 222, 907 P2d 259 (1995); North Plains, 27 Or LUBA at 383-84.

Metro responds that the urban reserve rule does not require conditions or similar mechanisms to ensure that land included under Subsection 4 will ultimately be developed consistently with the basis for those inclusions. Further, Metro contends that urban reserve decisions are, by their nature, at least one step removed from the UGB amendment cases petitioners cite, and several steps removed from actual development, and that there will be several opportunities to apply any conditions that are necessary with respect to particular lands in urban reserves when those lands are included in the UGB, if ever, and ultimately developed. Finally, Metro notes that if a local government conditioned the use of lands included under Subsection 4, it would be a condition on the next action of the local government itself, i.e. to amend the UGB. Metro submits that conditions adopted by one legislative body could not bind subsequent elected legislative bodies in the manner that such bodies can impose binding conditions on development applications by citizens.

We agree with petitioners that the rationale exhibited in the cited UGB amendment cases is equally applicable to decisions including land in urban reserves on the basis of the Subsection 4 exceptions. Without some mechanism to ensure that such lands are urbanized in accordance with the justification that brought them into urban reserves, the terms and purpose of Subsection 4 are easily subverted. However, we do not believe that mechanism need necessarily take the form of a condition, which as Metro points out, may be of dubious enforceability. The urban reserve rule supplies the necessary mechanism in the form of the findings required by Subsection 5. As explained in section 1.3, Subsection 5 requires that "[f]indings and conclusions concerning the results" of Metro's consideration under the urban reserve rule "shall be included in the comprehensive plan of affected jurisdictions." Subsection 5 requires Metro to adopt findings and conclusions regarding its consideration of lands included in urban reserves, including the results of its suitability analyses and any

Subsection 4 bases for inclusion, in order that those findings may be included in the comprehensive plan of affected jurisdictions as a guide to future decisions involving those lands. Once those findings are included in a jurisdiction's comprehensive plan, the Goal 2 consistency requirement should assure that any decisions regarding development of those lands must be consistent with that comprehensive plan and hence the bases on which such lands were included in urban reserves.[56]

The remaining question is whether the findings in the challenged decision suffice to satisfy Subsection 5. We noted in section 1.3 that Metro's findings generally do not address either the suitability or bases for inclusion of lands included in urban reserves, with a few exceptions, notably the St. Mary's property, resource lands in URSAs 53, 62 and 63A, and resource lands in URSA 31, the inclusion of which are all justified on the basis of the Subsection 4(a) jobs/housing exception. Arguably, these findings contain sufficient detail regarding suitability and the basis for inclusion to satisfy the purpose of Subsection 5. In addition, as discussed below, resource lands in ten URSAs were included on the basis of Subsection 4(c). These findings generally do not discuss suitability. Accordingly, with the exceptions noted above, we conclude that Metro's findings do not suffice to satisfy Subsection 5.

This subassignment of error is sustained, in part.

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[56]In the present case involving the metro region, it is not entirely clear what the "affected jurisdictions" are, given the unique jurisdictional structure of Metro. Even if the requisite findings are included in the comprehensive plan of the counties in which the designated urban reserves presently lie, and are included in Metro's equivalent to a comprehensive plan, its regional plans, the challenged decision does not purport to assign urban reserves to any particular city or jurisdiction within the metro region. For example, at oral argument we were advised that no determination has been made as to whether lands in URSA 31 will, if brought into the UGB, be annexed by the City of Lake Oswego or the City of West Linn. Presumably, once it is determined which cities will be "affected" by the challenged decision with respect to certain urban reserves, the Subsection 5 requirement that Metro's findings regarding those reserves be included in their comprehensive plan will apply to those cities.

1.6.3 Urban Services (OAR 660-021-0030(4)(b))

Subsection 4(b) of the urban reserve rule allows a local government to exclude higher priority lands that would otherwise be designated as urban reserves under the Subsection 3 priorities, where "[f]uture urban services" cannot reasonably be provided to those higher priority lands due to "topographical or other physical constraints." As intervenor-respondent City of Hillsboro notes, if specific higher priority sites are excluded on the basis of Subsection 4(b), the priority scheme of Subsection 3 determines what lower priority lands are included in their place. Petitioners identify exception lands in four URSAs (URSAs 1, 20, 49, and 60) that Metro excluded from designation in urban reserves on the basis, among others, that future urban services could not be "efficiently" provided to those lands, which petitioners construe as an application of Subsection 4(b).

Metro responds that it neither excluded nor included lands pursuant to Subsection 4(b), and that each of the four URSAs petitioners identify were excluded because Metro determined that they were not "suitable" for inclusion in urban reserves under Subsection 2 for various reasons, including relative inefficiencies in providing urban services. We agree with Metro that it did not purport to exclude or include any lands pursuant to Subsection 4(b). We address, elsewhere, arguments that Metro misapplied the Subsection 2 suitability criteria with respect to these URSAs and others. However, petitioners' arguments under this subassignment of error are misdirected.[57]

This subassignment of error is denied.

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[57]Metro's determination that the lands at issue in each URSA were unsuitable in part due to difficulties in providing urban services presumably reflects its consideration of Goal 14, factor 3 (orderly and economic provision of public facilities and services). If so, it calls into question what role, if any, Subsection 4(b) could play in designating urban reserves. It is difficult to imagine that any land with "topographical or other physical constraints" so severe that urban services cannot reasonably be provided to it could be deemed "suitable" for inclusion in urban reserves pursuant to Goal 14, factor 3, and hence reach the stage where it must be excluded under Subsection 4(b).

1.6.4 Maximum Efficiency of Land Uses (OAR 660-021-0030(4)(c))

Subsection 4(c) of the urban reserve rule provides that lower priority lands under Subsection 3 may be included in urban reserves if land of higher priority is inadequate for the following reason:

> "Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority land."

Metro designated resource lands in 10 URSAs on the basis of Subsection 4(c). Petitioners challenge three of those designations as misinterpreting and misapplying Subsection 4(c): 615 acres of resource land in URSA 31, 463 acres of resource land (the St. Mary's property) in URSAs 54 and 55, and 156 acres of resource land in URSA 65. According to petitioners, Metro interpreted Subsection 4(c) as allowing the inclusion of lower priority resource land where the "least cost or most direct way" for extending urban services to higher priority lands lies across some of those resource lands. Petition for Review (LUBA No. 97-050) 38. It is significant, petitioners argue, that at one point Metro characterized the appropriate standard under Subsection 4(c) as whether designation of lower priority lands will result in "maximum efficiency of public dollars." Jt App A 34.

Petitioners argue, first, that Metro's interpretation is inconsistent with the terms of Subsection 4(c), emphasizing that that provision applies only where maximum efficiency of lands uses <u>requires</u> inclusion of lower priority lands. In petitioners' view, achieving minor cost savings by running services across resource lands is not a circumstance that "<u>requires</u> inclusion of lower priority lands in order to include or provide services to higher priority land." OAR 660-021-0030(4)(c) (emphasis added). A more appropriate view of Subsection 4(c), petitioners submit, is to interpret Subsection 4(c) as requiring that Metro show that it is <u>impracticable</u> to provide urban services without including resource lands, similar to the standard for adopting an "irrevocably committed" exception to the statewide planning goals under ORS 197.732(1)(b).

Second, petitioners contend that Metro erred in assuming that large tracts of resource land can be included in urban reserves simply because a small portion of those resource lands must be included to provide urban services to higher priority lands. Petitioners note that many urban services are either linear (e.g. roads, utilities) or consistent with continuing agricultural use of the land (e.g. overhead power lines or underground sewer lines). Petitioners argue that Subsection 4(c) does not authorize including the entirety of resource lands within an URSA where the putative justification for including those lands indicates that the Subsection 4(c) need can be met with a portion of those lands. At the very least, petitioners submit, Metro must explain why including the entirety of a large tract of resource land is necessary to provide urban services to higher priority land.

Metro and several intervenors-respondent disagree with petitioners that Subsection 4(c) must be interpreted as requiring a showing that it is "impracticable" to provide urban services to higher priority without including resource lands. In particular, intervenor-respondent Metropolitan Land Company (Metropolitan) responds that an "impracticability" standard is contrary to the terms of Subsection 4(c). Metropolitan argues that the phrase "[m]aximum efficiency of land uses within a proposed urban reserve area" denotes degrees of efficiency, including the cost of providing urban services, among other considerations, and that Subsection 4(c) requires that the local government determine whether lower priority lands must be included in urban reserves to "most efficiently" provide urban services to higher priority lands, i.e. at least cost.

Although we do not agree with petitioners that the "impracticability" standard should be borrowed, even as an analogy, from the context of irrevocably committed exceptions, we agree that the terms of Subsection 4(c) do not allow inclusion of lower priority lands merely because utilities or other services can be provided most cheaply if extended across those lands. Metropolitan's interpretation of Subsection 4(c), that it allows inclusion of lower priority land where it is needed to "most efficiently" provide urban services, is not supported

by the terms of that provision. Contrary to Metropolitan's interpretation, the term "[m]aximum efficiency" in Subsection 4(c) does not refer to urban services or the cost of providing such services, but rather it refers to "land uses within a proposed urban reserve area[.]" (Emphasis added).

The term "[m]aximum efficiency of land uses" is apparently borrowed from Goal 14, factor 4, and in that context invokes a concern for avoiding leapfrog or sprawling development inconsistent with the density and connectivity associated with urban development. See North Plains, 27 Or LUBA at 390 (Goal 14, factor 4, encourages development within urban areas before conversion of rural areas to urban uses). In the Goal 14 context, concerns regarding the relative costs of providing urban services is captured by Goal 14, factor 3, not factor 4. We believe that term "[m]aximum efficiency of land uses" has a similar meaning and scope of meaning in the context of both Goal 14 and Subsection 4(c), i.e. Subsection 4(c) is concerned with the capability of a proposed urban area to develop at the densities and with the connectivity associated with urban development. Thus, Subsection 4(c) applies where the inclusion of lower priority lands is required in order for a proposed urban reserve area to achieve a maximally efficient urban form, either because higher priority lands cannot be included absent inclusion of lower priority lands, or because urban services cannot be provided to higher priority lands absent inclusion of those lands. If a proposed urban reserve area can achieve "[m]aximum efficiency of land uses," that is, develop at urban densities and efficiencies, without including lower priority lands, then inclusion of such lands is not required, and Subsection 4(c) does not apply. That services can be provided at some marginal savings if extended across lower priority land is not a sufficient basis under Subsection 4(c) to include those lands.

Accordingly, we agree with petitioners that Metro misconstrued and misapplied Subsection 4(c), and that its designation of lower priority land in URSAs 31, 54, 55 and 65 is contrary to the urban reserve rule to the extent those designations focus on the most cost-

efficient, that is, the least expensive, delivery of urban services to higher priority lands rather than on whether including those lower priority lands is required in order to achieve maximum efficiency of land uses within a proposed urban area.

Metropolitan also challenges petitioners' second argument that Subsection 4(c) does not allow inclusion of entire tracts of resource land, where inclusion is justified on providing urban services across only a portion of those lands. Metropolitan posits that petitioners' approach could result in an urban form characterized by "cherry-stem" shapes: relatively isolated pockets of higher priority land connected to the rest of the urban area by narrow strips of land containing urban services. Metropolitan argues that such development would not constitute an efficient urban land use pattern, in part because it lacks the connectivity and compact design necessary for efficient urbanization. Further, Metropolitan notes that not all urban services are linear in nature, but that some services, such as schools, libraries, parks, etc., are nonlinear in nature and require a multidimensional urban form to maximize the efficiency of land uses.

We agree with Metropolitan that any application of Subsection 4(c) that led to the creation of "cherry-stem" urban forms would be inconsistent with the "[m]aximum efficiency of land uses within the proposed urban reserve area." However, it does not follow that, when a local government concludes that lower priority lands must be included to provide specific urban services to higher priority lands, Subsection 4(c) allows the local government to also include <u>more</u> lower priority lands than are required to achieve that purpose. Taken to its logical extreme, the position espoused by Metro and other intervenor-respondents would allow a local government to include potentially large areas of lower priority land merely because one corner of that land must be urbanized to provide urban services to higher priority lands. Indeed, that is essentially what petitioners are alleging occurred here, that at best only relatively small portions of the resource land in URSAs 31, 54, 55 and 65 are required to achieve maximum efficiency of land uses by providing urban services to higher

priority lands, and that Metro offers no explanation why the bulk of those resource lands must be included to satisfy Subsection 4(c). We conclude that designations under Subsection 4(c) require that the local government justify the extent of the lower priority lands included in order to provide services to higher priority lands, including linear and nonlinear types of services. Subsection 4(c) does not contemplate that the local government may assume that all lower priority lands within an URSA or within the vicinity of higher priority lands can be included merely because some portion of those lower priority lands may be included pursuant to Subsection 4(c). We examine Metro's designations of lower priority lands in URSAs 31, 54, 55 and 65 in light of these Subsection 4(c) requirements.

1.6.4.1 URSA 31

Metro's findings applying Subsection 4(c) to the 615 acres of resource land in URSA 31 state:

> "URSA #31 is central to the 1214 acres of exception land within URSAs 31, 33 and 34. * * * The maximum efficiency of land uses within the proposed urban reserve area requires the inclusion of [URSA] 31 in order to provide affordable and efficient services to the exception areas within [URSAs] 34, 33, 31 and 30. Skipping over resource lands in URSA #31 would encourage leapfrog and inefficient development and result in inefficient use of the substantial existing and future investments of public resources in this area. Among the already existing substantial public investments in the area is the Stafford interchange, water and sewer service at Rivergrove and unincorporated areas outside Rivergrove, to Bergis and Rosemont Roads and the proposed large regional Lake Oswego park investment, as well as at least one public school (Stafford School) located outside the UGB. Including [URSA] 31 will allow urban services to be provided in an efficient and less costly way to those exception lands that will likely demand such services over the planning period, without impacting significant regional agricultural resources.
>
> "In this regard, the URSA study model subfactor reference to an efficiency factor did not score URSA #31 considering the economies of scale efficiency well served by URSA #31. The URSA study model considered efficiency only in terms of buildability. The closer look at URSA #31 established that it provides a maximum efficiency of public dollars required to serve URSA exception areas in URSAs 31, 33 and 34." Jt App A 34 (emphasis added).

Petitioners argue that these findings merely state that including resource lands in URSA 31 would make it "more" economical or cost-efficient to extend services to exception areas and make use of existing infrastructure, and that the only finding directed at the "[m]aximum efficiency of land uses" with respect to urban services merely cites the economies of scale that result from including those resource lands. See also Jt App A 72 ("including URSA 31 in the urban reserves provides the maximum public efficiencies by amortizing the public's investment in the infrastructure necessary to serve adjacent exception areas[.]").

Metro largely defers discussion of URSA 31 to Halton.[58] On the merits, Halton responds that Metro explained in adequate detail how including URSA 31 supplies efficiencies in the provision of existing and future services.

We agree with petitioners that Metro has misconstrued and misapplied Subsection 4(c) with respect to lower priority lands in URSA 31. "Amortization" of existing public infrastructure or achieving "economies of scale" within a certain area are not bases for including lower priority lands in Subsection 4(c). No doubt urbanizing resource lands in the general vicinity of higher priority lands included in urban reserves will have the effect of amortizing public investment over a larger area and thus achieve greater economies of scale, but so broadly conceived, Subsection 4(c) becomes the exception that swallows the rule. So conceived, Subsection 4(c) could apply to include almost any tract of lower priority land that was in the general vicinity of higher priority lands included in urban reserves, even where no other relationship exists between those lands. In our view, Subsection 4(c) is narrowly directed at circumstances where, given the relationship between higher priority lands, the urban area, and certain lower priority lands, those lower priority lands must be included in

[58]As a threshold matter, Halton argues first that petitioners have waived their right to challenge Metro's designations of resource land in URSAs 31, 54, 55 and 65 because petitioners failed to challenged similar designations in other URSAs. Halton does not explain why petitioners' selective challenges waive their right to raise arguments under Subsection 4(c), and we do not regard it further.

urban reserves in order to achieve the maximum efficiency of land uses, either by thus allowing the inclusion of those higher priority lands, or by providing urban services to those higher priority lands. Metro's findings are largely devoid of explanation why any part of the resource lands in URSA 31, much less all 615 acres, are so situated in relationship to higher priority lands that they must be included in urban reserves to provide urban services.

In fact, we have not been directed to any indication in Metro's findings or elsewhere that <u>any</u> urban services must cross or otherwise require the inclusion of lower priority land in URSA 31 in order to reach higher priority lands.[59] The gist of Metro's findings appear to be that whenever higher priority lands in the Stafford triangle are urbanized and provided urban services, apparently from sources other than across URSA 31, the cost of those services will be less on an amortized or per dwelling unit basis if URSA 31 is <u>also</u> urbanized and those services are <u>also</u> extended to URSA 31.

Even if Metro's findings could be construed as saying that services must cross some portion of URSA 31 in order to provide services to higher priority lands, there is no explanation why <u>all</u> 615 acres of lower priority land in URSA 31 are necessary to achieve that end. As shown on many maps in the record, including OE-11, the resource land in URSA 31 is not located <u>between</u> the closest urban area and higher priority lands included in urban reserves.[60] The bulk of the resource land in URSA 31, if not all of it, is so located in relationship to other lands that it is the <u>higher priority lands</u> that are between those resource

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[59]Indeed, petitioners in LUBA No. 97-052 point out that all of the options considered in Halton's own utility study of URSAs in the Stafford triangle show utilities crossing other URSAs rather than resource land in URSA 31.

[60]The Stafford area forms a triangular-shape with the apex of the triangle to the north. The resource lands of URSA 31 are located generally in the northeast and middle of the triangle, while the exception lands in URSAs 31, 32, 33 and 34 are generally along the western angle of the triangle, proximate to the City of Lake Oswego and City of Tualatin. URSA 30 is far to the south adjacent to the City of West Linn, and is not contiguous with the resource lands in URSA 31. The challenged decision does not specify the origin of urban services for the exception lands adjacent to the urban areas to the west, but it seems improbable that it would be more efficient to service those areas from the northeast, through URSA 31, than from the west.

lands and the closest urban areas from which urban services are likely to extend. We conclude that Metro has failed to demonstrate why including any part of the lower priority land in URSA 31, much less all 615 acres of it, is consistent with Subsection 4(a).

This sub-subassignment of error (URSA 31) is sustained.

1.6.4.2 URSA 54 and 55 (St. Mary's)

In the challenged decision, Metro concludes that "[m]aximum efficiency of land uses" requires that the 463-acre St. Mary's property in URSAs 54 and 55 be included to provide three types of urban services to exception lands to the south and west of that property: water service, sewer service and transportation improvements.[61] Jt App A 35-36. Metro found that both individually and cumulatively the efficiencies gained from using St. Mary's to supply higher priority lands with the three types of services justified inclusion in urban reserves. Id. at 36. Petitioners argue that Metro misapplied Subsection 4(c), and made a decision not supported by an adequate factual base when it included the St. Mary's property under that provision.

1.6.4.2.1 Water Service

In relevant part, the challenged decision finds with respect to the St. Mary's property:

> "[W]ater service to URSA #55 is most efficiently provided by extending water lines across the St. Mary's property. Hillsboro closely examined how water will be provided to the exception portions of URSAs #54 and 55. The city's expert testimony states that '[w]ithout approval of the St. Mary's project [sic], the remaining [URSA] would be without access to TVWD (Tualatin Valley Water District) water . . .' The experts also found that from a utilities planning perspective, constructing a water main across the St. Mary's property 'would enhance the engineering efficiency for the project, it would reduce cost to the developer, and would benefit TVWD and the community by expanding the service area.' These considerations demonstrate that it is both necessary and

[61]The St. Mary's property is tucked into a 90 degree corner of the UGB, so that it is bordered by the UGB on the east and north. The City of Hillsboro lies to the northwest, with unincorporated areas adjacent to Aloha and Beaverton within the UGB to the north and east. To the southwest of St. Mary's are lands also zoned EFU. The exception lands of URSA 55 lie to west of St. Mary's, bordered along the north and west by the City of Hillsboro. The exception lands of URSA 54 lie to the south of St. Mary's, bordered along the west by the UGB.

> desirable to include the St. Mary's property in the urban reserves to provide water service to URSA #55." Jt App A 35-36.

Petitioners argue that this finding is inadequate because it fails to explain why including the St. Mary's property is required in order to provide water service to higher priority lands, or, even assuming it is, why the entire 463-acre St. Mary's property is necessary to supply a water line for exception areas to the west of that property. Petitioners also argue that Metro's finding is not supported by an adequate factual base, because the testimony relied upon acknowledges potential alternatives and thus does not demonstrate that including St. Mary's is required in order to provide water service to higher priority lands.

We agree with petitioner that the challenged finding and the testimony it relies on establish, at most, that including the St. Mary's property would result in more cost-efficient provision of services to higher priority lands. The finding does not establish that including St. Mary's is required to provide water service to higher priority lands. Moreover, we agree with petitioners' second argument that Metro has failed to explain why crossing St. Mary's with a water line requires inclusion of the entire 463-acre parcel. To the extent the findings suggest that development and hence inclusion of the St. Mary's property is necessary to provide the "economies of scale" that make extending the water line across St. Mary's the most efficient means of providing water service to higher priority land, we rejected that view in our discussion of URSA 31. We conclude that Metro's inclusion of the entire St. Mary's property on the basis of extending the water line across it is error, absent an explanation why maximum efficiency of land uses requires the inclusion of the entire property in order to provide services to higher priority lands.

1.6.4.2.2 Sewer Service

The challenged decision states with respect to sewer service:

> "With respect to sanitary sewers, in order to serve the exception areas of URSA #55, USA [the United Sewerage Agency] plans to extend a gravity sewer line across the St. Mary's property to connect with the Rock Creek treatment plan. This extension will allow USA to eliminate its Aloha #3

> pump station which will improve service in the area. Expert testimony provided by the City of Hillsboro states that from a utility planning process, the exception lands in URSAs #54 and 55 will benefit from having sewer service through St. Mary's. Thus, St. Mary's property must be included in the urban reserve to maximize these efficiencies." Jt App A 35.

Petitioners make similar arguments that Metro's findings are inadequate and not supported by an adequate factual base, and we resolve them in the same manner. We agree with petitioners that the challenged findings establish only that the higher priority lands will "benefit" from including the St. Mary's property, and do not establish that doing so is required in order to provide sewer service to the exception lands in URSA 55. In addition, we agree the challenged finding fails to explain why the entire 463-acre St. Mary's property must be included in order to provide sewer service to higher priority lands.

1.6.4.2.3 Transportation Improvements

The challenged decision finds with respect to transportation improvements:

> "As noted in the St. Mary's findings for Goal 14 factors 3-7 in Appendix III, which is incorporated here by this reference, the needed improvements to TV Highway, 209th Avenue and 229th Avenue which will be necessary to serve the urban reserves in the southeastern corner of Hillsboro are not likely to occur without partial funding support from development of St. Mary's. Also, the ability to extend road and other utility infrastructure across St. Mary's is necessary in order to develop the exception land in URSAs #54 and 55. Particularly with respect to the exception area of URSA #55, which lacks adequate access to Hillsboro's arterial road system, providing these transportation facility improvements is critical to urbanizing these areas. If Hillsboro is to maximize the efficiency of land uses in the exception areas of URSAs #54 and 55, the St. Mary's property must be included to insure these transportation facility improvements occur." Jt App A 35.

Petitioners contend, and we agree, that this finding is nothing more than unsupported speculation about the likelihood of obtaining funding for off-premises transportation projects in the Hillsboro region if the St. Mary's property is not developed. Further, as petitioners note, it is quite unlikely under current jurisprudence that the city could lawfully exact from any developer of St. Mary's transportation improvements in excess of those required to address the impact of developing St. Mary's itself. See Dolan v. City of Tigard, 512 US 374,

114 S Ct 2309, 129 L Ed 2d 304 (1994) (city may only exact improvements bearing a "rough proportionality" to the needs and impacts of the proposed development). In addition, Metro's speculation is a variant of the position we rejected above, that development of the St. Mary's property is necessary to help pay for transportation improvements in the vicinity of the higher priority land included in urban reserves. We repeat that Subsection 4(c) is directed at circumstances where lower priority lands is located in a relationship with higher priority lands and the urban area such that the lower priority land or some portion of it must be included in order to provide urban services to those higher priority lands. The mere presence of lower priority lands in the vicinity, such that if those lower priority lands are also included some "economy of scale" would be achieved, is not sufficient to satisfy Subsection 4(c).

Finally, the quoted findings do conclude generally that "roads and other utility infrastructure" must be extended across St. Mary's in order to "develop" the higher priority lands in URSAs 54 and 55. However, those findings do not explain why that is so, and it is not otherwise apparent. The higher priority lands in URSAs 54 and 55 both border major road collectors or arterials and are contiguous to urban areas. Other than the water and sewer service discussed above, there is no indication why roads or other utilities must be extended across St. Mary's in order to develop those higher priority lands. Even if some such indication existed in the record, there is again no explanation why the entire St. Mary's property must be included to satisfy Subsection 4(c).

This sub-subassignment of error (URSAs 54 and 55) is sustained.

1.6.4.3 URSA 65

Pursuant to Subsection 4(c), Metro included 156 acres of resource land in URSA 65, which also contains 265 acres of first priority exception lands. URSA 65 is an irregularly shaped area with the UGB bordering it to the south, generally along Springville Road, which contains water and sewer mains. The bulk of the resource lands in URSA 65 are in the middle of the URSA, contiguous with the UGB, with a smaller isolated portion to the

northeast separated from the UGB by exception lands that border the UGB. A large area of exception lands lies to the northwest of the main bulk of resource lands. The UGB borders these exception lands to the south, within which is located a local community college campus. The challenged decision justifies inclusion of the resource lands in URSA 65 as follows:

> "Sanitary Sewer, Water and Storm Water Lines: There are urban services such as water and sanitary sewer located in Springville Road. Unified Sewerage Agency (USA) has a sewer line in Springville Road; Tualatin Valley Water District has 24" and 16" water lines in Springville Road. In order to serve the exception lands to the north of the subject tax lots, the most efficient provisions of underground utilities would be through the subject lots. The cost of service provision for this URSA was among the lower cost areas studied by KCM ($3,570 per Equivalent Dwelling Unit).
>
> "Efficient land uses: The subject tax lots provide an opportunity to develop at Metro 2040 densities, and a conceptual master plan has been prepared for this area with a net density of almost 13 units per acre--including student housing adjacent to the Portland Community College (PCC) Rock Creek Campus. * * *
>
> "Transportation: This tax lot provides the opportunity for north-south connector streets from Springville Road and pedestrian and bicycle connections into the PCC campus. It provides potential transportation access to the tax lots to the north, and an opportunity to create a better grid system in this portion of Washington County." Jt App A 36-37.

Petitioners argue first that these findings fail to explain why providing services from Springville Road through the resource lands in the middle of URSA 65 to the exception lands in the northeast corner is required in order to provide services to those lands or even why that is the most efficient means of doing so, rather than through the urban area directly to the south of those exception lands.

Second, petitioners contend that Metro's consideration of the potential density of housing that could be built on resource land in URSA 65 as well as other considerations relating to the appropriateness of those resource lands for urbanization are not permissible considerations under Subsection 4(c). Finally, petitioners challenge the findings regarding

transportation, arguing that providing "potential transportation access" to exception areas and creating "a better grid system" are not reasons demonstrating that resource land is required to provide urban services to the higher priority lands in the northeast.

We agree that the challenged finding does not establish that including the resource lands in the middle of URSA 65 is required in order to provide services to the exception lands in the northeast. This issue represents a closer question than the similar issues raised with respect to URSA 31 and URSAs 54 and 55, given that the resource land in URSA 65 is located roughly between the higher priority lands and urban services in Springville Road. However, as petitioners point out, the finding does not explain why services cannot be provided through the urban area directly to the south of the higher priority lands.

We also agree with petitioners that Metro considered a number of reasons regarding the suitability of resource lands for development that are irrelevant and extraneous to Subsection 4(c); however, unless those reasons form the sole basis for designation under Subsection 4(c), we perceive no basis to reverse or remand the decision on that point. Further, we agree that the "potential for transportation access" across resource lands to higher priority lands does not, of itself, demonstrate a basis to include those resource lands in urban reserves, because there is no indication that such access is required to provide access to higher priority lands. Finally, we again agree with petitioners that Metro has failed to explain why including all of the resource lands in URSA 65 is required to satisfy Subsection 4(c).[62]

This sub-subassignment of error (URSA 65) is sustained.

This subassignment of error (1.6.4.) is sustained.

The sixth assignment of error (LUBA Nos. 97-050/053/057) is sustained.

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[62]In particular, there is no explanation or apparent reason why the completely isolated portion of resource land in the northwest corner of URSA 65 must be included to provide urban services to higher priority lands.

1.7 ASSIGNMENTS OF ERROR (INTERVENOR-PETITIONER GRASER-LINDSEY)

INTRODUCTION

Intervenor-petitioner Graser-Lindsey filed a petition for review challenging Metro's decision on a number of grounds, particularly insofar as it designates land in URSAs 25 and 26, which includes an area of small farms and rural residences known as "Beavercreek." URSA 25 borders the metro UGB near the southern edge of Oregon City, and is comprised of 1,048 acres of exception lands. URSA 26 borders URSA 25 to the south, and is comprised of 2,140 acres of exception lands. The two URSAs total 3,188 acres, or approximately 17 percent of the total acreage of lands included in urban reserves.

1.7.1 FIRST ASSIGNMENT OF ERROR (GRASER-LINDSEY)

Intervenor-petitioner argues that Metro misconstrued the urban reserve rule and erred in designating all of URSA 26 and much of URSA 25 because those areas are not "adjacent" to the metro UGB, i.e. those areas do not abut the UGB nor are they "at least partially within a quarter of a mile" of the UGB. OAR 660-021-0010(6). Petitioner notes that none of URSA 26 is within one quarter mile of the UGB, and much of URSA 25 is beyond one quarter mile. Metro interpreted that definition in the context of OAR 660-021-0020, which authorizes Metro to designate urban reserves in coordination with affected local governments, including cities "within two miles of the urban growth boundary," as allowing it to study and designate lands located anywhere within two miles of the metro UGB.

Intervenor-petitioner argues, first, that the "two-mile" limit of OAR 660-021-0020 tells Metro with which cities it must coordinate, and does not modify the meaning of "adjacent lands" or allow Metro to designate lands that do not meet the definition of "adjacent." We agree. We also agree that Metro misconstrued OAR 660-021-0020 to the extent it reads that provision as authorizing Metro to designate lands that do not meet the definition of "adjacent" lands.

However, we disagree with intervenor-petitioner that URSAs 25 and 26 are not "adjacent" to the metro UGB as defined in OAR 660-021-0020. Intervenor-petitioner argues that there must be some outer limit to urban reserves in order to give effect to the definition of "adjacent" and its implicit policy of encouraging a compact urban form, and suggests that an appropriate measure of that limit is whether the center of a proposed URSA is within one quarter mile of the UGB. However reasonable that proposal might be, we see no basis for it in the text of the rule. To the extent the adjacency requirement embodies a policy of encouraging a compact urban form, that policy is satisfied by ensuring that urban reserves are located near the UGB. However, constraining the outer border of such reserves is not required by the rule and may, in particular cases where the supply of suitable land is small and the urban land need large, cause a conflict with the Subsection 1 requirement that urban reserves contain an amount of land sufficient to meet the urban land need over a defined period.[63]

Second, intervenor-petitioner argues that the boundaries of URSAs 25 and 26 extend several miles to the southeast of the metro UGB, forming a narrow, extended "peninsular" shape that, if not inconsistent with the urban reserve rule, is inconsistent with the "compact" and "efficient" urban form required by RUGGO Objectives 1.1 and 1.6.[64] Intervenor-petitioner also notes that URSA 25 and 26 are appended to the Oregon City UGB, which itself forms a peninsular shape extending southeast from the metro area, and thus compounding the problem. Metro does not respond to this argument, or cite to any evidence or explanation demonstrating that ultimate development of lands in URSAs 25 and 26, given

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[63]For example, a city that is surrounded on three sides by water or steep mountains and thus can expand in only one direction might need urban reserves of a considerable depth, if its urban land need were large.

[64]Objective 1.1. provides in relevant part that "[t]he region's growth will be balanced by: * * * maintaining a compact urban form, with easy access to nature." Objective 1.6 provides in part that "[t]he management of the urban land supply shall occur in a manner that: * * * encourages the evolution of an efficient urban growth form."

its linear, peninsular shape, would be consistent with a "compact" or "efficient" urban form. As Metro points out elsewhere, the urban reserves it designates must comply with applicable RUGGOs as well as the urban reserve rule. We agree with intervenor-petitioner that Metro has not demonstrated that URSAs 25 and 26 comply with Objectives 1.1 and 1.6.

The first assignment of error (Graser-Lindsey) is sustained in part.

1.7.2 SECOND ASSIGNMENT OF ERROR (GRASER-LINDSEY)

Intervenor-petitioner contends Metro erred in a number of respects in analyzing the suitability of lands for inclusion in urban reserves, particularly in its use of URSA-matic. However, most of the specific arguments tend to demonstrate, at most, that had Metro configured the URSA-matic analysis to correct arguable deficiencies, the relative suitability scores of URSAs 25 and 26, as well as other URSAs, would probably have been lower. The difficulty with those arguments is that at most they tend to demonstrate that URSAs 25 or 26 are <u>less</u> suitable than Metro concluded they were. We fail to understand how the <u>relative</u> suitability of various URSAs, compared to other URSAs, is a basis to challenge the designation of any particular URSA, absent a showing that Metro erred in concluding that that particular URSA is suitable. With some exceptions described below, intervenor-petitioner does not argue that Metro erred in concluding that lands in URSAs 25 and 26 are suitable for inclusion in urban reserves. Therefore, we address only those arguments that invoke an arguable basis to reverse or remand the challenged decision. The remainder are denied without discussion.

1.7.2.1 Third Subassignment of Error (Graser-Lindsey)

Intervenor-petitioner argues that Metro misapplied Goal 14, factor 6 (Agricultural Retention), because URSAs 25 and 26 contain a number of small farms and agricultural uses, and thus lands in those URSAs should not have been indicated as suitable for urbanization. We agree with Metro that all of the lands within URSAs 25 and 26 are exception lands, and that the "retention of agricultural land" element of Goal 14 is directed at lands that are

designated as agricultural lands. Accordingly, the fact that some agricultural uses occur on exception lands within URSAs 25 and 26 need not be addressed in Metro's analysis of factor 6, and do not provide a basis to conclude that lands within those URSAs are not suitable.[65]

This subassignment of error is denied.

1.7.2.2 Fifth Subassignment of Error (Graser-Lindsey)

Intervenor-petitioner argues that Metro erred in not setting absolute thresholds for each Goal 14 suitability factor measured by URSA-matic. According to intervenor-petitioner, Metro should have set a minimum threshold for each factor and perhaps each subfactor and the failure of an URSA to meet that threshold for any factor should have disqualified that URSA as unsuitable. Instead, intervenor-petitioner explains, Metro considered the totality of scores from all factors in deciding whether an URSA was suitable, resulting in inclusion of certain areas, notably URSAs 25 and 26, that have low scores for certain factors, scores that, according to intervenor-petitioner, are below any reasonable minimum threshold for suitability. For example, intervenor-petitioner notes that URSAs 25 and 26 received the lowest possible scores for the traffic congestion and access to centers subfactors, and argues that those low scores should have disqualified URSAs 25 and 26 from inclusion in urban reserves.

In section 1.4.2.2, we agreed with petitioners that, in the urban reserve context, a determination whether land is suitable for inclusion in urban reserves as measured by the Goal 14 factors requires defining what minimum set of circumstances satisfy each of those factors, i.e. a minimum threshold of some type. Accordingly, we agree with intervenor-petitioner that Metro's failure to define thresholds for the various factors of its suitability analysis requires remand. Absent such thresholds, we cannot meaningfully evaluate whether

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[65]But see our discussion in section 1.7.3 below, with respect to factor 5 (Metro must address the economic impacts of urban reserve designation on the agricultural economy in URSAs 25 and 26).

intervenor-petitioner is correct that URSAs 25 and 26 are not suitable for urban reserves, nor Metro's implicit conclusion that they are.

This subassignment of error is sustained, in part.

The second assignment of error (Graser-Lindsey) is sustained in part.

1.7.3 THIRD, FOURTH, FIFTH, SIXTH AND SEVENTH ASSIGNMENTS OF ERROR (GRASER-LINDSEY)

In these assignments of error, intervenor-petitioner argues that Metro's decision with respect to URSAs 25 and 26 fails to adequately address or show compliance with Goal 14, factor 3 through 7, respectively. Again, for the most part, the gist of intervenor-petitioner's arguments are that, had Metro corrected a number of arguable deficiencies in its analysis of the Goal 14 factors, URSAs 25 and 26 would have received different, presumably lower, relative suitability scores. Again, such arguments provide no basis to reverse or remand the challenged decision, absent a showing that Metro erred in concluding that URSAs 25 and 26 are suitable for inclusion in urban reserves, or that Metro otherwise violated the urban reserve rule or other authority. Accordingly, we address only those arguments that provide an arguable basis to reverse or remand the challenged decision, and deny the remainder without discussion.

In the fifth assignment of error, intervenor-petitioner contends that Metro's analysis of Goal 14, factor 5 EESE consequences fail to adequately address or comply with that factor. Metro's factor 5 analysis assigned for these enumerated consequences three types of subfactors: environmental constraints, jobs/housing balance, and access to centers. For environmental consequences, Metro examined developmental constraints, i.e., the degree to which slopes, floodplains, wetlands, and riparian corridors were present in the URSA. Jt App A 19. For energy and social consequences, Metro examined access to centers, measuring the distance along public rights of way to the central city, regional centers and town centers. Id. For energy, economic and social consequences, Metro also examined the jobs/housing balance in the five regional center market areas, which for URSAs 25 and 26 is

the Milwaukie/Clackamas Town Center area, on the apparent theory that a balanced jobs/housing ratio translates into lower VMTs, which translates into more acceptable economic, energy, and social consequences. Id.

Intervenor-petitioner argues that Metro's EESE analysis is not responsive to factor 5, noting that, for example, evaluating developmental constraints, i.e. the amount of buildable land within an URSA, does nothing to identify or evaluate the environmental consequences of designating that URSA as an urban reserve and hence gives it priority for eventual urbanization.

With respect to energy consequences, intervenor-petitioner notes that the access to centers analysis measures only to an arbitrary cutoff distance, and that distances beyond that cutoff are not measured. Intervenor-petitioner argues that the result for URSAs like 25 and 26 that extend perpendicularly away from the urban regional center is that those URSAs seem much closer than they actually are, which means URSA-matic fails to accurately assess access to centers. Intervenor-petitioner argues that if access to centers had been accurately measured for URSAs 25 and 26, the EESE score for those URSAs, combined with the already low "traffic congestion" scores, would show that those URSAs have extremely poor access to any urban center and hence are unsuitable for urbanization.

With respect to economic and social consequences, intervenor-petitioner contends that Metro's analysis of these factors, limited to the jobs/housing balance in the Milwaukie/Clackamas Town Center area, does nothing to evaluate the consequences of urbanization to the small farms and rural residences in URSAs 25 and 26, which intervenor-petitioner asserts form a significant agricultural economy and a self-identified rural community of "Beavercreek." Intervenor-petitioner argues that eventual urbanization of URSAs 25 and 26 will obliterate that economy and that rural community, that Metro's EESE analysis must evaluate those types of economic and social consequences, and that Metro's

evaluation of the job/housing balance in the Milwaukie/Clackamas Town Center area is not an adequate substitute.

We agree with intervenor-petitioner that Metro's EESE analysis is inadequate to measure the suitability of lands under Goal 14, factor 5, for the reasons she states. Metro's analysis must make some effort to identify environmental consequences and evaluate them, not just assess developmental constraints or buildable lands. To the extent Metro's analysis measures subfactors such as access to centers, it must do so in ways that take into account the actual distances between URSAs and urban centers. Further, evaluation of the jobs/housing balance in a region does little to evaluate economic and social consequences of the types intervenor-petitioner describes, and which we agree are the types of consequences that must be evaluated under factor 5.[66]

The fifth assignment of error (Graser-Lindsey) is sustained, in part. The third, fourth, sixth and seventh assignments of error are denied.

1.7.4 EIGHTH ASSIGNMENT OF ERROR (GRASER-LINDSEY)

In the eighth assignment of error, intervenor-petitioner argues that Metro erred in designating more acreage in urban reserves than needed, for essentially the same reasons as argued in petitioners' first assignment of error, discussed in section 1.1. Intervenor-petitioner's arguments add nothing to petitioners', and likewise do not provide a basis to reverse or remand the challenged decision.

The eighth assignment of error (Graser-Lindsey) is denied.

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[66]We recognize that Metro may have difficulty in quantifying such consequences to fit into its URSA-matic framework, but that simply underscores what may be one of the more pervasive flaws in Metro's approach, its attempt to address the Subsection 2 suitability criteria for most URSAs by using solely a numeric method of analysis. We have difficulty imagining how a criterion such as "social consequences" can be adequately measured by assigning numbers to it.

1.7.5 NINTH ASSIGNMENT OF ERROR (GRASER-LINDSEY)

Intervenor-petitioner argues that Metro erred in designating urban reserves, particularly URSAs 25 and 26, without first identifying and demonstrating a site or purpose-specific local need. Intervenor-petitioner contends that urban reserves cannot be designated based solely on regional needs, but must be linked to identified local needs. Because the regional need is for housing, and URSAs 25 and 26 are already housing-rich, intervenor-petitioner submits, Metro cannot designate those URSAs to satisfy a regional need.

We disagree the urban reserve rule or other authority requires a demonstration of local as opposed to a jurisdiction-wide need before lands can be included in urban reserves. While the Subsection 4(a) jobs/housing exception allows Metro to skew the distribution of lands around the region to correct imbalances caused or unalleviated by straightforward application of the Subsection 3 priorities, we discern nothing that prohibits Metro from designating urban reserves for regional housing needs even though no local housing need has been demonstrated.

Intervenor-petitioner also argues that Metro included an additional 400 acres of exception land to URSA 26 just prior to adopting the challenged decision, apparently in a last minute scramble to find enough land to meet the revised urban land need. As we have discussed elsewhere, Metro failed to go back and study additional lands once it had revised its estimated urban land need from approximately 14,000 acres to approximately 18,000 acres, instead attempting, with only moderate success, to satisfy the revised urban land need from the limited pool of lands initially studied. In URSA 26, Metro ultimately included 400 acres of additional lands in urban reserves without studying those lands for suitability under Subsection 2.[67] We agree with intervenor-petitioner that including lands in urban reserves

[67]Similarly, Metro included unstudied lands in URSA 30, as discussed in section 5.5.

that have not been studied and determined to be suitable under the Subsection 2 criteria is inconsistent with the urban reserve rule.

Intervenor-petitioner raises a number of other arguments or subassignments of error within the ninth assignment of error. None provide a basis to reverse or remand the challenged decision and are denied without discussion.

The ninth assignment of error (Graser-Lindsey) is sustained, in part.

1.7.6 TENTH ASSIGNMENT OF ERROR (GRASER-LINDSEY)

Intervenor-petitioner argues that the procedure leading to adoption of the challenged decision deprived persons in the Beavercreek area of equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution. Further, intervenor-petitioner contends that Metro failed to provide for the public involvement of Beavercreek residents, as required by Goal 1 and the Metro Code, in particular by failing to schedule any "listening posts" for any URSA in Clackamas County, even though "listening posts" were conducted elsewhere in the region. In addition, intervenor-petitioner contends that Metro acted outside its jurisdictional boundaries in designating URSAs 25 and 26, because those URSAs are outside the Metro district, which means, among other things, that Beavercreek residents have no representation on the Metro Council.

Intervenor-petitioner's constitutional and Goal 1 challenges are either not developed or not well taken. Metro conducted a number of hearings and 'listening posts' in the region, some of which intervenor-petitioner attended, and compiled over three volumes of citizen input. Intervenor-petitioner has not established that Goal 1 or the Metro Code requires more. To the extent intervenor-petitioner argues that Metro discriminated against Beavercreek residents by failing to take their views into consideration, intervenor-petitioner has not explained why such omissions constitute a violation of the equal protection clause. Deschutes Development v. Deschutes Cty., 5 Or LUBA 218, 220 (1982).

Intervenor-petitioner's jurisdictional arguments are also not developed or well taken. By its nature, application of the urban reserve rule by any municipal jurisdiction, including Metro, involves designation of urban reserves outside the boundaries of those municipalities, and outside any urban growth boundary, in areas under the jurisdiction of counties. Under OAR 660-021-0020, cities and counties are authorized to cooperatively designate urban reserves, while Metro may do so as long as it coordinates with affected jurisdictions, including affected counties. Further, ORS 268.390 invests Metro with authority to designate areas and activities having significant impact upon the orderly and responsible development of the "metropolitan area," a term which is defined at ORS 268.020(3) as the area "within the boundaries of Clackamas, Multnomah and Washington Counties." Accordingly, we conclude that Metro is authorized to designate urban reserves outside its district boundaries, notwithstanding that doing so necessarily affects persons who are represented on the County Commission but not on the Metro Council.

The tenth assignment of error (Graser-Lindsey) is denied.

1.7.7 ELEVENTH ASSIGNMENT OF ERROR (GRASER-LINDSEY)

Intervenor-petitioner contends that Metro erred in failing to identify and preserve the Beavercreek area as a "rural unincorporated community" in violation of OAR chapter 660, division 22 and provisions of the Metro Code. Intervenor-petitioner asserts that the Beavercreek area is an unincorporated "rural community" as that term is defined at OAR 660-022-0010(7).

However, intervenor-petitioner cites to no evidence that the Beavercreek area meets that definition, and further fails to recognize that whether an area is a "rural community" under OAR chapter 660, division 22 depends on whether the county has identified and designated that area as a rural community. Intervenor-petitioner does not argue that Clackamas County has designated the Beavercreek area as a "rural community" pursuant to OAR chapter 660, division 22, and identifies no obligation or authority for Metro to do so.

The eleventh assignment of error (Graser-Lindsey) is denied.

GROUP 2

(LUBA No. 97-055)

2.1 ASSIGNMENT OF ERROR

Petitioners in LUBA No. 97-055 argue that Metro erred in failing to designate site 113, the northernmost portion of URSA 49. Petitioners state that site 113 is composed entirely of exception lands and other nonresource lands and is thus "first priority" land as provided under OAR 660-021-0030(3)(a). Petitioners argue, first, that Metro's failure to designate site 113 as an urban reserve area is inconsistent with the priority scheme in the urban reserve rule because Metro ultimately designated other lands that are of lower priority than site 113.

Metro responds, and we agree, that petitioners misapprehend the urban reserve rule. The priority scheme reflected in Subsection 3 operates only on that subset of lands studied under Subsection 2 that the local government finds are "suitable" for an urban reserve. Metro argues that the Metro Council excluded site 113 from urban reserves because it found those lands to be unsuitable for inclusion in urban reserves. It is immaterial that land could be considered "first priority" land under Subsection 3, if the local government has found that land to be unsuitable under Subsection 2.

Second, petitioners address the Subsection 2 criteria for suitability and argue that Metro erred in determining that site 113 is unsuitable for inclusion in urban reserves based on those criteria. Petitioners cite to evidence that site 113 received adequate suitability scores in the URSA analysis. We understand petitioners to contend that Metro's conclusion with respect to site 113 is not supported by an adequate factual base.

Metro and intervenor-respondent Parmenter respond by identifying in their briefs evidence supporting a conclusion that site 113 is not suitable for inclusion in urban reserves, particularly evidence of the difficulty of connecting much of site 113 with urban services and

roads in the adjoining urban areas, due to intervening cul-de-sacs and private property. Metro cites to CM 2/458-59, a transcript of the meeting where the Metro Council, with some discussion, voted to exclude site 113 from URSA 49, as evidence that the Metro Council chose not to designate site 113 as an urban reserve because it found that site to be unsuitable for urbanization for failure to satisfy Goal 14, factors 3, 4, and 5.

In sections 1.4.2.2 and 1.7.2.2 of this opinion, we determined that Metro erred in failing to define some minimum thresholds for determining whether each Goal 14 factor is satisfied, and thus whether lands are suitable for inclusion in urban reserves as measured by the Goal 14 factors. Metro's decision not to designate site 113 illustrates the necessity of such thresholds. The Metro Council's discussion cited to at CM 2/458-59 was a vote to exclude site 113 from URSA 49, without mention of suitability or any Goal 14 factors, and without any indication that the Metro Council believed that site 113 is not suitable under any or all applicable Subsection 2 criteria. The discussion preceding the vote allows the inference that a majority of the Council believed that site 113 was relatively less suitable than other areas in some respects, but there is no indication that the Council believed site 113 was or was not suitable for inclusion in urban reserves based on the Subsection 2 criteria, which is the inquiry Subsection 2 demands.

Absent Metro's identification of thresholds for each Goal 14 factor, we cannot meaningfully evaluate whether Metro's decision not to designate site 113 is supported by an adequate factual base.

The assignment of error in LUBA No. 97-055 is sustained, in part.[68]

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[68]The petition for review in LUBA No. 97-055 (Skourtes et al.) incorporates by reference the second, third, fourth, fifth and sixth assignments of error in the combined petitions for review in LUBA Nos. 97-050/53/57 (Group 1). Petitioners in LUBA No. 97-055 make no particularized argument under those incorporated assignments of error, and we do not address them separately.

Group 3

(LUBA No. 97-063)

INTRODUCTION

In LUBA No. 97-063, the City of Hillsboro challenges Metro's compliance with the urban reserve rule, Metro's failure to designate a particular site for inclusion in urban reserves (the Shute Road site), and Metro's enactments with respect to the First Tier concept and designation of First Tier urban reserves. Hillsboro's fourth and fifth assignments of error are directed against the First Tier aspect of the challenged decision, and are addressed below in section 6, along with the similar arguments of petitioner in LUBA No. 97-054. Intervenor-respondent Coalition for a Liveable Future, et al. (the Coalition) filed a brief responding solely to Hillsboro's second assignment of error regarding the Shute Road site.

The Shute Road site is a 200-acre area consisting of fourth priority resource lands located adjacent to the UGB north of Hillsboro, within URSA 62. In November 1996, Hillsboro submitted a request that Metro designate the Shute Road site as a "specific type of identified land need" under Subsection 4(a), explaining that inclusion of that site was necessary to allow Hillsboro to comply with Goal 9 (economic development) and Goal 12 (transportation). Hillsboro submitted evidence that it needed the Shute Road site to meet future demand for large campus industrial uses for the electronics industry. At its February 20, 1997 meeting, the Metro Council voted to delete the Shute Road site from URSA 62. The challenged decision contains no findings related to that deletion, other than a brief mention that new boundaries were approved "to remove resource lands." Jt App A 22.

3.1 FIRST ASSIGNMENT OF ERROR (HILLSBORO)

Hillsboro argues that Metro's decision designating urban reserves does not comply with the urban reserve rule because it (1) fails to adopt findings and conclusions concerning the results of Metro's considerations under the urban reserve rule, as required by Subsection

5; and (2) fails to address the criteria for exceptions in Goal 2 and ORS 197.732, as required by Subsection 2.

3.1.1 Lack of Findings

With respect to Subsection 5, Hillsboro argues that the decision itself, Ordinance 96-655E, does not adopt or incorporate the challenged findings, found at Jt App A 15-105, and that without such adoption or incorporation, the decision lacks the findings required by Subsection 5. Metro responds that at its March 6, 1997 meeting, the Metro Council adopted the challenged findings in support of Ordinance 96-655E, and argues that the Council's failure to incorporate the findings into the decision, or attach it as an exhibit, does not violate Subsection 5.

We agree with Metro that the Metro Council adopted the challenged findings in support of the decision, see CM 1/77, and that Subsection 5 does not require that those findings be incorporated into the ordinance itself or attached as an exhibit.

This subassignment of error is denied.

3.1.2. Failure to Address Exceptions criteria

Hillsboro argues, for the many of the same reasons addressed at section 1.4.2.1, that Metro's failure to address the exceptions criteria in Goal 2, ORS 197.732 and OAR 660-004-0010 requires remand. Hillsboro notes that in considering designation of resource land under Subsection 4(a), the local government must apply the alternative sites analysis imposed by exceptions criterion (ii) to show that the specific land need cannot be reasonably accommodated on land that does not require a new exception. Hillsboro argues that it demonstrated to Metro that land not requiring a new exception could not accommodate its need for the large campus industrial uses, and thus concludes that Metro must make findings addressing the application of exceptions criterion (ii) to the Shute Road site.

In section 1.4.2.1, we determined that Metro failed to comply with the alternative sites analysis required by exceptions criterion (ii) with respect to land included under

Subsection 4. However, as explained in section 3.2, below, Subsection 5 does not require that a local government adopt findings with respect to lands not included in urban reserves. Accordingly, we conclude that Metro's failure to adopt findings applying the exceptions criteria to the Shute Road site is not a basis for reversal or remand.

This subassignment of error is denied.

The first assignment of error (LUBA No. 97-063) is denied.

3.2 SECOND ASSIGNMENT OF ERROR (HILLSBORO)

Hillsboro contends that Metro's refusal to designate the Shute Road site and failure to explain why it refused to designate that site violates the urban reserve rule, ORS 197.732(4) and Goals 2, 9 and 12.

3.2.1 ORS 197.732(4)

ORS 197.732(4) requires that "[a] local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons which demonstrate that the standards of [ORS 197.732(1)] have or have not been met." Hillsboro argues that Subsection 2 of the urban reserve rule requires Metro to comply with the "criteria for exceptions" at, inter alia, ORS 197.732. Hillsboro thus concludes that Metro must comply with ORS 197.732(4) and adopt findings explaining its denial of Hillsboro's request to include the Shute Road site.

Intervenors-respondent the Coalition responds, and we agree, that ORS 197.732(4) applies only when a local government approves or denies an exception, and that Subsection 2 does not require local governments to approve or deny an exception when making urban reserve designations. Subsection 2 does not require that the local government follow the procedures for approving or denying an exception, only that inclusion in urban reserves be based upon the "criteria for exceptions" at ORS 197.732, which is a plain reference to the substantive provisions at ORS 197.732(1)(c) (referred to earlier in this opinion as exceptions criteria (i) through (iv)). The Coalition notes that Goal 14 has similar provisions that require

the local government to apply both "the procedures and requirements" of the Goal 2 exceptions criteria in amending the UGB. In contrast, Subsection 2 refers only to the exceptions criteria without reference to their procedures. We agree with the Coalition that ORS 197.732(4) does not require Metro to adopt findings either with respect to lands included or lands not included in urban reserves.

This subassignment of error is denied.

3.2.2 OAR 660-021-0030

Hillsboro argues that pursuant to Subsection 5, Metro is required to consider and respond to Hillsboro's arguments that it has a "specific type of identified land need" for land suitable for campus industrial use and that that need cannot be reasonably accommodated on higher priority lands.

The Coalition responds that Subsection 5 requires findings concerning only the results of Metro's consideration under the urban reserve rule, and Metro's considerations never resulted in a determination that a specific land need existed for employment lands in the Hillsboro subregion. We agree that Subsection 5 is limited to the results of Metro's considerations, and further that the scope of findings required by Subsection 5 is limited by the evident purpose of that provision, to develop comprehensive plan language to guide future land decisions. See also OAR 660-021-0020 (plan policies and land use regulations shall be adopted to guide the management of urban reserves). Findings regarding land that was not included in urban reserves do not serve that purpose and thus are not required by Subsection 5.

This subassignment of error is denied.

3.2.3 Goals 9 (Economic Development) and 12 (Transportation)

Hillsboro argues that pursuant to ORS 268.380(1) the challenged decision, which amends Metro's UGB plan, its version of a comprehensive plan, must be consistent with the statewide planning goals. Hillsboro contends that it presented evidence that in the future it

will not be able to comply with the requirements of Goal 9 and Goal 12 if the Shute Road site is not included in urban reserves, and that Metro is required to respond to those arguments and adopt findings demonstrating that its urban reserve designations comply with Goals 9 and 12.

Goal 9 is "[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens." Goal 9 requires, in relevant part, that comprehensive plans shall "[p]rovide for at least an adequate supply of sites of suitable sizes, types, locations, and service levels for a variety of industrial and commercial uses consistent with plan policies." See also 660-009-0025 (comprehensive plans must designate sufficient acreage to equal the projected land need during the 20-year planning period). The gist of Hillsboro's arguments regarding Goal 9 is that the existing inventory of industrial land within the UGB in the Hillsboro area is insufficient to accommodate projected demand for large campus industrial uses past the 20-year planning horizon of Hillsboro's comprehensive plan. See CM 11/3011-12.

With respect to Goal 12 (Transportation), Hillsboro submitted testimony to Metro to the effect that the best means of reducing VMTs in the metro region and in Hillsboro was to continue to concentrate industry, particularly the integrated electronics industry, in the Hillsboro area rather than encouraging future industrial development elsewhere in the metro region, to avoid commuting between widespread industrial sites. See CM 11/3012-13.

The Coalition responds that Metro has neither the obligation nor the authority to ensure future goal compliance for the comprehensive plans of individual jurisdictions within its boundaries. Under ORS 268.380(1) and 268.390(4), the Coalition notes, Metro has no authority to require the comprehensive plans of constituent cities to conform to statewide planning goals; on the contrary, Metro may require only that cities conform to Metro's functional plans, and may only recommend that cities take measures to comply with the

statewide planning goals. Accordingly, the Coalition submits, the obligation to ensure goal compliance lies first and last with the individual jurisdictions, not with Metro.

Second, the Coalition argues that Hillsboro's argument is premature. The Coalition contends that, because the challenged decision merely designates urban reserves, and individual parcels therein may or may not ever come inside the UGB, even if Metro is obliged to consider compliance of Hillsboro's comprehensive plan with the goals, that obligation does not arise even with respect to the city's current comprehensive plan until the UGB is expanded. Finally, the Coalition notes that Hillsboro's acknowledged plan currently complies with Goals 9 and 12 as a matter of law, and that Hillsboro offers only speculation that it might be out of compliance beyond the comprehensive plan's planning horizon.

In section 5.3.1, we determine that Metro may anticipate future goal compliance problems on behalf of affected jurisdictions, and take action within its ambit to assist the jurisdiction in correcting those anticipated problems, in the form of designating urban reserves near the jurisdiction under Subsection 4(a). Nonetheless, we agree with the Coalition that Metro bears no obligation to ensure that Hillsboro's comprehensive plan will remain in compliance with Goals 9 and 12 or other goals beyond the city's 20 year planning horizon. The future obligation to ensure the goal compliance of Hillsboro's future comprehensive plan lies solely with Hillsboro.

This subassignment of error is denied.

3.2.4 Goal 2 and OAR 660-021-0020

Hillsboro argues that the Goal 2 coordination requirement and its analogue at OAR 660-021-0020 require that Metro consider and accommodate as much as possible the needs of affected governmental units. Melton v. City of Cottage Grove, 28 Or LUBA 1, 11, aff'd 131 Or App 626, 887 P2d 359 (1994). Further, Hillsboro argues that to "consider and accommodate" means that, while Metro need not accede to every request or concern by

affected governments, it must respond in its findings to the legitimate concerns raised by an affected governmental unit. Waugh v. Coos County, 26 Or LUBA 300, 314 (1993).

The Coalition responds first that Goal 2 does not apply to the challenged decision and that, even if it does, Goal 2 requires coordination with Hillsboro's comprehensive plan, not Hillsboro's requests for additional land. Second, the Coalition argues that the coordination requirement of OAR 660-021-0020 is not analogous to the Goal 2 coordination requirement, but is coextensive with the findings required by Subsection 5, which, the Coalition argues elsewhere, does not extend to findings regarding lands not included in urban reserves. Finally, the Coalition argues that even if the Goal 2 coordination requirement applies, or the OAR 660-021-0020 requirement is analogous, Metro made findings that addressed Hillsboro's concerns. The Coalition notes that Metro made findings that the Hillsboro subregion is or will be housing poor and job rich, which the Coalition argues implicitly countervails Hillsboro's alleged need for additional employment lands. Further, the Coalition argues that even if Metro's findings do not suffice to satisfy the coordination requirement, the record demonstrates that the Metro Council explicitly considered, and rejected, Hillsboro's claim of a specific land need to include the Shute Road site, and thus the record demonstrates that Metro "coordinated" with Hillsboro. CM 2/462-64.

We agree with Hillsboro that, whether or not the Goal 2 coordination requirement applies, the OAR 660-021-0020 coordination requirement is coextensive with its Goal 2 analogue. We disagree with the Coalition that the OAR 660-021-0020 coordination requirement is satisfied by the findings required by Subsection 5. Coordination is not necessarily satisfied by adopting findings regarding the results of Metro's considerations under the urban reserve rule. Further, we perceive no principled basis to distinguish the Goal 2 coordination requirement from the OAR 660-021-0020 requirement. Cf. Melton, 28 Or LUBA at 11 (the coordination requirement of the Transportation Planning Rule should be interpreted the same as the Goal 2 coordination requirement).

Finally, we disagree with the Coalition that either Metro's findings regarding Hillsboro's "housing poor" status or the record cited to us suffice to demonstrate that Metro considered and responded to the city's concerns regarding goal compliance. While Metro's findings allow the inference that Hillsboro will have difficulty demonstrating a need for additional employment lands, nothing in those findings expressly or implicitly consider Hillsboro's concerns regarding goal compliance. Similarly, the cited pages of the record contain no mention or express consideration of Hillsboro's concerns regarding goal compliance. We conclude that Metro has not established that it considered and responded to Hillsboro's concerns, and thus that it coordinated with Hillsboro, as required by OAR 660-012-0020.

This subassignment of error is sustained.

The second assignment of error (LUBA No. 97-063) is sustained, in part.

3.3 THIRD ASSIGNMENT OF ERROR (HILLSBORO)

Hillsboro argues that Metro's amendment to MC 3.01.025(a) requiring all major UGB amendments to include only land designated as urban reserves is inconsistent with ORS 197.298 and Goal 14, because it denies entities like Hillsboro the opportunity to establish at the time of amending the UGB that urban reserves cannot reasonably accommodate a specific land need.

The challenged decision amends MC 3.01.025(a) as follows:

> "All major amendments shall be solely upon lands designated in urban reserves, when designated [unless the petition demonstrates by substantial evidence that the need cannot be met within urban reserves] <u>consistent with 3.01.012</u>. * * *" (Bracketed text deleted; underlined text added).

Hillsboro argues that under <u>former</u> MC 3.01.025(a) it had the right to apply to amend the UGB to include lands not within urban reserves if it could demonstrate a need that could not be met with designated urban reserves. Hillsboro explains that <u>former</u> MC 3.01.025(a) was thus consistent with ORS 197.298, which defines priorities for when land is brought into

1 an urban growth boundary. In particular, Hillsboro notes the consistency between former
2 MC 3.01.025(a) and ORS 197.298(3), which substantively mirrors Subsection 4 of the urban
3 reserve rule in providing that, in amending a UGB, lands not within urban reserves may be
4 included in the UGB where lands in urban reserves cannot accommodate the need for one of
5 three specified reasons, including "[s]pecific types of identified land needs."[69] However,

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[69]ORS 197.298 provides in relevant part:

"(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.

"(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.

"* * * * *

"(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 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."

under MC 3.01.025(a) as amended, Hillsboro argues that it no longer can seek to include lands outside urban reserves as provided in ORS 197.298(3), but can petition Metro to include only lands within urban reserves, when designated consistent with MC 3.01.012. Thus, Hillsboro contends that it is precluded by the amendment to MC 3.01.025(a) from ever petitioning Metro to include the Shute Road site within the UGB, notwithstanding how urgent its need for campus industrial sites becomes, and therefore that MC 3.01.025(a) as amended is inconsistent with ORS 197.298(3).

Metro responds, first, that its consideration, and rejection, of Hillsboro's argument that the Shute Road site should be included in urban reserves under Subsection 4(a) already has given Hillsboro the benefit proffered by ORS 197.298(3) and that Hillsboro should not be able to bypass that determination by seeking a second chance to include the Shute Road site through ORS 197.298(3). Second, Metro contends that, notwithstanding the apparent inconsistency of its amendment to MC 3.01.025(a) with ORS 197.298(3), MC 3.01.025(a) must be applied consistently with Metro's RUGGOs, and Objective 24.1 replicates the provisions of ORS 197.298(3). Accordingly, Metro argues, MC 3.01.025(a) will be applied in a manner that provides the opportunity for demonstrating a "special land need" when the UGB is amended, and thus MC 3.01.025(a) will be applied consistently with ORS 197.298(3).

Third, Metro explains that the amendment to MC 3.01.025(a) was intended to avoid a potential conflict between Goal 14 and the priority scheme in ORS 197.298. Metro notes that UGB amendments require compliance with Goal 14 and the alternatives analysis under Goal 2, Part II, and argues that ORS 197.298

> "does not indicate what the result would be if the Goal 14 alternatives analysis indicated that land of lower statutory priority is the best land to meet the need. If the ORS 197.298 priorities must be applied, regardless of the Goal 14 analysis, other urban reserves would have to be added to the UGB to meet the Goal 14 'need' instead of, for example, adjacent second priority exception land outside a designated urban reserve. ORS 197.298(1)(b).

> "To avoid this potential conflict between [ORS 197.298] and Goal 14, Metro's acknowledged UGB amendment procedures were amended to comply with ORS 197.298 to focus on amendments to designated urban reserves, for adjacent exception lands, <u>based on</u> the urban reserve plan required by [MC] 3.01.012(e). Using the same UGB amendment record that demonstrates the best alternative lands to meet the identified need for Goal 14, the urban reserves could be amended to add any such adjacent exception lands to urban reserves prior to approval of the UGB amendment. Any lands added to urban reserves under this example would become part of ORS 197.298(1)(a) first priority before the UGB amendment was adopted. This allows for site specific adjustment of urban reserves <u>based on the application of Goal 14 locational factors at the time the need is identified.</u> * * * Thus, petitioner is afforded yet another opportunity to add lands to the UGB during a UGB amendment process if the Goal 14 factors can be satisfied." Metro's Response Brief (LUBA No. 97-063) 10-11 (emphasis in original; footnotes omitted).

If we understand Metro's third response correctly, it contends that its code as amended offers Hillsboro an equivalent opportunity to demonstrate a specific land need under ORS 197.298(3) at the time the UGB is amended, because if the Goal 2 alternatives analysis reveals that higher priority urban reserves are inadequate to accommodate Hillsboro's specific land need for, say, campus industrial sites, and lower priority land is better suited, Metro will amend its urban reserves to include that lower priority land, thus converting it into first priority land, instead of applying the ORS 197.298(3) exception process.

It is not clear that the potential "conflict" Metro identifies between Goal 14 and ORS 197.298 exists. It seems to us that the exception process at ORS 197.298(3) is designed to address the very scenario Metro posits, where higher priority land is inadequate to accommodate the need justifying the UGB amendment. The issue under ORS 197.298 is not, as Metro puts it, which is the "best land to meet the need," but rather whether lands in urban reserves or higher priority lands in general can accommodate that need. Moreover, Metro does not identify any code provision or other authority that allows it to include additional land in urban reserves on a site-specific basis <u>outside of the urban reserve process</u>. The process Metro describes, of amending urban reserves rather than following the priorities of

ORS 197.298 and the exception process at ORS 197.298(3) in amending the metro UGB, appears to nullify those statutory provisions. For these reasons, we disagree that the process Metro describes provides parties such as Hillsboro an equivalent opportunity to demonstrate a specific land need as that provided under ORS 197.298(3).

Metro's second response, that notwithstanding deletion of the only apparent basis to do so, MC 3.01.025(a) will be applied to allow parties such as Hillsboro to demonstrate a specific land need under ORS 197.298(3), is undercut by Metro's first and third responses, where Metro's argument effectively demonstrates that Hillsboro will not have such an opportunity. Accordingly, we agree with Hillsboro that Metro's amendment to MC 3.01.025(a) is inconsistent with ORS 197.298.

The third assignment of error (LUBA No. 97-063) is sustained.

Group 4

(LUBA No. 97-048)

INTRODUCTION

Petitioner in LUBA No. 97-048 argues that Metro erred in several respects in failing to designate for urban reserves two separate parcels in URSAs 55 and 65 owned by petitioner. The majority of petitioner's parcel in URSA 65 is zoned EFU; the remainder is zoned AF-20. The other property at issue is a parcel zoned EFU that lies partially within URSA 55 (the Molt property). According to petitioner, Metro studied both parcels for suitability and determined that they were suitable for inclusion in urban reserves. However, petitioner argues, Metro's ultimate decision not to designate each parcel for urban reserves violates the urban reserve rule and other applicable law.

4.1 FIRST ASSIGNMENT OF ERROR (LUBA NO. 97-048)

Petitioner argues that Metro failed to comply with Subsection 2 of the urban reserve rule, because it studied lands that were not "adjacent" to the UGB as defined in OAR 660-021-0010(6), and ultimately included "non-adjacent" lands in urban reserves instead of

suitable lands that are adjacent, such as the two parcels of land petitioner owns.[70] Petitioner contends that Metro should have considered "adjacent" lands, including its two parcels, for inclusion in urban reserves before any "nonadjacent" properties.

The unspoken premise to petitioner's argument is that the term "lands" in the urban reserve rule refers to "parcels" or units of property, and thus that "adjacent lands" consist solely of those parcels or lots that either abut or whose property boundaries are at least partially within a quarter of a mile of the UGB. However, we perceive no basis in the rule to confine the undifferentiated term "lands" to parcels or similar units of property. On the contrary, if the term has any differentiated meaning, the context in which that term appears in the rule suggests that it refers to contiguous areas of land that share one of four types of designations: either land within exception areas, land designated as marginal land under ORS 197.247 (1991), land designated as secondary land, or land designated as agricultural or forestry land under Goals 3 and 4, without regard to the parcels or lots within those areas. OAR 660-021-0030(3)(a) to (d). Under this view, an exception area or a contiguous area of resource land that lies partially within one quarter mile of the UGB is "adjacent," notwithstanding that certain parcels or lots within those areas are further than one quarter mile from the UGB.[71]

Further, we disagree with petitioner to the extent it suggests that the relative proximity of its two parcels to the UGB has any significance in determining whether those lands are included in urban reserves under Subsections 3 or 4. Metro studied petitioner's two parcels of land for suitability, determined that they consisted of fourth priority resource

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[70]OAR 660-021-0010(6) defines the term 'adjacent" to mean "[l]ands either abutting or at least partially within a quarter of a mile of an urban growth boundary."

[71]We need not and do not decide here if the meaning of the term "lands" has the precise meaning described in the text above. That description is only intended to demonstrate that the term does not have the much more limited meaning that petitioner implicitly ascribes to it.

lands,[72] and thus, under Metro's application of the Subsection 3 and 4 priority scheme, those two parcels lacked the priority to be included in urban reserves. The fact that petitioner's parcels abut or are immediately proximate the UGB does not alter the Subsection 3 and 4 priority scheme.

The first assignment of error (LUBA No. 97-048) is denied.

4.2 SECOND AND THIRD ASSIGNMENTS OF ERROR (LUBA NO. 97-048)

In the second and third assignments of error, petitioner contends that Metro's decision was a quasi-judicial and not a legislative decision, at least insofar as the decision affects petitioner's property, which, for purposes of the second and third assignments of error, means its property in URSA 65. Accordingly, petitioner argues that it was entitled to the procedural safeguards inherent in quasi-judicial decision-making, particularly the requirements that the challenged decision contain adequate findings supported by substantial evidence. Petitioner maintains that Metro failed to make adequate findings, supported by substantial evidence, with respect to petitioner's property in URSA 65 and thus that Metro's decision must be remanded.

Petitioner's argument begins, appropriately enough, by discussing the distinction between quasi-judicial and legislative decisions drawn in Fasano v. Washington Co. Comm., 264 Or 574, 581, 507 P2d 23 (1973), where the court held that quasi-judicial decisions are distinguished by application of general rules or policies to specific individuals, interests or situations, rather than to an open class of such individuals, interests or situations. That distinction was refined in Strawberry Hill 4 Wheelers v. Benton Co. Bd. of Comm., 287 Or 591, 601 P2d 769 (1979) and subsequent cases into the following three-part query: (1) whether the action is directed at a closely circumscribed factual situation or a relatively small

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[72]Metro failed to determine whether any lands in Washington County zoned AF-20 consist of lands designated as marginal lands under ORS 197.247 (1991). See our discussion in section 1.5.2. It is possible, but immaterial to this assignment of error, that all or some part of the portion of petitioner's property zoned AF-20 may be second priority land rather than fourth priority land.

number of persons; (2) whether the decision is bound to apply preexisting criteria to concrete facts; and (3) whether the process is bound to result in a decision. Id. at 602-03; Neuberger v. City of Portland, 288 Or 155, 603 P2d 771 (1979), reh'g den 288 Or 585, 607 P2d 722 (1980). The more definitely these queries are answered in the negative, the more likely it is that the decision is legislative rather than quasi-judicial in nature. Casey Jones Well Drilling v. City of Lowell, ___ Or LUBA ___ (LUBA Nos. 97-072/73, March 27, 1998), slip op 9.

Petitioner does not assert that the entire challenged decision is quasi-judicial, only that part of it that affects its property. Petitioner cites Neuberger for the proposition that a decision can consist of both legislative and quasi-judicial components. However, Neuberger does not support that proposition. In that case, the court examined whether a decision rezoning a 601-acre parcel at the request of its owners was quasi-judicial or legislative in nature. The court noted that the city's decision involved policy-making, and commented that both types of decision-making were involved in the decision, but ultimately concluded on the whole that the decision was quasi-judicial in nature. Id. at 164, 166. Petitioner does not cite any other authority, and we are not aware of any, for the proposition that a single decision can be both a legislative and quasi-judicial decision. Absent compelling authority to the contrary, we decline to announce that principle here.

Therefore, we consider whether, under the Strawberry Hill 4 Wheelers factors, the challenged decision as a whole is quasi-judicial or legislative in nature. We conclude that it is legislative. As Metro notes, the decision affects the comprehensive plans of 24 cities and three counties, and designates 54 urban reserve areas that, except for their boundaries, are not even property-specific. The decision is directed at a vast geographic area and a huge number of factual variables, affecting hundreds of thousands of people. Moreover, the level of factual inquiry required for the urban reserve process is relatively abstract. Accordingly, we agree with Metro that the decision was not "directed at a closely circumscribed factual situation or a small number of persons," nor "bound to apply preexisting criteria to concrete

facts."[73] Finally, it is not even clear that the process was bound to result in a decision, at least a decision within any particular time frame, and certainly not with respect to any individual piece of property. The urban reserve rule merely authorizes Metro to designate urban reserves, it does not require it. OAR 660-021-0020. Although ORS 195.145(2) grants LCDC the authority to require Metro to adopt urban reserves under particular circumstances, it is not apparent on this record that LCDC did so.

Because the challenged decision was legislative in character, Metro was not obliged to adopt findings, supported by substantial evidence, with respect to petitioners' property, and the lack of such findings is not a basis for reversal or remand.[74] To the extent petitioner argues that the decision to exclude its parcel in URSA 65 from urban reserves is not supported by an adequate factual base, the record shows that petitioner's parcel in URSA 65 is resource land in active farm use, and that no basis exists to include it in urban reserves under Subsection 3 or 4.

The second and third assignments of error (97-048) are denied.

4.3 FOURTH ASSIGNMENT OF ERROR (LUBA NO. 97-048)

Petitioner argues that Metro erred in excluding petitioner's property in URSA 55, known as the Molt property, from designation as urban reserves, without making findings supported by substantial evidence. Petitioner relies in part on its argument in the second and third assignments of error that Metro's decision was a quasi-judicial decision with respect to

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[73]Petitioner cites to Smullin v. Jackson County, 8 Or LUBA 139 (1983) as an example of a decision affecting a number of properties over a large geographic area that this Board held to be quasi-judicial rather than legislative. However, the facts in Smullin are distinguishable the facts here. Smullin involved a decision rezoning to EFU a number of parcels in the county, in which the county conducted a parcel-by-parcel inquiry, applying relevant criteria to each particular parcel. Despite the geographic scope of the decision and other indicia of legislative action, we held that, in balance, the decision was quasi-judicial rather than legislative, primarily because of the county's application of criteria to each individual parcel. But see 8 Or LUBA at 150-51, Bagg, concurring, (disagreeing that the decision was quasi-judicial).

[74]As explained in section 3.2.2, Subsection 5 of the urban reserve rule does not require findings with respect to land not included in urban reserves.

petitioner's property, and thus subject to the requirement to make findings supported by substantial evidence.

However, petitioner argues in the alternative that even if Metro's decision was a legislative decision, the record lacks an adequate factual base to support Metro's exclusion of the Molt property. According to petitioner, the Molt property was partially included in URSA 55 throughout most of the proceedings below. However, in the final weeks leading up to the challenged decision, the boundaries of URSA 55 were redrawn to exclude the Molt property. Petitioner states that it can find no evidence in the record whatsoever explaining why its property was excluded from URSA 55 and thus not designated, and submits, therefore, that the decision with respect to the Molt property lacks an adequate factual base.

Metro responds that, as initially established, the boundaries of all URSAs were not based on and did not follow property or tax lot lines. Metro explains that, in response to a request by the Metro presiding officer, in February 1997 Metro staff prepared new URSA maps whose boundaries were redrawn to correspond to tax lot boundary lines. Metro states that during this process, the boundaries of a number of URSAs, including URSA 55, were redrawn to exclude parcels, like the Molt property, that are zoned EFU, partially within the URSA boundaries, and not subject to any Subsection 4 specific land need. It was these tax lot-specific maps, Metro explains, that formed the basis for the ultimate Council decision to designate urban reserve areas. Metro argues that the Molt property, like other EFU lands not subject to the exceptions at OAR 660-021-0030(4), are "fourth priority" lands pursuant to OAR 660-021-0030(3)(d), and that Metro chose not to, and did not need to, designate any "fourth priority" lands. Metro attaches to its brief minutes of Metro Council meetings where the tax lot-specific maps were introduced and discussed, and also attaches several examples of EFU lands that were excluded as part of the boundary redrawing process to demonstrate that, contrary to petitioner's suggestion, Metro did not single out petitioner in excluding the Molt property from urban reserve areas. Metro submits that its decision to exclude the Molt

property and similar "fourth priority" EFU lands partially within URSA boundaries is supported by an adequate factual base. We agree.

The fourth assignment of error (LUBA No. 97-048) is denied.

Group 5

(LUBA No. 97-052)

INTRODUCTION

In LUBA No. 97-052, the City of Lake Oswego and the City of West Linn (the cities) challenge Metro's decision to designate urban reserves, with particular emphasis in the fifth through ninth assignments of error in the cities' combined petition for review on Metro's designation of URSAs 30, 31, 32, 33 and 34 in the Stafford triangle.[75] Intervenor-petitioner Clackamas County filed a brief adopting the cities' arguments that Metro improperly applied the urban reserve rule in designating URSAs 31, 32 and 33. Intervenors-respondent Halton filed a brief responding to the cities' assignments of error with respect to URSAs 30, 31, 32, 33 and 34.

5.1 FIFTH ASSIGNMENT OF ERROR (CITIES)

The cities argue that Metro violated the Goal 2 coordination requirement and the similar provisions of ORS 197.015(1) and 268.325, and OAR 660-021-020 by failing to consider the needs of local governments affected by the designation of URSAs 30, 31, 32, 33, and 34 as urban reserves.[76] The cities note that ORS 197.015(5) describes what is required for a comprehensive plan to be coordinated:

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[75]The cities' first, second, third, and fourth assignments of error incorporate respectively the entirety of the first, sixth, fourth and fifth assignments of error in the combined petitions for review in LUBA Nos. 97-050/053/057. The cities make no particularized argument under the first through fourth assignments of error, and we do not address them separately.

[76]OAR 660-021-0020 provides in relevant part:

> "Cities and counties cooperatively, and [Metro] for the Portland Metropolitan area urban growth boundary, are authorized to designate urban reserve areas under the requirements of this rule, <u>in coordination with special districts listed in OAR 660-021-0050(2) and other</u>

> "A [comprehensive] plan is 'coordinated' when the needs of all levels of governments, semipublic and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." (Emphasis added).

In Rajneesh v. Wasco County, 13 Or LUBA 202, 209-211 (1985), LUBA held that the statutory coordination obligation requires that the local government (1) exchange information with affected governmental units, or at least invite such an exchange, and (2) use the information to balance the needs of all governmental units as well as the needs of citizens. Further, this Board has held that the Goal 2 coordination provision requires a local government to adopt specific findings that respond to an affected agency's concerns. ONRC v. City of Seaside, 29 Or LUBA 39, 56 (1995). The cities concede that Metro "exchanged information" with affected governments, including the cities, but argue that Metro responded only generally to one issue the cities raised, the cost of providing services to the Stafford triangle URSAs, and failed to respond at all to another concern: the impact of urbanizing those URSAs on the cities' livability.

Intervenor-respondent Halton responds that Metro satisfied its coordination responsibility when it sought and considered the cities' comments, and that nothing in Goal 2 or elsewhere requires Metro to accede to the cities' requests, or provide the cities with veto power over urban reserves affecting them. Long v. Marion County, 26 Or LUBA 132, 134-35 (1993). Further, Halton argues that Metro responded, at least generally, to the cities' concern regarding the cost of services, and that nothing requires Metro to respond to such concerns with any particular degree of detail. With regard to livability, Halton argues that Metro made general findings for all URSAs to the effect that designation of urban reserves will not impair livability but will actually increase it over the planning horizon by providing opportunities to live and work in a planned urban environment, reduce traffic congestion, and offer other benefits of planned urbanization. Halton also suggests that Metro is required to

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> affected local governments, including neighboring cities within two miles of the urban growth boundary." (Emphasis added).

respond only to legitimate concerns related to application of the urban reserve rule or other standards, and argues that to the extent the cities' livability concerns are merely local aversion to accommodating newcomers or growth, that is not a concern to which Metro need respond.

We agree with Halton that Metro responded generally to the cities' concerns regarding the cost of services, and that that response is adequate to satisfy the coordination requirement in both Goal 2 and the urban reserve rule. The cities' brief does not describe the cities' livability concerns, but merely provides a string of cites to the record. A review of those record cites reveals only a general aversion to local growth and its perceived negative consequences that is not directed at any substantive criteria of the urban reserve process. We agree with Halton that Metro's findings need not respond to or accommodate such concerns.

The fifth assignment of error (LUBA No. 97-052) is denied.

5.2 SIXTH ASSIGNMENT OF ERROR (CITIES)

The cities contend that Metro failed to address, with respect to all URSAs, and in particular to URSAs 30-34, the criteria for exceptions in Goal 2 and in ORS 197.732, as required by OAR 660-021-0030(2). In section 1.4.2.1, we addressed an identical argument advanced by petitioners in LUBA Nos. 97-050/053/057, and determined that Metro had failed to demonstrate compliance with exceptions criteria (ii) of the Subsection 2 exceptions criteria. That determination also resolves the cities' sixth assignment of error.

This assignment of error is sustained.

5.3 SEVENTH ASSIGNMENT OF ERROR (CITIES)

Metro justified inclusion of URSA 31 under Subsection 4(a) on three alternative bases: (1) to provide the additional 352 to 480 acres the City of Lake Oswego needs to comply with the requirements of Goal 10, the Metropolitan Housing Rule (OAR chapter 660, division 7) and ORS 197.303 with respect to affordable housing; (2) to allow the City of Lake Oswego to accommodate its share of the region's growth consistently with the

requirements of the UGM Functional Plan; and (3) to improve an unfavorable jobs/housing ratio with respect to affordable housing. Each alternative basis is premised on Metro's findings (1) that Lake Oswego is largely built-out, with relatively little vacant or redevelopable land, and (2) that Lake Oswego suffers particularly from a lack of affordable housing because its housing inventory is more expensive than other cities in the region. Because the wage level of jobs within the city is relatively low, the result, Metro finds, is that people who work in Lake Oswego generally cannot afford to live there. The cities argue that each of Metro's three alternative bases misconstrues the applicable law, is not supported by substantial evidence, and fatally conflicts with contrary interpretations elsewhere in the decision.

5.3.1 Goal 10

With respect to Goal 10 and related affordable housing provisions, the challenged decision states:

> "The City of Lake Oswego does not have adequate opportunities to supply appropriate amounts of affordable or needed housing to the City or the Metro areas. See generally, Report of Leland Consulting. To meet a fair share of affordable and moderate income requirements over the planning horizon [i.e. to the year 2015], Lake Oswego must have a minimum of 352 to 480 acres of land suitable (buildable) for affordable and moderate housing in addition to its current inventory. Moreover, Lake Oswego requires approximately 628 acres of land suitable for affordable and moderate housing in addition to its current inventory by the year 2040. * * *" Jt App A 61 (emphasis in original).

After discussing the difficulty of meeting the need for affordable housing by infill and redevelopment within the city, the decision goes on to find:

> "URSA 31 supplies a minimum of 414 buildable acres that can help to satisfy the special affordability need. While the City may not wish to concentrate affordable housing in one place, URSA 31 provides a large enough number of buildable acres to enable master planning which can provide a mix and range of housing opportunities with a significant number of affordable housing units * * *. URSA 31 is composed of larger lots which are owned by a relatively few number of property owners. This situation makes it uniquely capable of planning and building a mixed use 2040 community, that can include significant amounts of affordable housing. * * *" Jt App A 62-63.

The cities argue first that Metro's conclusion that Lake Oswego needs additional acreage to comply with Goal 10 is essentially a collateral attack against the city's acknowledged comprehensive plan. The cities contend that Lake Oswego's plan is acknowledged to comply with Goal 10 and associated rules as a matter of law, and thus the "need" to provide affordable housing does not exist, as a matter of law. Second, the cities argue that Metro selectively applied the affordable housing "need" solely to Lake Oswego, rather than examining the region as a whole for potential affordable housing issues, determining each jurisdiction's "fair share" of affordable housing, assigning that share to each jurisdiction, and making urban reserve decisions accordingly. Third, the cities argue that, assuming Lake Oswego does need to add additional acreage for affordable housing, Metro has not demonstrated that the 615 acres of resource land in URSA 31 are necessary to supply that land, given that it also designated 121 acres of exception land in URSA 31 as well as over 600 buildable acres in URSAs 30, 32, 33 and 34, most of which consist of higher priority exception lands. Finally, the cities argue that, assuming Lake Oswego needs additional land for affordable housing, Metro erred in not conditioning designation of URSA 31 to require that affordable housing is actually built.

With respect to the cities' first argument, we agree with Halton that it is appropriate for Metro to anticipate goal compliance problems beyond the planning period of any comprehensive plan, and that doing so does not constitute a collateral attack on Lake Oswego's acknowledged comprehensive plan.

With respect to the cities' second argument, Halton responds that RUGGO Objective 17 requires Metro to adopt a "fair share" strategy for "meeting the housing needs of the urban population in cities and counties <u>based on a subregional analysis</u> * * *[.]" (Emphasis added). Halton submits that, as required by Objective 17, Metro performed a subregional analysis, determined Lake Oswego's "fair share" and accordingly made urban reserve decisions that allows Lake Oswego to assume responsibility for its share. The difficulty with Halton's

argument is that Metro did not apply Objective 17 in designating URSA 31 under Subsection 4(a). Halton cites to no evidence that Metro has adopted a "fair share strategy" or conducted a subregional analysis for any part of the metro region to determine fair shares of affordable housing. Instead, the challenged decision relies on a report submitted by Halton's consultant, which is apparently focused on the lack of affordable housing in Lake Oswego.[77] Halton is incorrect that Objective 17 provides support for Metro's designation of resource lands in URSA 31.

Notwithstanding, we agree with Halton's larger point that the anticipated inability of a jurisdiction to provide affordable housing may constitute a "[s]pecific type[] of identified land need" under Subsection 4(a). The difficulties of ascertaining Lake Oswego's "fair share" aside, Metro has determined that, given Lake Oswego's inability to provide affordable housing, a "need" for an amount of additional lands exists in the Lake Oswego area, in the range of 460 to 628 acres by the year 2040. Arguably, that determination is sufficient to identify the type and extent of the Subsection 4(a) "need." However, as the cities' third argument suggests, Metro has ignored the specific inquiry framed by Subsection 4(a): whether higher priority lands in the area can reasonably accommodate that need. As described in section 1.6 above, designation of lower priority lands under Subsection 4(a) and exceptions criterion (ii) requires a determination that higher priority lands, including studied and unstudied exception lands and other lands higher in priority than the land under consideration, cannot reasonably accommodate the Subsection 4(a) need. As the cities point out, Metro designated 121 acres of exception land in URSA 31 and over 600 buildable acres in URSAs 30, 32, 33 and 34, most of which are exception lands. Further, there appear to be

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[77]The parties have not identified the location of the Leland Consulting Report in the 11,000 page record, but we surmise that it is the document at CM 4/974-80. If so, the report is clearly not a subregional analysis of affordable housing needs for various jurisdictions or a determination of "fair shares" for those jurisdictions. See CM 4/978, n 6 (the Report's assessment of need "does not impose a fair share of the need in Clackamas County generally[.]")

a large number of unstudied exception areas in the Stafford triangle, particularly on the east side, that could potentially be included to help accommodate the identified need. Unlike Metro's application of Subsection 4(a) in the Hillsboro subregion, the challenged findings contain no evaluation of whether higher priority lands in the Stafford triangle area can reasonably accommodate the identified need.

Halton responds that the resource land in URSA 31 is particularly well suited to meeting Lake Oswego's need for affordable housing because (1) it is relatively close to Lake Oswego, and (2) it consists mostly of larger parcels of undeveloped land suitable for master planning and hence development at the densities recommended by the 2040 Concept, which contains density and mixed-use requirements that facilitate the development of affordable housing. According to Halton, URSAs 30, 32, 33 and 34 are not individually as large as URSA 31 and the exception lands within those URSAs tend to be parcelized and partially developed and hence less capable of master planning. Further, Halton notes that URSA 30 is adjacent to the City of West Linn, while URSA 34 is adjacent to the City of Tualatin, and that both are further from Lake Oswego than URSA 31.

We repeat that the inquiry under Subsection 4(a) is not whether a particular lower priority site is more suitable in some respects than alternative higher priority lands, but whether those higher priority lands, considered individually or cumulatively, are adequate to reasonably accommodate the identified Subsection 4(a) need. Further, we reemphasize that Subsection 4(a) requires that the local government justify the <u>extent</u> of lower priority lands it includes in urban reserves, and not assume that all resource lands within an URSA can be included because a need is demonstrated to include some resource lands. Metro has not conducted an alternative sites analysis, as required by Subsections 4(a) and exceptions criterion (ii), and adopted findings, as required by Subsection 5, demonstrating that higher priority lands cannot reasonably accommodate the need for affordable housing. Further, even assuming higher priority lands cannot completely meet that need, Metro has not

justified the inclusion of every acre of resource land in URSA 31. Even assuming Halton is correct that the provision of affordable housing is correlated with master planning, large vacant parcels, and implementation of the 2040 Concept to some degree, Halton has not demonstrated that higher priority lands in the Stafford triangle area are incapable of implementing the 2040 Concept and thus cannot reasonably accommodate all or some part of the identified need for affordable housing.

Finally, with respect to the cities' fourth argument, that Metro failed to condition inclusion of resource land in URSA 31 on the provision of affordable housing, Halton responds that the master planning provisions imposed for major UGB amendments involving urban reserves requires a plan showing compliance with the 2040 Concept. Under Metro's code, that plan must demonstrate "how residential developments will include, without public subsidy, housing affordable to households with incomes at or below area median incomes for home ownership and at or below 80% of area median incomes for rental as defined by the U[nited] S[tates] Department of Housing and Urban Development for the adjacent urban jurisdiction." Jt App A 12 (amendments to MC 3.01.012(e)(6)). Halton submits that these provisions suffice to ensure that, when lands in any urban reserves including URSA 31 are urbanized, affordable housing will be required.

However, it is not clear to us that these provisions adequately ensure that lands in URSA 31 will be urbanized consistently with the specific need that justified their inclusion in urban reserves. For one thing, the section of MC 3.01.012(e) quoted above merely requires that the plan "include" affordable housing, with no discernable requirements to ensure that any significant amount of affordable housing will be built. Further, the requirements of MC 3.01.012(e), including the affordable housing provisions, apply only to legislative or major amendments of the UGB, and do not appear to apply to minor UGB amendments, which are governed by separate criteria at MC 3.01.035 that do not contain affordable housing provisions. Accordingly, Metro's findings are not sufficient to ensure that lands included

pursuant to the Subsection 4(a) "affordable housing" need will be urbanized consistently with that need.

This subassignment of error is sustained, in part.

5.3.2 Regional Growth

Alternatively, Metro justified the inclusion of resource lands in URSA 31, 32 and 33 on the basis of a Subsection 4(a) land need to "meet Lake Oswego's requirements to accommodate its share of growth consistent with the [UGM] Functional Plan." Jt App A 63. Metro's findings do not specify Lake Oswego's share of growth under the UGM Functional Plan, or what percentage of that growth it expects Lake Oswego will not be able to accommodate within the UGB and thus what amount of land must be included in urban reserves to make up the difference. The cities note that Lake Oswego was not required to demonstrate compliance with the UGM Functional Plan until November 1998, and argue that Metro's assumption that Lake Oswego will fail to comply with the UGM Functional Plan's requirements to increase capacity within the UGB is, at best, premature.

Halton responds that Metro could not wait until November 1998 to determine if Lake Oswego could demonstrate compliance with the UGM Functional Plan, and that, given historic resistance in Lake Oswego to increased density, it was reasonable for Metro to assume that Lake Oswego would not be able to meet its capacity targets, and thus some additional land outside the UGB would be necessary for that purpose.

We agree with the cities to the extent that, if Metro expects that Lake Oswego will fail to comply with the UGM Functional Plan and thus that additional lands must be included under Subsection 4(a) to make up the difference, Metro must make some effort to quantify the shortfall and thus the amount of additional lands that are needed. Because Metro never determined the size of the Subsection 4(a) land need, we cannot tell whether Metro's inclusion of <u>all</u> the resource lands in URSAs 31, 32 and 33 included more lower priority lands than were necessary to accommodate that need. In addition, and perhaps more

importantly, Metro failed to conduct an alternative sites analysis demonstrating that higher priority lands in the Stafford triangle area cannot reasonably accommodate the identified land need.

This subassignment of error is sustained, in part.

5.3.3 Jobs/Housing Imbalance

As a final alternative, Metro included the 615 acres of resource land in URSA 31 pursuant to the Subsection 4(a) jobs/housing exception, in order to improve an unfavorable jobs/housing ratio with respect to affordable housing. As the challenged decision notes, Metro's application of the jobs/housing exception to address affordable housing is unusual because the "imbalance" is not between jobs and housing, but rather between jobs with wages that enable workers to afford housing in a given area and jobs with wages that do not. Accordingly, although the area immediately around URSA 31 is housing rich and jobs poor, Metro did not apply the jobs/housing exception to add employment lands to redress that imbalance. Instead, it applied the jobs/housing exception to add additional housing lands in order to increase the supply of affordable housing, thus allowing relatively low-wage workers in the area to live there rather than commute from other areas. For clarity, we follow the cities in referring to Metro's application of Subsection 4(a) in this respect as the "jobs/affordable housing" exception.[78]

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[78]The cities do not directly question whether Metro's concept of the "jobs/affordable housing" exception is consistent with Subsection 4(a). As noted elsewhere, a primary purpose of the Subsection 4(a) jobs/housing exception is to reduce VMTs by locating jobs near housing, and vice versa. Metro's "jobs/affordable housing" exception arguably serves this purpose by attempting to increase the supply of housing that workers in the Lake Oswego area can afford to own. However, we noted in section 5.3.1 above that neither the 2040 Growth Concept nor the challenged decision appears to require that any particular amount of affordable housing be built in newly urbanized areas. Absent some requirement mandating a significant amount of affordable housing, it is possible that most of the actual housing built in the Stafford triangle reserves will follow the prevailing pattern in the area of expensive homes unaffordable to local workers. In other words, it is possible that most of the wage earners in these newly urbanized areas will commute to Portland, Hillsboro or other high-wage employment centers, further exacerbating the existing housing-rich jobs/housing imbalance and more than offset any reduction in VMTs from local housing for local low-wage workers. If so, we question whether Metro's concept of the "jobs/affordable housing exception" is consistent with Subsection 4(a).

In the challenged decision, Metro describes its analysis under the jobs/affordable housing exception:

> "To evaluate this issue, data was taken from a six-mile radius which included the regional centers of Oregon City, Washington Square, Milwaukie, and includes a population greater than 100,000. A three-mile radius was also created linked to the Lake Oswego town center. Both radii centered on the intersection of Stafford and Rosemont Roads [outside the UGB near URSA 31] * * *. The three-mile radius was used to evaluate subregional need as a subset of the regional centers to determine particular subregional needs ties to the Lake Oswego town center. Employment within this area was enumerated, and the average wage for each Standard Industrial Classification was used. Income and household trends estimates for the three and six mile radii and the City of Lake Oswego were obtained and compared with the wage data and housing cost data.
>
> "In employment, a six-mile radius shows that the average wage for area jobs is approximately $27,000. Approximately 45 percent, or 66,000 jobs fall below the average wage. A current count of transportation analysis zones in the six-mile radius indicates a ratio of 1.46 jobs per household. Using this ratio for a guide, approximately 78% of the jobholders could not afford to live in Lake Oswego. * * *" Jt App A 66 (footnote omitted).

The decision goes on to describe the results of its analysis under the three-mile radius, which extends only to the Lake Oswego town center and shows an even larger jobs/affordable housing "imbalance." The decision then concludes:

> "Given the regional and subregional need to achieve affordable housing * * *, URSA 31 is a logical addition to the Lake Oswego town center and the affected regional centers' land base. URSA 31 can be master planned at far higher densities than current Lake Oswego zoning, thus allowing * * * provision of housing within prevailing wage levels. There is a subregional need for housing which can be priced to meet subregional employee needs—without a land base distinct from its current high-priced inventory, this need will not be met in Lake Oswego." Jt App A 67 (footnote omitted).

The cities argue that Metro misconstrued Subsection 4(a) in a number of respects, principally because Metro provides no explanation why higher priority lands within the "area of at least 100,000 population," or within the Stafford triangle for that matter, cannot reasonably accommodate or meet the alleged jobs/affordable housing imbalance. In addition, the cities note that Metro's application of the jobs/affordable housing exception to URSA 31

is at odds with its application of the same exception in the Hillsboro subregion, where the "area of at least 100,000 population" corresponded more or less with the boundaries of a defined regional center rather than an arbitrary six-mile radius, and where Metro applied a straight jobs to housing comparison without taking into consideration, in fact refusing to consider, the impact of wages and affordable housing. The cities submit that Metro cannot have it both ways, and that Subsection 4(a) must be applied consistently across the metro region to avoid turning the jobs/housing exception into "a vehicle for property owners to cook the books to justify inclusion of their own particular properties." Petition for Review (LUBA No. 97-052) 19.

Halton responds, and we agree, that Subsection 4(a) allows Metro to consider jobs/housing ratios for areas of at least 100,000 population "served by one or more regional centers," which implies that the boundaries of the study area need not correspond to the boundaries of the regional centers.[79] We also see no necessary inconsistency in examining wages and affordability as part of the jobs/housing exception in one subregion but not in another. However, we agree with the cities that Metro misapplied the jobs/housing exception in several other respects. First, we see no basis in Subsection 4(a) to conduct an analysis of an area with less than 100,000 population, i.e. the three-mile radius extending only to the Lake Oswego. The terms of Subsection 4(a) require that the unit of analysis is an "area of at least 100,000 population." While the rule may give Metro some flexibility in defining the boundaries of that study area, it cannot designate lower priority lands under Subsection 4(a) using a study area that does not conform to that provision.

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[79]However, we question whether choosing an arbitrary geographic point (which just happens to be near the area of resource lands under consideration) as the center of a study area with a six-mile radius is consistent with the jobs/housing exception. Subsection 4(a) speaks of areas "served by regional centers," which implies urban areas within the UGB. The particular study area chosen here is centered on a geographic point outside the UGB and apparently takes in a vast amount of rural land in Clackamas and Washington County. The boundaries of the study area may not need to correspond with regional center boundaries or any particular geopolitical or administrative boundaries, but meaningful assessment of the ratio between jobs and housing would seem to require a focus on urbanized areas within the UGB.

Second, the six-mile radius that delimits the "area of at least 100,000 population" represents a vast urbanized and semi-urban area including parts of the cities of West Linn, Oregon City, Gladstone, Milwaukie, southwest Portland, Tigard, Tualatin and Wilsonville. The issue under Subsection 4(a) is whether that area as a whole has a jobs/affordable housing imbalance, that is, whether the number of jobs within the area supports wages enabling workers to afford housing within the area. Accordingly, that 78% of jobholders in the area cannot afford to live in Lake Oswego says nothing about whether enough jobs with sufficient wages exist in the area as a whole to allow workers to live in that area.

Third, and perhaps most importantly, even assuming that Metro has demonstrated a jobs/affordable housing imbalance in the area, Metro failed to conduct an alternative sites analysis to demonstrate that higher priority lands in the area (which would presumably include lands outside the Stafford triangle) cannot reasonably accommodate the identified need.

This subassignment of error is sustained.

The seventh assignment of error (LUBA No. 97-052) is sustained in part.

5.4 EIGHTH ASSIGNMENT OF ERROR (CITIES)

The cities contend that Metro's findings regarding the cost and feasibility of public facilities and services to URSA 31 are not supported by substantial evidence in the record, in light of the fact that Metro's decision also designates URSAs 32, 33 and 34 as urban reserves. We understand the cities to argue that the URS Greiner study of utility service to URSA 31 that Metro relies upon assumed service only to URSA 31, without considering the collective impact of servicing other URSAs that were ultimately designated. The cities submit that Metro's findings regarding the costs of serving URSA 31 with utilities is not supported by substantial evidence, because no reasonable person would rely on evidence of utility costs specific to only one URSA in isolation, when designating several URSAs in the same area that, presumably, will have common utility services.

Halton responds that Metro relied upon a separate study, the KCM study, to assess the costs of utility service to the Stafford triangle as a whole, and that the URS Greiner study focused on URSA 31 in response to the cities' objections below regarding the cost of service to URSA 31. We agree with Halton that the KCM study provides an adequate factual base for Metro's conclusions regarding the cost of utility service to URSAs in the Stafford triangle, including URSA 31.

The eighth assignment of error (LUBA No. 97-052) is denied.

5.5 NINTH ASSIGNMENT OF ERROR (CITIES)

The cities argue that Metro erred in adding 67 acres to URSA 30, which increased the size of URSA 30 from 139 acres to 206 acres, without studying those 67 acres for suitability under Subsection 2. Further, the cities argue that much of the acreage added to URSA 30 is outside the West Linn watershed, making those areas more difficult to serve, and also consist of slopes steeper than 25 percent.

Metro explains that when the boundaries of all URSAs were adjusted to reflect tax lot boundaries in February 1997, the 67 acres were added to "round out" URSA 30. Metro's Response Brief (LUBA No97-052) 23. Metro concedes that some of the lands added at this stage consist of slopes steeper than 25 percent, and thus violate Metro's own RUGGOs, but argues that its error in doing so was harmless, because those steep areas can be protected or selected out when making future UGB amendments.

We determined in section 1.7.5 that the urban reserve rule requires that all lands included in urban reserves be studied and found suitable under the Subsection 2 criteria. We agree with petitioners that Metro erred in including the 67 acres without studying the suitability of those lands.

The ninth assignment of error (LUBA No. 97-052) is sustained.

Group 6

(LUBA No. 97-054; Cross-Petitioner Heritage Homes)

INTRODUCTION

Group 6 includes the petition for review filed by Halton in LUBA No. 97-054 and that of cross-petitioner Heritage Homes (Heritage), both of which challenge that aspect of Metro's decision establishing the "First Tier Concept" and designating certain urban reserve areas as "First Tier" areas. In addition, in this section we address the City of Hillsboro's fourth and fifth assignments of error.

The challenged aspect of the decision (1) designates certain urban reserve areas as "First Tier" reserves; (2) defines "First Tier Urban Reserves" in MC 3.01.010 as "reserves to be first urbanized because they can be most-effectively provided with urban services"; and (3) requires, in MC 3.01.012(d), that First Tier reserves "shall be included" in the Metro UGB prior to other areas or lands when the urban growth boundary is expanded.

Metro's response is limited to an argument that all assignments of error directed at the First Tier provisions of the challenged decision are moot as a result of Metro's subsequent decision, in September 1998, to amend MC 3.01.012(d). Metro makes no argument with respect to the merits of those assignments of error and, at oral argument, essentially conceded those merits. Accordingly, we first address Metro's mootness defense.

The challenged decision adopts MC 3.01.012(d), which provided that First Tier urban reserves "shall be included" within the UGB prior to other lands unless a special land need is identified. Metro explains that in September 1998 the Metro Council adopted Ordinance 98-772B, which among other provisions amended the text of MC 3.01.012(d) as follows:

> "First tier urban reserves shall be [included] <u>considered for inclusion</u> in the Metro Urban Growth Boundary prior to other urban reserves unless a special land need is identified which cannot be reasonably accommodated on first tier urban reserves." (bracketed text deleted; underlined text added).

Metro argues that the gravamen of the assignments of error directed at the First Tier provisions is that, on various grounds, Metro erred in <u>requiring</u> that First Tier urban reserves be included in the metro UGB prior to other lands. According to Metro, the subsequent

amendment to MC 3.01.012(d) eliminates that requirement, and replaces it with an "internal policy guideline" that simply requires Metro to "consider" inclusion of First Tier urban reserves before considering the inclusion of other lands. Metro submits that the amendment to MC 3.01.012(d) moots those assignments of error directed at MC 3.01.012(d).

In addition, at oral argument, Metro recognized that some of the assignments of error are directed not at MC 3.01.012(d), but also at the evidentiary, procedural and legal basis for adopting the First Tier map and the First Tier definition. At oral argument, Metro contended that, although its September 1998 decision did not readopt that map, or modify the First Tier definition, the decision record of that proceeding contains the evidence and public participation necessary to remedy any defects in the prior record and proceeding. Metro submits that any deficiency in the challenged decision is remedied by the record of the September 1998 decision, and thus those assignments of error directed at the First Tier map and definition are also moot.

We agree with Hillsboro and Halton that the September 1998 amendment to MC 3.01.012(d) does not moot any of the First Tier assignments of error. With respect to the challenges to the First Tier map and definition, Metro provides no authority for the proposition that the record of a separate, subsequent decision can remedy the conceded evidentiary and legal deficiencies of a prior record and decision, and we are aware of none. With respect to the amendments to MC 3.01.012(d), we agree with Halton that its challenges to MC 3.01.012(d) are concerned with the <u>priority</u> granted to First Tier reserves by either version of MC 3.01.012(d), whether that priority is one of inclusion or merely consideration for inclusion. For these reasons, adoption of Ordinance 98-772B does not moot any of the assignments of error addressed below.

6.1 FIRST ASSIGNMENT OF ERROR (HALTON)

FOURTH ASSIGNMENT OF ERROR (HILLSBORO)

Both Halton and Hillsboro argue that the First Tier concept itself violates Goal 14 and Metro's acknowledged code and RUGGOs because it creates a single threshold standard for UGB amendments based on the economic provision of urban services, essentially Goal 14, factor 3, rather than basing those decisions on consideration and balancing of all of the Goal 14 locational factors.

At oral argument, Metro responded to the effect that in amending the UGB it would apply the First Tier concept in accordance with Goal 14 by evaluating First Tier urban reserves under all of the Goal 14 locational factors. However, we agree with both petitioners that the First Tier concept of assigning priority, even priority of consideration, to certain reserves based solely on cost-effectiveness rather than consideration of all the Goal 14 locational factors is inconsistent with Goal 14. It may be permissible for Metro to assign priority or "First Tier" status to certain urban reserves <u>after</u> consideration of all of the Goal 14 factors, but doing so <u>prior</u> to consideration of all the Goal 14 factors means that the reserves first considered and thus most likely to be brought into the metro UGB will be weighted in favor of one Goal 14 factor, which violates the balancing of factors that is fundamental to Goal 14.

The first assignment of error (LUBA No. 97-054) and the fourth assignment of error (LUBA No. 97-063) are sustained.

6.2 REMAINING ASSIGNMENTS OF ERROR (LUBA NO. 97-054 AND 97-063)

Halton's second through fifth assignments of error in LUBA No. 97-054, Hillsboro's fifth assignment of error in LUBA No. 97-063, and cross-petitioner Heritage's first through fourth assignments of error all address alternative grounds for reversing or remanding the First Tier concept. Our determination in section 6.1 that the First Tier concept as implemented by Metro violates Goal 14 makes it unnecessary to address those alternative challenges.

CONCLUSION

Metro requests that, if the challenged decision is remanded, that this Board uphold the severance clause that is part of the decision, and sever all parts or designations of the decision that were not challenged or were sustained on appeal, so that those parts or designations may remain in effect.

We question whether we have authority to make determinations with respect to aspects of a decision that were not challenged or raised on appeal. Even if we do, we would decline to exercise it here, because some of the bases for remands we have sustained are so general or pervasive that we would find it difficult to determine the precise boundaries of the parts or designations of the decision have not been affected by our remand.[80]

Metro's decision is remanded.[81]

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[80]However, we know of nothing prohibiting Metro from determining, on remand, what aspects or designations of the decision were not affected by the remand and thus which may be severed from the proceedings on remand by virtue of the severance clause.

[81]The 77-day period within which the Board was required to make a final decision in this consolidated appeal expired October 25, 1998. Pursuant to ORS 197.840(1)(d), the Board hereby grants a continuance for the intervening period between October 25, 1998, and the date of this opinion, and makes the following findings pursuant to 197.840(2):

1. The Board finds that the complexity of this consolidated appeal, including the number of the parties, the enormous size of the record, and the existence of novel questions of fact or law, make it unreasonable to expect adequate briefing, argument and consideration of the issues within the 77-day time limit.

2. The Board finds that failure to grant the continuance in this proceeding would have resulted in a miscarriage of justice, because the complexity of the facts, issues and the law in this case required a considerable amount of additional time for all parties to brief their positions, to resolve preliminary motions, and to prepare for oral argument. The Board's failure to grant additional time both for the parties and its own consideration would have prejudiced the substantial rights of many parties to a full and fair hearing.

3. The ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.