

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

<b>IN THE MATTER OF THE REVIEW</b>	)	
<b>OF THE DESIGNATION OF URBAN</b>	)	<b>COMPLIANCE</b>
<b>RESERVES BY METRO AND RURAL</b>	)	<b>ACKNOWLEDGEMENT</b>
<b>RESERVES BY CLACKAMAS COUNTY,</b>	)	<b>ORDER 12-ACK-001819</b>
<b>MULTNOMAH COUNTY, AND</b>	)	
<b>WASHINGTON COUNTY</b>	)	

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

- Metro Ordinance No. 10-1238A, the June 23, 2010 joint and concurrent submittal of Clackamas County, Multnomah County, Washington County, and Metro (initial submittal);
- Metro Ordinance No. 11-1255, the May 13, 2011 (re-designation submittal);
- Objections received;
- The Department’s staff reports;
- Written exceptions to the Department’s reports; and
- Arguments and information presented at Commission hearings conducted on October 19-22 and 29, 2010 and August 18-19, 2011.

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**I. INTRODUCTION**

**A. Procedural History**

1. On June 23, 2010, the Department received Metro Ordinance No. 10-1238A, the joint and concurrent submittal of Clackamas County, Multnomah County, Washington County, and Metro pursuant to ORS 197.628-197.650 (initial submittal).
2. Pursuant to OAR 660-025-0150(1)(c), the Director referred the initial submittal to the Commission for review pursuant to ORS 197.633(1)(c) and (f).
3. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to the initial submittal was July 14, 2010. The Department received 46 objections.
4. On September 28, 2010, the Department issued its staff report (DLCD September 28, 2010 Report).

5. Pursuant to OAR 660-025-0160(4), the deadline to file exceptions to the staff report was October 8, 2010. The Department received 33 exception filings to the staff report.
6. On October 19-22, 2010, the Commission held a public hearing in Portland, Oregon; the hearing was continued to October 29, 2010.
7. On October 29, 2010, the Commission voted to remand a portion of the initial submittal as it applied to certain reserve designations in Washington County.
8. On May 13, 2011, the Department received the re-designation submittal, Metro Ordinance No. 11-1255.
9. Pursuant to OAR 660-025-0140(2)(a), the deadline to file objections to was June 3, 2011. The Department received 14 objections.
10. On July 28, 2011, the Department issued its staff report on the re-designation submittal (DLCD July 28, 2011 Report).
11. Pursuant to OAR 660-025-0160(4), the deadline to file exceptions to the staff report was August 8, 2011. The Department received 11 exception filings to the staff report.
12. On August 18-19, 2011, the Commission held a public hearing in Portland, Oregon.
13. On August 19, 2011, the Commission voted to acknowledge the Metro Urban and Rural Reserves Submittal in its entirety, including the 2010 initial submittal, as revised by the 2011 re-designation submittal.
14. This Acknowledgement Order memorializes the decision of the Commission, pursuant to OAR 660-002-0010(6).

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

The Metro Urban and Rural Reserves Submittal before the Commission includes amendments to the Clackamas, Multnomah, and Washington County comprehensive plans and the Metro Regional Framework Plan (RFP) and Urban Growth Management Functional Plan (UGMFP) to designate urban and rural reserves in the tri-county metropolitan area using the process authorized by the Oregon legislature in 2007 (SB 1011). The Commission reviews urban and rural reserves for acknowledgment “in the manner provided for periodic review.” ORS 197.626(1)(c) and (f). This item is before the Commission as a referral from the Director of the Department of Land Conservation and Development (Department). The Commission reviewed the objections, the Department’s Reports, which responded to those objections, and exceptions to the Department’s reports filed by the participants, heard arguments from the parties, and decided to either sustain or reject each of the objections. Following initial hearings on the matter in 2010, the Commission voted to approve the initial submittal in part; and to reverse and remand portions of that submittal to Metro and Washington County. In response to the Commission vote, Metro and the counties filed a re-designation submittal. This order is a review on the record submitted by Metro and the three counties on both the initial submittal, Ordinance No. 10-1238A and the re-designation submittal, Ordinance No. 11-1255.

## 1. Purpose of Urban and Rural Reserves

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

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

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

“The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long-range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow urbanization become applicable to the areas.” Exhibit D to Ordinance No. 10-1238A; Metro Record at 8.

The counties define their intent for rural reserves as follows:

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

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

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

In its 2010 report to the Commission, the Department explained the overall purpose and intent of the Metro Urban and Rural Reserves Submittal:

“[The] urban and rural reserves guide where the Portland region may grow (and where it will not) over the next fifty years, it is important to understand that these decisions do *not* commit particular lands to urban development. That will occur only if and when Metro is able to justify an urban growth boundary expansion under other applicable law.

“It is also important to understand that the process and criteria set by the Oregon legislature for designating urban and rural reserves is unlike any other large-scale planning exercise previously carried out in Oregon. With two exceptions, the Department believes that the statutes and rules that guide this effort replaced the familiar standards-based planning process with one based fundamentally on political checks and balances, together with factors that local governments are required to consider in making their decisions. The two exceptions, where the legislature and the Commission have set general standards for reserves are in terms of the overall amount of urban reserves, which must be based on forecasted population and employment growth (ORS 195.145(4)) and the commission’s articulation of the purpose of reserves: ‘a balance in \* \* \* urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the regions for its residents.’ OAR 660-027-0005(2).

“The result is that, in the Department’s opinion, the region has substantial discretion in determining the *location* of urban and rural reserves – the framework that will guide *where* the region will grow over the next fifty years *if* the region shows that its needs for housing and employment require additional lands beyond the current urban growth boundary.

“Rural reserves in the Portland metro region will provide the long-term certainty about stability of uses that our agricultural and forest industries need to make significant capital investments. They also will help shape the region and protect the landscapes and natural features that define it.

“Urban reserves will enable communities in the regional and their partners in the private sector and government to plan for efficient improvements to our roads, other transportation systems, sewer and water systems, creating the foundation for great communities that can sustain long-term job creation and provide needed housing.” DLCD September 28, 2010 Report at 3.

## 2. Matter At Issue

Metro's initial decision to designate urban reserves in the three-county region was made on June 3, 2010. Multnomah, Clackamas and Washington counties made their initial final decisions to designate rural reserves in their counties, respectively, on May 13, 27 and June 15, 2010. The four governments submitted their joint and concurrent decision to the Department on June 23, 2010. The initial submittal established a system of urban and rural reserves in the three-county region to guide long-term planning to the year 2060. The initial submittal designated 28,615 acres of urban reserves to accommodate urban growth to 2060, and 266,954 acres of rural reserves to protect agricultural land, forest land and important natural landscape features from urbanization for 50 years. The initial submittal included changes to the counties' comprehensive plans and Metro's RFP and UGMFP, including plan maps that depict the urban and rural reserves.

At the conclusion of its hearing on October 29, 2010, the Commission passed a motion to (1) approve the urban and rural reserve designations as submitted in Clackamas and Multnomah counties; (2) approve the urban reserves in Washington County, with the exception of two areas; and (3) reverse the urban reserve designation of Area 7I, remand the urban reserve designation of Area 7B for further findings, and remand the rural reserve designations in Washington County for further consideration in light of changes made on remand to Areas 7B and 7I.

The Commission chair summarized the motion prior to the vote as follows:

“\* \* \*[T]he motion is that we remand to Washington County and Metro to reject 7I; we remand to them to develop findings with regard to 7B; we remand Washington County's rural reserves for Washington County and Metro to consider whether to designate some of that rural reserve to urban reserve, capped at [an acreage equal to that contained in Area] 7I \* \* \* so that it is 7I plus the other amount, plus any amount of undesignated land that they want to designate. We are approving everything else in all three counties, and we \* \* \* are determining that any objection not specifically addressed in this motion is being denied.”

This Commission vote rejected the urban reserve designation of Area 7I and required Metro and Washington County to make additional findings regarding the urban reserve designation of Area 7B. This vote allowed, but did not require, Metro and Washington County to replace any lands removed from the urban reserves designation as a result of their decisions regarding Areas 7I and 7B. Because Metro based its determination of need on a range forecast and made a policy choice to plan for the upper end of the middle third of its projection, the Commission determined that Metro could remove some lands without adding other lands by either altering its policy choice (to, for example, plan for the middle of the middle third) or by shortening the number of years that the reserves are planned for. Alternatively, Metro and Washington County could decide to leave the decisions concerning the amount of land unchanged, and add other lands as an urban reserve. The vote to remand the Washington County rural reserves allowed Metro and the county discretion in making those decisions.

Subsequent to the Commission’s vote on the initial submittal, and without a final written order, Metro adopted amendments to the regional framework plan on April 21, 2011, and Washington County adopted amendments to its comprehensive plan to revise its rural reserve designations on April 26, 2011. Clackamas and Multnomah Counties adopted conforming plan amendments on April 21 and April 28, 2011, respectively. Clackamas County adopted additional findings to supports its initial decision, but neither the Clackamas County nor Multnomah County amendments changed reserve designations in those counties.

The Metro and Washington County re-designations, submitted May 13, 2011, did not significantly change the overall balance between urban and rural reserves, but adjusted the urban and rural reserve designations in Washington County in the following five ways (*see* Exhibit B to the Supplemental Intergovernmental Agreement between Metro and Washington County):

1. Urban Reserve Area 7B – Removed the urban reserve designation from 28 acres in an area between Council Creek and Highway 47 in the vicinity of the intersection of NW Purdin Road/NW Verboort Road and Highway 47, north of Forest Grove, leaving those 28 acres undesignated; and retaining 480 acres of Area 7B in urban reserves.
2. Urban Reserve Area 7I (Northern Portion) – Changed 263 acres from urban reserve to rural reserve in an area south of NW Long Road, extending from NW Cornelius-Schefflin Road to just east of NW Susbauer Road (North of Cornelius).
3. Urban Reserve Area 7I (Southern Portion) – Removed the urban reserve designation from 360 acres in an area north of the City of Cornelius and south of the general location of NW Hobbs Road, between NW Cornelius-Schefflin Road and the floodplain of Dairy Creek, leaving those 360 acres undesignated.
4. Area to the West of Urban Reserve Area 8B – Designated 352 acres urban reserve, which was formerly undesignated, north of Highway 26 and east of NW Groveland Road.
5. Area to the South of SW Rosedale Road – Removed the rural reserve designation from 383 acres south of SW Rosedale Road, west of SW Farmington Road, leaving those 383 acres undesignated.

Washington County otherwise readopted its rural reserves as initially submitted. The net effect of the changes in Washington County was to decrease the amount of urban reserves designated by 299 acres, to decrease the amount of rural reserves designated by 120 acres, and to increase the amount of undesignated lands in Washington County by 419 acres. These changes are summarized in Table 1.

**Table 1:** Summary of Re-designation Submittal Changes

	Urban Reserve Acreage Change	Rural Reserve Acreage Change	Undesignated Acreage Change
Area 7B (North Plains)	-28 acres		+28 acres
UR Area 7I - North (Cornelius)	-263 acres	+263 acres	

UR Area 7I - South (Cornelius)	-360 acres		+360 acres
UR Area 8B (North Hillsboro)	+352 acres		-352 acres
South of Rosedale Road		-383 acres	+383 acres
TOTAL	-299 acres	-120 acres	+419 acres

The re-designations also added findings addressing more specifically both the urban and rural reserve factors in cases where Metro designated Foundation Agricultural Land in Washington County for urban reserves.

Following the re-designations, and with the adoption of Metro Ordinance No. 11-1255, Metro has designated 28,256 gross acres as urban reserves throughout the three-county region. Clackamas County Ordinance No. ZDO-233 designates 68,713 acres as rural reserves. Multnomah County Ordinance No. 20-10-1161 designates 46,706 acres as rural reserves. Washington County Ordinance No. 740 designates 151,209 acres of rural reserves. The total of rural reserves throughout the three counties is 266,628. Metro Supp. Record at 2.

This Acknowledgement Order is the final order approving the 2010 initial submittal, as revised through the 2011 re-designation submittal, which together constitute the Metro Urban and Rural Reserves Submittal.

### 3. The Written Record For This Proceeding

1. The DLCD September 28, 2010 staff report with responses to objections.
2. Forty-six objections to the initial submittal filed pursuant to OAR 660-025-0150(1)(c):

Ref.    Objector

1. Ann Culter
2. Arthur Dummer
3. Tualatin Riverkeepers
4. Coalition for a Prosperous Region
5. Carol Chesarek
6. Chris Maletis *et al.*
7. Dale Burger
8. Forest Park Neighborhood Association
9. David Hunnicutt
10. Oregonians in Action
11. David Smith
12. Donald Bowerman *et al.*
13. Dorothy Partlow
14. Elizabeth Graser-Lindsey
15. Hank Skade
16. Jim Calcagno (Cal Farms)

17. Jim Irvine
18. Oregon Department of Agriculture *et al.*
19. Audubon Society of Oregon
20. John Burnham
21. John and Judy Cherry
22. Joseph C. Rayhawk (lower Springville)
23. Joseph C. Rayhawk (Peterkort)
24. Kathy Blumenkron
25. Linda Peters
26. 1000 Friends of Oregon *et al.*
27. Gary Gentemann
28. Melissa Jacobsen
29. Michael Wagner
30. Michael Cropp
31. Metropolitan Land Group
32. City of Portland
33. Robert Burnham
34. Robert Zahler
35. Coalition for a Livable Future
36. Sandra Baker
37. Save Helvetia
38. Steve and Kelli Bobosky
39. Susan McKenna
40. VanderZanden Farms
41. Thomas VanderZanden
42. Tim O'Callaghan
43. Tom Szambelan
44. Cities of Tualatin and West Linn
45. William Kaer
46. City of Wilsonville

3. Correspondence identifying material in the record responsive to objections to the initial 2010 submittal:

- a. Metro, August 13, 2010
- b. Multnomah County, August 13, 2010
- c. Washington County, August 13, 2010
- d. Clackamas County, August 18, 2010

4. Urban and Rural Reserves submittals

- a. Metro Ordinance No.10-1238A, and the following exhibits:
  - i. Exhibit A – Map
  - ii. Exhibit B – Regional Framework Plan Policy 1.7 Urban and Rural Reserves

- iii. Exhibit C – Title 5 of the Urban Growth Management Functional Plan is repealed
  - iv. Exhibit D – Title 11: Planning for New Urban Areas
  - v. Exhibit E – [Consolidated Findings for Urban and Rural Reserve Designations] Reasons for Designation of Urban and Rural Reserves
- b. Clackamas County Ordinance No.ZDO-223, and the following exhibits:
- vi. Exhibit A – Chapter 4 Clackamas County Comprehensive Plan amendment, including map
  - vii. Exhibit B – Urban Rural Reserves findings of fact
- c. Multnomah County Ordinance No.1161 and Ordinance No.1165 and the following exhibits:
- viii. Exhibit 2 – Findings of Fact
  - ix. Exhibit 3 – Record Index
- d. Washington County Ordinance No.733 and the following exhibits:
- x. Exhibit 1 amending the proposed Policy 29, relating to Rural and Urban Reserves designations, of the Rural/Natural Resource Plan;
  - xi. Exhibit 2 amending the Rural/Natural Resource Plan by the creation of a new map entitled "Rural and Urban Reserves" in Policy 29;
  - xii. Exhibit 3 amending the Rural/Natural Resource Plan by the creation of a new map entitled "Special Concept Plan Areas" in Policy 29;
  - xiii. Exhibit 4 amending Policy 3, Intergovernmental Coordination, of the Rural/Natural Resource Plan;
  - xiv. Exhibit 5 amending Policy 23, Transportation Plan, of the Rural/Natural Resource Plan;
  - xv. Exhibit 6 amending Policy 27, Urbanization, of the Rural/Natural Resource Plan;
  - xvi. Exhibit 7 amending Policy 3, Intergovernmental Coordination, of the Comprehensive Framework Plan for the Urban Area;
  - xvii. Exhibit 8 amending Policy 32, Transportation, of the Comprehensive Framework Plan for the Urban Area; and
  - xviii. Exhibit 9 amending Policy 40, Regional Planning Implementation, of the Comprehensive Framework Plan for the Urban Area.

5. Thirty-three exceptions to the DLCDC September 28, 2010 Report filed pursuant to OAR 660-025-0160(4):

<u>Ref.</u>	<u>Objector</u>
1.	East Bethany Owners
2.	Dale Burger
3.	Dorothy Partlow
4.	Hank Skade
5.	John Burnham
6.	Kathy Blumenkron

7. Robert Burnham
8. Robert Zahler
9. City of Sandy
10. Coalition for a Prosperous Region
11. Carol Chesarek
12. Carol Chesarek – Amabisca
13. Chris Maletis *et al.*
14. Forest Park Neighborhood Association
15. David Smith
16. Donald Bowerman
17. Elizabeth Graser-Lindsey
18. Jim Irvine
19. Audubon Society of Portland
20. John and Judy Cherry
21. Joseph C. Rayhawk (Lower Springville)
22. Joseph C. Rayhawk (Peterkort)
23. 1000 Friends of Oregon *et al.*
24. Michael Wagner
25. Metropolitan Land Group
26. Sandra Baker
27. Save Helvetia
28. Steve and Kelli Bobosky
29. Susan McKenna
30. Thomas VanderZanden
31. Cities of Tualatin and West Linn
32. William Kaer
33. City of Wilsonville

6. The DLCD July 28, 2011 staff report including responses to objections.

7. Fourteen Objections to the re-designation submittal filed pursuant to OAR 660-025-0150(1)(c):

Ref.    Objector

1. Van De Moortele Family
2. Coalition for a Prosperous Region
3. City of Cornelius
4. City of Hillsboro
5. 1000 Friends of Oregon *et al.*
6. Department of Agriculture
7. Joseph C Rayhawk
8. Save Helvetia Community
9. Thomas Black
10. Steve and Kelli Bobosky
11. Chris and Tom Maletis
12. Forest Park Neighborhood Association

13. Metropolitan Land Group
14. East Bethany Owners

8. Correspondence from Metro dated June 24, 2011 identifying material in the record responsive to objections.

9. Re-designation Submittal:

- a. Metro Ordinance No. 11-1255, with exhibits
- b. Clackamas County Ordinance No. ZDO-223 with revised findings dated April 21, 2011, with exhibits
- c. Multnomah County Ordinance No. 2010-1180 with exhibits
- d. Washington County Ordinance No.740 with exhibits

10. Eleven exceptions to the DLCD July 28, 2011 Report filed pursuant to OAR 660-025-0160(4):

<u>Ref.</u>	<u>Objector</u>
1.	1000 Friends of Oregon <i>et al.</i>
2.	City of Cornelius
3.	Linda Peters
4.	Save Helvetia
5.	East Bethany Owners
6.	Joseph C Rayhawk
7.	Metro
8.	Cities of Tualatin and West Linn
9.	Chris and Tom Maletis
10.	Metropolitan Land Group
11.	Van De Moortele Family

### **C. Applicable Law**

#### **1. Metro Urban and Rural Reserves Statutory and Rule Requirements**

ORS 195.137 to 195.145 provide the statutory authorization for rural reserve designation and a process for urban reserve designation that is unique to the Portland metropolitan region. Adopted in 2007 as SB 1011, these statutes also provide criteria regarding the amount of urban reserve land;<sup>1</sup> and both criteria and factors for the location of urban reserve land;<sup>2</sup> the location of rural reserves;<sup>3</sup> and the uses allowed within an urban reserve.<sup>4</sup>

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<sup>1</sup> ORS 195.145(4) provides:

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

In addition to statutory provisions governing the designation of reserves, the legislature directed the Commission to adopt rules implementing the statutes. ORS 195.141(4); ORS

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<sup>2</sup> ORS 195.145(5) provides:

“A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

“(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;

“(b) Includes sufficient development capacity to support a healthy urban economy;

“(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

“(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

“(e) Can be designed to preserve and enhance natural ecological systems; and

“(f) Includes sufficient land suitable for a range of housing types.”

<sup>3</sup> ORS 195.141 provides in part:

“(2) Land designated as a rural reserve:

“ (a) Must be outside an urban growth boundary.

“ (b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145(4) [“at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.”]

“ (c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

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

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

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

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

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

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

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

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

“ (D) The sufficient of agricultural infrastructure in the area.”

<sup>4</sup> ORS 195.145(3) provides in part:

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

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

195.145(6). Shortly after the effective date of SB 1011, the Commission adopted OAR chapter 660, division 27, which includes implementing measures for the counties and Metro to employ in their reserve determinations. The Commission adopted amendments to OAR chapter 660, division 27 on October 19, 2010. The Department filed the amended division and it became effective under ORS 183.355(2) on October 20, 2010. The Commission reviewed this matter under division 27 as effective on that date.

The rules in this division include provisions regarding the amount of urban reserve land;<sup>5</sup> the location of urban reserves;<sup>6</sup> the location of rural reserves;<sup>7</sup> and planning for areas inside urban and rural reserves.<sup>8</sup>

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<sup>5</sup> OAR 660-027-0040 provides in part:

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

“(3) If Metro designates urban reserves under this division prior to December 31, 2009, it shall plan the reserves to accommodate population and employment growth for at least 20 years, and not more than 30 years, beyond 2029. Metro shall specify the particular number of years for which the urban reserves are intended to provide a supply of land.”

<sup>6</sup> OAR 660-027-0050 provides:

“Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

“(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

“(2) Includes sufficient development capacity to support a healthy economy;

“(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;

“(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;

“(5) Can be designed to preserve and enhance natural ecological systems;

“(6) Includes sufficient land suitable for a range of needed housing types;

“(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and

“(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.”

<sup>7</sup> OAR 660-027-0060 provides:

“(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.

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“(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation:

“(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;

“(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;

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

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

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

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

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

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

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

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

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

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

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

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

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

“(g) Provide for separation between cities; and

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

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

<sup>8</sup> The applicable version of OAR 660-027-0070, effective October 20, 2010, which the Commission has since amended in 2012, provided:

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

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

“(3) Counties that designate rural reserves under this division shall not amend comprehensive plan provisions or land use regulations to allow uses that were not allowed, or smaller lots or parcels than were

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

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

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allowed, at the time of designation as rural reserves unless and until the reserves are re-designated, consistent with this division, as land other than rural reserves, except as specified in sections (4) through (6) of this rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

Pursuant to OAR 660-027-0080, the Commission reviews adopted urban and rural reserves “in the manner provided for periodic review under ORS 197.628 to 197.650.” OAR 660-025-0160(6) provides that the Commission must issue an order that does one or more of the following:

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

## **2. Commission’s Standard of Review**

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

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

“The commission’s standard of review:

“(a) For evidentiary issues, is whether there is substantial evidence in the record as a whole to support the local government’s decision.

“(b) For procedural issues, is whether the local government failed to follow the procedures applicable to the matter before the local government in a manner that prejudiced the substantial rights of a party to the proceeding.

“(c) For issues concerning compliance with applicable laws, is whether the local government’s decision on the whole complies with applicable statutes, statewide land use planning goals, administrative rules, the comprehensive plan, the regional framework plan, the functional plan and land use regulations. The commission shall defer to a local government’s interpretation of the comprehensive plan or land use regulations in the manner provided in ORS

197.829. For purposes of this paragraph, ‘complies’ has the meaning given the term ‘compliance’ in the phrase ‘compliance with the goals’ in ORS 197.747.”<sup>9</sup>

The Court of Appeals has further explained that in applying this standard of review, the Commission “must demonstrate in its opinion the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts.” *1000 Friends of Oregon v. LCDC*, 244 Or App 239, 267, 259 P3d 1021 (2011) (*McMinnville*) (quoting *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 224, 239 P3d 272 (2010) (*Woodburn*)).<sup>10</sup>

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

The requirement for findings is not simply a technicality; its purpose is to assure that the Commission can perform its review function and that it does not substitute its judgment for that of Metro and the counties. *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 16 n 6, 38 P3d 956 (2002); *Naumes Properties, LLC v. City of Central Point*, 46 Or LUBA 304, 314 (2004). In a recent decision on the City of Bend’s proposed urban growth boundary, the Commission decided that where local findings are inadequate, the Commission nonetheless may affirm the local decision if the local government identifies evidence in the record that “clearly supports” its decision. This is analogous to the express statutory authority for the Land Use Board of Appeals to affirm local land use decisions in these circumstances (the Commission indicated that it was adopting the same approach). LUBA has narrowly interpreted the term “clearly supports” in ORS 197.835(11)(b) to mean “makes obvious” or “makes inevitable.” *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995). ORS 197.835(11)(b) authorizes LUBA to remedy minor oversights and imperfections in local government land use

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<sup>9</sup> ORS 197.633(3) became effective on June 23, 2011. Or Laws 2011, ch 469, §2.

<sup>10</sup> Several parties have cited *City of West Linn v. LCDC*, 201 Or App 419, 426-429, 119 P3d 285 (2005) for the Commission’s standard of review. In *City of West Linn*, the Court of Appeals addressed at length *its* own standard of review under ORS 197.650 of a Commission order in a UGB amendment decision. While that case provides some useful guidance, it is important to note that the standard of review for the court is different from the standard for the Commission; and that the standard of judicial review in the event the Commission’s decision in this matter is appealed is controlled by a different statute (ORS 197.651) than the statute that provided the standard of review in *City of West Linn* (ORS 197.650).

decisions, but does not allow LUBA to assume the responsibilities assigned to local governments, such as the weighing of evidence.” *Salo v. City of Oregon City*, 36 Or LUBA 415, 429 (1999).

### **3. Procedural Rules**

Pursuant to ORS 197.633(2), the Commission has adopted rules, OAR chapter 660, division 25, to govern procedures for matters reviewed in the manner of periodic review. Under OAR 660-025-0230(1)(d), the applicable version of division 25 to this review is the version filed and effective on May 15, 2006. The 2011 Oregon legislature passed HB 2130, which made changes to ORS 197.633, effective June 23, 2011.<sup>11</sup> To the extent those amendments conflict with division 25, the Commission followed the amended provisions of ORS 197.633 during its review of the re-designation submittal.

## **II. PROCEDURAL ISSUES**

### **A. Decisions on Validity of Objections**

The Department received a total of 46 letters of objection to the initial submittal and 14 letters of objection to the re-designation submittal. Many of the objection letters included numerous specific objections. The Department analyzed the validity of each objection in the DLCD September 28, 2010 Report or the DLCD July 28, 2011 Report.

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

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

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

The Department determined that 33 objections to the initial submittal were valid and addressed them in the DLCD September 28, 2010 Report. The Department found that several objections to the initial submittal did not satisfy the requirements of OAR 660-025-0140(2) and recommended that the Commission not consider those objections.

The following list includes objections the Department determined to be invalid and comments received that do not object to any aspect of the reserves decision. Objections that

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<sup>11</sup> In February 2012, the Commission adopted amendments to division 25 to conform the rule to the statutory amendments made by HB 2130. A copy of the applicable version of division 25 is attached as Attachment 1 to this compliance acknowledgement order.

support the reserves decision, or otherwise do not object to the submittals, are indicated as “no objection” in the list below.

<u>Ref.</u>	<u>Objector</u>	<u>Explanation</u>
2	Arthur Dummer	No citation
7	Dale Burger	No citation and no remedy
17-2	Jim Irvine	No citation
19	Audubon Society of Portland	No remedy
22	Joseph Rayhawk	No remedy
27	Gary Gentemann	No objection
31-6	Metropolitan Land Group	No remedy
35	Coalition for a Livable Future	No citation
38-4	Steve and Kelly Bobosky	No citation
38-4	Steve and Kelly Bobosky	No citation
40	Thomas J. VanderZanden	No objection
45	William Kaer	No objection
42-6	Tim O’Callaghan	No remedy

The Department recommended that the Commission reject the objections from these objectors as invalid under OAR 660-025-0140(2). The Commission allowed each party an opportunity to argue whether the objection(s) are valid. In four instances, the Commission disagreed with the Department’s recommendation. The Commission allowed Dale Burger, Audubon Society of Portland, Steve and Kelly Bobosky, and Metropolitan Land Group to argue the merits of their objections.

The Department determined that all objections to the 2011 re-designation submittal were valid. Challenges were raised to the validity of some objections, on the basis that they exceeded the scope of the “remand” hearing and raised issues that were, or could have been, raised during the initial review proceedings. The Commission rejects those challenges. While the focus of the August 18-19, 2011 oral argument was the re-designation submittal, the proceedings were a continuation of the initial proceedings. While a vote was taken, no final order was issued, and no issues were finally resolved following the initial hearings, and therefore no parties were precluded from raising, or continuing to raise issues related to the Metro Urban and Rural Reserves Submittal.

**B. Decision on City of Sandy’s Exception**

Under the Commission’s rules, persons who filed a valid objection to a submittal were permitted to file written exceptions to the Department’s staff report. Exceptions to the report are governed by OAR 660-025-0160(4), which provides in part: “Persons who filed valid objections or an appeal, and the submitting local government, may file written exceptions to the director’s report within ten (10) days of the date the report is mailed.” Thirty-three objectors filed exceptions to the DLCD September 28, 2010 Report and eleven objectors filed exceptions to the July 28, 2011 Report.

Subsequent to distribution of the DLCD September 28, 2010 Report, the City of Sandy submitted a letter dated October 8, 2010 to the Department, during the period for filing exceptions. The letter requested permission to testify at the Commission hearing. The City of Sandy had not filed an objection. The Commission concluded that the city neither filed a valid objection under OAR 660-025-0140(2) nor is it a submitting local government. As a result, the Commission determined that the city's exception is not permitted and did not consider it. *See also*, Section II.C. below.

### **C. Oral Argument**

OAR 660-025-0085(5)(c) provides the procedures for oral argument at Commission hearings:

“Oral argument will be allowed. The local government or governments whose decision is under review and parties who filed objections or an appeal may present oral argument. Oral argument will not be an opportunity to present new evidence regarding the matter before the commission. \* \* \* *Other affected local governments may address only those issues raised in objections or the appeal.*” Emphasis added.

The Commission permitted all affected local governments and parties who filed objections an opportunity to present oral argument.

The City of Sandy maintained that it is affected by the reserves decision. The Commission found that the city is an affected local government for the purposes of OAR 660-025-0085(5)(c). The Commission allowed the city to present argument concerning issues raised in objections from other parties. However, because the issues raised in the city's October 8, 2010 letter were not raised in other objections, the Commission did not allow argument from the city on the issues in the city's letter.

### **D. New Evidence and Information**

In providing oral argument to the Commission during the 2010 and 2011 public hearings, several parties distributed written handouts to the Commission.<sup>12</sup> The Commission also received a memorandum from the director and legal counsel.<sup>13</sup> To the extent that any of the materials in the written handouts distributed in 2010 constitutes new evidence or information, the Commission moved to request that each of the documents be included in its consideration and review of the submittal under OAR 660-025-0160(5). The Commission also requested that to the extent any of the materials in or attached to the written exceptions filed in the 2010 proceeding constituted new evidence or information, that that information or evidence be included in its consideration and review of the submittal under OAR 660-025-0160(5).

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<sup>12</sup> For example, the Washington County Farm Bureau took the Commission and the parties on a PowerPoint tour of the areas in Washington County implicated in the initial submittal. The Commission afforded all parties the opportunity to respond to that tour.

<sup>13</sup> October 28, 2010 Memorandum regarding “Metro Reserves Deliberations” from Richard Whitman and Steve Shipsey. Attachment 2 to this compliance acknowledgement order.

The 2011 legislature enacted HB 2130 which amended, *inter alia*, ORS 197.633. ORS 197.633(3), as amended, provides in part, “The commission shall confine its review of evidence to the local record.” The amendment became effective on June 23, 2011, prior to the Commission hearing on the re-designation decision. The Commission therefore no longer had authority to consider new evidence or information in reviewing the re-designation decision.<sup>14</sup>

At the 2010 hearings, the Commission offered Metro and the respective counties the opportunity to respond to objectors, including the new evidence and information presented orally or in writing by the objectors at the Commission’s request pursuant to OAR 660-025-0085(5)(d) and 660-025-0160(5). At the 2011 hearings, the Commission again afforded Metro and the respective counties the opportunity to respond to objectors.

### **E. Official Notice**

At its October 19-22, 2010 hearing, Metro requested that the Commission take official notice of:

- Metro Resolution No. 09-4094 (Attachment 3 to the compliance acknowledgement order)
- LCDC Order 07-WKTASK-001726 (Attachment 4 to the compliance acknowledgement order)

The Commission takes official notice of the requested items. OAR 660-025-0085(5)(e).

## **III. COMMISSION REVIEW**

### **A. Commission’s Scope of Review**

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

“The Commission shall review the submittal for:

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

“(b) Compliance with applicable administrative rules, including but not limited to the objective provided in OAR 660-027-0005(2) [i.e. a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and

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<sup>14</sup> While the Department report correctly states that OAR 660-025-0160(5) provides for new evidence or information, the Commission had not yet amended the rule to conform to the recently enacted legislation that had become effective the prior month. See DLCD July 28, 2011 Report at 10. Thus, in this Acknowledgement Order, the Commission applies ORS 197.633(3) and not OAR 660-025-0160(5) to the re-designation submittal.

vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents] and the urban and rural reserve designation standards provided in OAR 660-027-0040; and

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

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

### **1. Compliance with the Statewide Planning Goals**

OAR 660-027-0080(4)(a) and ORS 197.747 provide that “compliance with the goals” means “the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.” In addition, not all goals apply to the reserves decision and some goals may apply, but only in a limited fashion.

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

### **2. Compliance with the Best Achieves Standard**

Consistent with the legislative findings in ORS 195.137, the Commission established the objective of the urban and rural reserves as “a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” OAR 660-027-0005(2). In adopting division 27, the Commission intended that this “best achieves” standard would require less scrutiny for the reserves decision than the requirements for locational decisions involved in urban growth boundary expansions (to consider and apply factors to alternative candidate areas – discussed below). The standard applies to the designation “in its entirety,” it does not require Metro or a county to rank alternative areas. It is a standard that Metro and the counties must demonstrate has been met, through their findings.<sup>15</sup>

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<sup>15</sup> During the Commission’s consideration of the OAR chapter 660, division 27 rules, the Commissioner who chaired the rules workgroup explained the objective of the “best achieves” standard, stating, “I think it’s important to recognize that the workgroup never saw that best requirement as being something that would require a detailed parcel to parcel type analysis. And there was real worry that it would even be construed that way because that was the opposite of the kind of fluid creative process we were hoping to be able to create. And that instead of being a process that would require exactitude found in like a parcel to parcel comparison that this best concept is supposed to focus on the collective overall regional process. It would be looking for the best fundamental balance between competing areas. It would not require a ranking.” The Commission adopted that understanding (Transcript, LCDC

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

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

### **3. Compliance with the Amount of Land Standard**

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

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

To designate the appropriate amount of reserves, Metro must know for which years and for how many years it is planning. The rule involves two different planning periods: the first is the “20-year planning period for which Metro has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296” (hereafter, the “UGB-planning period”), while the second planning period is the 20 to 30-year period for which the urban reserves reserve land (the “UR-planning period”). The statute and rules provide Metro a substantial degree of discretion concerning both: (a) the *time period* that the urban reserves are planned to accommodate population and employment growth for; and (b) the *methods and policy considerations* that Metro uses to project future population and employment. The statute and rules also provide Metro significant discretion in determining how to apply its overall regional projections to parts of the region (counties).

#### 4. Consideration of the Factors

OAR 660-027-0040(10) and (11), together with OAR 660-027-0050 (urban) and 660-027-0060 (rural), require the Commission to review the submittal to determine whether Metro and the counties considered and applied the factors for urban and rural reserves. Where the submittal includes Foundation Agricultural Land, OAR 660-027-0040(11) requires the Commission to determine whether Metro and the counties considered and applied both the urban reserve factors and the rural reserve factors. The Commission confronts two related questions: (a) what it means for Metro and the counties to consider and apply the factors; and (b) whether the rule requires Metro and the counties to consider and apply the factors to each area, to the region as a whole, or to each county.

##### a. What is the Meaning of “Consider and Apply the Factors”?

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

This evaluation does not require a ranking, nor does it require that the “best” suited lands be designated as either an urban or rural reserve, but it does require the county and Metro to show that they evaluated alternative areas in terms of each of the factors, *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-410, 26 P3d 151 (2001), and that their findings explain why each area’s designation as an urban or rural reserve is appropriate. While the UGB amendment process requires more stringent evaluation of the factors, as in UGB amendment proceedings, the Commission concludes “[n]o single factor is of such importance as to be determinative \* \* \* nor are the individual factors necessarily thresholds that must be met.” *Citizens Against Irresponsible Growth v. Metro*, 179 Or App at 17. In other words, as to any one area, the designating governmental body does not have to determine that the area complies with or meets every factor.<sup>16</sup> The designating body considers the factors together, and weighs and balances the factors as a whole.

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<sup>16</sup> The staff report to the Commission for the rulemaking to adopt division 27 discussed the intent for “consideration of factors” thoroughly:

“Factors: It is important to note that the intent is for the rule to include and, where necessary, clarify the factors in SB 1011, but also to expand the list of factors (as allowed by that statute) in order to address additional concerns discussed by the workgroup (see rules 0050 and 0060 below for more detailed discussion of the particular additional factors proposed as part of these rules by the workgroup).

“The workgroup discussed the term ‘consideration of factors.’ The proposed rules are based on the understanding that ‘factors’ are a special type of ‘criteria’ similar to the ‘factors’ proscribed for UGB location under Goal 14. As such, a general principle for Goal 14 factors applies here: factors are not ‘independent criteria’ – every parcel or area considered for urban or rural reserves would not be required to meet each and every factor. Instead, the factors are applied, weighed and balanced to select and evaluate areas for designation as urban or rural reserves. Metro and the counties must apply all the factors, not merely ‘consider’ them, and must use the factors to compare alternative locations for the reserves. The group decided that the requirement to ‘consider’ the factors in the statute is not meant to imply that any

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

The Commission finds that division 27 requires Metro and the counties to apply the factors to areas, not to individual properties, and not to the entire region. As stated in the history

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factor may be simply ‘considered but then disregarded’ – all the factors must be considered, applied together (which also implies they must be ‘balanced’ in the manner of Goal 14), and Metro and counties must demonstrate that they have done this.

“The term ‘consideration of factors’ was previously adopted by LCDC in specifying the evaluation and selection of land for a UGB under Goal 14. Thus, there is precedent set by both LCDC and the courts regarding the interpretation and employment of ‘factors.’ As indicated above, there was considerable discussion of the term ‘factors’ by the workgroup, including advice from LCDC legal counsel, and the group has concluded that ‘factors’ under SB 1011 are intended to be employed and interpreted in the same manner as the UGB factors in Goal 14. According to legal counsel, while the courts have not been entirely consistent in their interpretation of ‘factors,’ some legal precedent is worth noting in order to clarify the intent of ‘factors’ under the proposed reserve rules.

“First, the courts have indicated ‘factors’ are a type of ‘criteria’ (this is important because the workgroup discussion revealed that many planners consider ‘criteria’ to be something different than ‘factors,’ since typically a set of factors are ‘considered’ and ‘weighed’ in arriving at a decision).

“Second, a Court of Appeals interpretation of the term ‘factors’ was paraphrased in LCDC’s 2006 UGB Amendment rules, OAR 660-24-0060(3), which state that: ‘The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the UGB location, a local government must show that all the factors were considered and balanced.’ Because the intent of the rules proposed by the Metro Reserves workgroup is for ‘factors’ to be interpreted in the same manner as UGB factors, this previous LCDC declaration about factors is important in applying the reserve factors.

“Finally, some examples are provided below regarding prior legal interpretations concerning the ‘consideration of factors.’ Although these examples concern Goal 14 factors and the selection of land for a UGB, the factors in the proposed reserve rules also concern the selection of land and use the term ‘consideration of factors.’ As such, the following examples may further clarify the intent of the proposed rules regarding ‘factors’:

“• Even if one of the factors is not fully satisfied, or is less determinative, that factor must still be considered and addressed. *Rosemont II*, 173 Or App at 328; *Baker v. Marion County*, 120 Or App 50, 54, 852 P2d 254, *rev den* 317 Or 485 (1993).

“• ‘Locational’ factors 3 through 7 of Goal 14 are not independent approval criteria. It is not required that a designated level of satisfaction for each factor be met in order to approve a UGB amendment. Rather, a local government must show that the factors were ‘considered’ and balanced in determining whether a UGB amendment is justified. *1000 Friends of Oregon v. Metro*, 174 Or App 406, 409-10 (2001)

“• The goal of the consideration under factors 3 through 7 is to determine the “best” land to add to the UGB, after considering each factor. *ARLU*, slip op at 13. In carrying out such consideration, each factor must be addressed. That a potential UGB expansion site failed a “test” established by the local government for compliance with one locational factor is not a sufficient basis for excluding it from consideration under the other locational factors. *1000 Friends II*, 174 Or App at 414 15.”

DLCD January 11, 2008 Report at 15-16 (footnotes omitted). Attached as Attachment 6 to this compliance acknowledgement order.

of the Commission's division 27 rulemaking and in the legislative history for Senate Bill 1011, the reserve factors derive from the Goal 14 locational factors. *See* note 16. Those factors are applied to alternative locations for expanding an urban growth boundary to decide which one(s) to select to include within the expanded UGB. *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App at 417. Similarly, under the Commission's division 21 urban reserves rules, the Goal 14 factors are applied to proposed urban reserve areas. *D.S. Parklane Development, Inc. v. Metro*, 35 Or LUBA 516 (1999), *aff'd as modified* 165 Or App 1, 994 P2d 1205 (2000). The Commission intends, and construes that the legislature intended, that in deciding which lands to designate as urban and rural reserves, Metro and the counties are to apply the factors to selected areas to decide which ones to include as urban reserves, and which areas to include as rural reserves. Furthermore, because SB 1011 and division 27 require Metro and a county to jointly decide upon urban and rural reserves, the factors are applied to alternative areas within a county to decide which ones to designate as urban or rural reserves.

OAR 660-027-0040(10) requires Metro and the counties to “adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why *areas* were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule.” (Emphasis added.) The rule specifically requires Metro and the counties to apply the factors to “areas” rather than specific properties or to the region or a county as a whole. OAR 660-027-0040(11) expands the requirements of OAR 660-027-0040(10) by requiring Metro to make additional findings if it designates “Foundation Agricultural Land,” as defined in OAR 660-027-0010(1), as urban reserves. The findings and statement of reasons required under subsection (11) for Foundation Agricultural Lands do not alter the geographic unit that Metro and the counties must adopt findings for – the findings must still be by “area” rather than on a property-by-property or region-wide basis. What this means is that if Metro designates some portion or all of an area as an urban reserve, and that area includes Foundation Agricultural Land, then the joint findings must explain why the area was selected as an urban reserve by applying both the urban and rural factors to that area and explaining why that area is more suitable as an urban reserve than other lands within Metro's study area that are not Foundation Agricultural Lands.

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

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

In most instances, with one important exception, the Commission does not review the decision to determine whether an area would be *better* as a rural reserve than as an urban reserve, or even whether Metro was right in its designations. The question is a narrow one: whether

Metro considered what the statute and rules require it to consider, and whether Metro’s findings explain its reasoning, and whether there is substantial evidence in the record to support Metro’s decision.

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

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

## **B. Summary of Commission Evaluation**

### **1. Designation of Urban and Rural Reserves**

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

- a. Amount of urban reserve land;
- b. Location of urban reserves;
- c. Amount of rural reserve land; and
- d. Location of rural reserves.

#### **a. Amount of Urban Reserve Land**

The statutory and regulatory requirements regarding the amount of land that Metro may designate as urban reserves are provided in ORS 195.145(4) and OAR 660-27-0040(2). Generally, the urban reserve is to include a sufficient quantity of land to accommodate urban growth for 20 to 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis under ORS 197.296. OAR 660-027-0040(2). Metro must first inventory the buildable land supply inside the UGB, determine the capacity of those lands (the lands already inside the UGB) to meet the region’s long-term needs, and analyze what portion of those long-term needs may require additional lands beyond the current UGB. In carrying out these steps, Metro must specify the number of years for which the urban reserves are intended to provide a supply of land. OAR 660-027-0040(2).

Because under OAR 660-027-0040(2) the UR-planning period begins after the UGB-planning period ends, in order to designate the correct amount of urban reserves it is necessary to know which 20-year UGB-planning period the UR-planning period follows. Metro based the UR-planning period on the 2010-2030 UGB-planning period in the Urban Growth Report. Metro designated 30 years of urban reserves to provide for future urban expansion and development from 2030 until 2060 – thirty years beyond the UGB-planning period. *See* Ordinance No. 10-1238A, Exhibit E; Metro Rec. at 22.

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

Metro designated urban reserves for a planning period that is authorized under the urban reserve statutes and rules. Metro completed its inventory, determination and analysis under ORS 197.296 for the 2009-2030 UGB-planning period, and compiled the results into the 2009-2030 Urban Growth Report (“UGR”). Metro Council adopted the 2009-2030 UGR by Resolution 09-4094 in December 2009. Metro Record at 22. The Metro Council subsequently adopted the UGR as part of the capacity ordinance on December 16, 2012 by Ordinance No. 10-1244B. Accordingly, Metro demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296, and the 2009-2030 UGB-planning period is one onto which the UR-planning period may tack under OAR 660-027-0040(2) and ORS 195.145(4). For these reasons, the Commission finds that Metro has satisfied the statutory and rule requirements regarding the amount of urban reserve land.

#### b. Location of Urban Reserves

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

- “(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
- “(2) Includes sufficient development capacity to support a healthy economy;
- “(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;

- “(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;
- “(5) Can be designed to preserve and enhance natural ecological systems;
- “(6) Includes sufficient land suitable for a range of needed housing types;
- “(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and
- “(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.”

The factors are not standards or criteria which Metro must demonstrate are satisfied. Rather, the Commission finds that the factors are considerations Metro must take into account when deciding whether to designate an area as an urban reserve.

OAR 660-027-0050, the factors for urban reserves, and OAR 660-027-0060 for rural reserves refer to identification and selection of “land,” and some of the individual factors in those rules mention characteristics of “the area.” None of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions.

Because the applicable law limits Metro to the amount of urban reserve land that it demonstrates is needed, the region-wide supply of urban reserve is constrained, so locating urban reserve boundaries requires a higher level of precision than does locating rural reserve boundaries. The Commission affirms the analysis areas Metro has used for evaluating lands as urban reserves, expressly determining that neither the statutes nor rules require a parcel-by-parcel analysis, particularly in light of the fact that the land in question normally will not be urbanized for decades. The Commission upholds Metro’s use of areas, as set forth in the Consolidated Findings, as the appropriate scale for considering the application of the urban reserve factors.

The findings included in the Metro Council’s decision are found in the Consolidated Finding. Exhibit E to Ordinance No. 10-1238A, Metro Record at 14 and Exhibit B to Ordinance No.11-1255. The findings explain how Metro employed the factors, by explaining the background, overall conclusions, the overall process and an analysis of public involvement. The factors were applied in different processes in each of the counties.

#### c. Amount of Rural Reserve Land

Neither the statute nor the rule includes criteria, standards or factors concerning the amount of rural reserve land the counties may, should, or must designate. (Nor does the statute or rules require the counties to designate any particular land.) The rural reserve factors address the qualities of the land, and there is no state standard regarding how many acres of rural reserves a county may designate. The purpose statement in the rule (OAR 660-027-0005(2)) includes the following provision:

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

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

#### d. Location of Rural Reserves

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

“(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;

“(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;

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

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

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

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

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

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

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

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

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

- “(c) Are important fish, plant or wildlife habitat;
- “(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;
- “(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;
- “(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses;
- “(g) Provide for separation between cities; and
- “(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.” OAR 660-027-0060(3).

The findings regarding rural reserve decisions included in each county’s and Metro’s decisions can be found in Metro’s submittal. Exhibit B to Ordinance No. 11-1255 at 33 and Metro Record at 39 for Clackamas County; Exhibit B to Ordinance No. 11-1255 at 45 and Metro Record at 49 for Multnomah County; and Exhibit B to Ordinance No. 11-1255 at 54 and Metro Record at 82 for Washington County. The findings describe each rural reserve area and explain the county’s findings regarding the rural reserve factors in OAR 660-027-0060(2).

## **2. Plan and code provisions to implement reserves policy**

The statute and administrative rule requirements relevant to planning and land use regulations within reserves are found in footnotes 4 and 8. The only statutory provision is a restriction on new regulations prohibiting the siting of a single family dwelling on a legal parcel where that use was formerly permitted. The counties and Metro complied with this provision.

The rule includes restrictions on up-zoning and other intensification of uses in urban or rural reserves. The counties have adopted amendments to their comprehensive plan policies implementing these restrictions in order to influence future land use decisions. Clackamas Co. Record at 12, Policy 10 (FCFC); Multnomah Co. Record at 9663a; Washington Co. Record at 9044. The department received no objections related to the counties’ implementation of planning and zoning inside urban and rural reserves. The Commission finds that the Metro Urban and Rural Reserves Submittal complies with OAR 660-027-0070 and ORS 195.145(3)(a).

OAR 660-027-0070(8) requires that Metro ensure the lands designated as urban reserves ultimately be planned to be developed in a manner consistent with the findings and conclusions that resulted in the designation. To implement the use restrictions within urban reserves, Metro adopted an amendment to the Urban Growth Management Functional Plan to include policies requiring completion of concept plans developed by affected local governments, service districts, and Metro for areas before they are added to the UGB. Metro Record at 4, 8–13. The department received no objections related to Metro’s implementation of planning and zoning inside urban reserves. The Commission finds that the Metro Urban and Rural Reserves Submittal is consistent with OAR 660-027-0070.

## **IV. CONSIDERATION OF OBJECTIONS**

The Department analyzed the valid objections submitted under OAR 660-025-0140(2) and, in the reports issued pursuant to OAR 660-025-0140(6), provided the Commission a recommendation to reject each objection. *See* DLCD September 28, 2010 Report at 23-108; DLCD July 28, 2011 Report at 12-58. In many instances, objectors also filed written exceptions to those reports pursuant to OAR 660-025-0160(4). The Department reviewed and responded to the exceptions. After considering the objections, recommendations, exceptions, responses and the oral arguments presented at the public hearings, the Commission rejects each objection for the reasons set forth below.

The following individuals or organizations submitted objections in response to the initial submittal.

<u>Ref.</u>	<u>Objector</u>
1.	Ann Culter
2.	Arthur Dummer
3.	Tualatin Riverkeepers
4.	Coalition for a Prosperous Region
5.	Carol Chesarek
6.	Chris & Tom Maletis
7.	Dale Burger
8.	Forest Park Neighborhood Association et al.
9.	David Hunnicutt
10.	Oregonians in Action
11.	David A. Smith
12.	Donald and Dawn Bowerman, et al.
13.	Dorothy Partlow
14.	Elizabeth Graser-Lindsey
15.	Hank Skade
16.	Jim Calcagno
17.	Jim Irvine
18.	Oregon Department of Agriculture
19.	Audubon Society
20.	John Burnham
21.	John and Judy Cherry
22.	Joseph C. Rayhawk
23.	Joseph C. Rayhawk
24.	Kathy Blumenkron
25.	Linda Peters
26.	1000 Friends of Oregon
27.	Gary Gentemann
28.	Melissa Jacobsen
29.	Michael Wagner
30.	Michael Cropp
31.	Metropolitan Land Group
32.	City of Portland
33.	Robert Burnham

34. Robert Zahler
35. Coalition for a Livable Future
36. Sandra J. Baker
37. Save Helvetia Community
38. Steve and Kelli Bobosky
39. Susan McKenna
40. Thomas J. VanderZanden
41. Thomas J. VanderZanden
42. Tim O'Callaghan
43. Tom Szambelan
44. Cities of Tualatin and West Linn
45. William E. Kaer
46. City of Wilsonville

The following individuals and organizations filed written exceptions to the DLCD September 28, 2010 Report and recommendation on the initial submittal.

- | <u>Ref.</u> | <u>Objector</u>                      |
|-------------|--------------------------------------|
| 1.          | East Bethany Owners Collaboration    |
| 2.          | Dale Burger                          |
| 3.          | Dorothy Partlow                      |
| 4.          | Hank Skade                           |
| 5.          | John Burnham                         |
| 6.          | Kathy Blumenkron                     |
| 7.          | Robert Burnham                       |
| 8.          | Robert Zahler                        |
| 9.          | City of Sandy                        |
| 10.         | Coalition for a Prosperous Region    |
| 11.         | Carol Chesarek                       |
| 12.         | Carol Chesarek-Cherry Amabisca       |
| 13.         | Chris Maletis et al                  |
| 14.         | Forest Park Neighborhood Association |
| 15.         | David Smith                          |
| 16.         | Donald Bowerman                      |
| 17.         | Elizabeth Graser-Lindsey             |
| 18.         | Jim Irvine                           |
| 19.         | Audubon Society of Oregon            |
| 20.         | John and Judy Cherry                 |
| 21.         | Joseph C. Rayhawk                    |
| 22.         | 1000 Friends of Oregon <i>et al</i>  |
| 23.         | Michael Wagner                       |
| 24.         | Metropolitan Land Group              |
| 25.         | Sandra Baker (Barker's Five)         |
| 26.         | Save Helvetia                        |
| 27.         | Steve and Kelli Bobosky              |
| 28.         | Susan McKenna                        |

29. Thomas VanderZanden
30. Cities of Tualatin and West Linn
31. William Kaer
32. City of Wilsonville

The following individuals or organizations submitted objections in response to re-designation submittal.

<u>Ref.</u>	<u>Objector</u>
1.	Van De Moortele Family, LLC
2.	Coalition for a Prosperous Region
3.	City of Cornelius
4.	City of Hillsboro
5.	1000 Friends of Oregon <i>et al.</i>
6.	Oregon Department of Agriculture
7.	Joseph C. Rayhawk
8.	Save Helvetia
9.	Tom Black
10.	Steve & Kelli Bobosky
11.	Chris and Tom Maletis
12.	Forest Park Neighborhood
13.	Metropolitan Land Group
14.	East Bethany Owners

The following individuals and organizations filed written exceptions to the DLCD July 28, 2011 Report and recommendation on the re-designation submittal.

<u>Ref.</u>	<u>Objector</u>
1.	1000 Friends of Oregon
2.	City of Cornelius
3.	Linda Peters
4.	Save Helvetia
5.	East Bethany Owners
6.	Joseph Rayhawk
7.	Metro
8.	Cities of Tualatin and West Linn
9.	Chris and Tom Maletis
10.	Metropolitan Land Group
11.	Van De Moortele Family

In this order, the Commission considers and addresses the objections and exceptions based on the issues raised and not by objector.

## A. Commission Review Authority – Urban Reserves and the Metro Code

The Cities of Tualatin and West Linn assert that the Commission lacks authority to review the Metro Urban and Rural Reserves Submittal on the premise that Metro lacked authority to designate urban reserves pursuant to OAR chapter 660, division 27. The cities also assert that for this reason Metro’s designation of urban reserves violates Goal 2. Tualatin, July 14, 2010 at 3.

The cities contend that Metro’s designation of urban reserves under the division 27 process is unlawful in substance because *former* Metro Code Chapter 3.01,<sup>17</sup> and specifically Sections 3.01.010(h) and 3.01.012, require Metro and cities and counties within Metro’s jurisdiction to designate urban reserves pursuant to OAR chapter 660, division 21. At the time of the initial submittal, Metro had not amended its code to add the authority provided through SB 1011 (codified at ORS 195.137 to 195.145). According to the cities, Metro therefore has no authority under its own code to adopt urban reserves pursuant to division 27, and the counties are likewise prohibited from designating rural reserves. *See former* Metro Code Section 3.01.012. Accordingly, the cities argue the Metro Urban and Rural Reserves Submittal is void and the Commission cannot review it.

The cities anticipate that Metro would argue its adoption of Ordinance No. 10-1238A (June 3, 2010) is a *de facto* amendment to Chapter 3.01. In response, the cities argue that, while the ordinance amended other sections of the Metro Code, it did not amend Chapter 3.01. The cities contend Metro’s findings do not explain how the reserves submittal is consistent with Chapter 3.01 and, therefore, the Metro Urban and Rural Reserves Submittal violates Goal 2 because Metro’s adopted planning documents must be the “basis for all decisions and actions related to the use of land” under that goal. *D.S. Parklane*, 165 Or App at 21-23.

Metro designated urban reserves under ORS 195.145(1)(b) and OAR chapter 660, division 27. Specifically, ORS 195.141(1) provides “[a] county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement \* \* \* to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145(1)(b)” and ORS 195.145(1)(b) provides “[a]lternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement \* \* \* to designate urban reserves.” In implementing ORS 195.145, OAR chapter 660, division 27, provides “[a]s an alternative to the authority to designate urban reserve areas granted by OAR chapter 660, division 21, Metro may designate urban reserves through intergovernmental agreements with counties and by amendment of the regional framework plan to implement such agreements in accordance with the requirements of this division.” OAR 660-027-0020(1).

The statute and rule establish an additional process for designating urban reserves for metropolitan service districts and counties within such districts, as an alternative to the process provided in ORS 195.145(1)(a) and OAR chapter 660, division 21. *See* ORS 195.145(1)(b) and

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<sup>17</sup> On December 16, 2010, after the initial submittal but prior to the re-designation submittal, Metro adopted Ordinance No. 10-1244B, which *inter alia* repealed Metro Code Chapter 3.01. *See* Ordinance No. 10-1244B at 3; Exhibit K to Capacity Ordinance No. 10-1244B at 2. In the alternative, the Commission rejects this objection on the basis that the repeal of Metro Code Chapter 3.01 renders the objection moot.

OAR 660-027-0020(1). Nothing in either the statute or the rule requires a metropolitan service district to designate urban reserves under either process; and neither preempts any local choice to select one process over the other.

For Urban Reserves Areas, *former* Metro Code 3.01.012(a) provided: “This section establishes the process and criteria for designation of urban reserve areas pursuant to ORS 195.145 and Oregon Administrative Rules Chapter 660, Division 021.”<sup>18</sup> Metro Code 3.01.010(h) defined “Urban reserve” to mean “an area designated as an urban reserve pursuant to Section 3.01.012 of this Code and applicable statutes and administrative rules.”

The cities contend that these code provisions limit Metro’s authority to designate urban reserves to the process provided under OAR chapter 660, division 21. The Commission agrees that if Metro elected to designate urban reserves under ORS 195.145(1)(a) and division 21, it would have had to follow the process and criteria in *former* Metro Code 3.01.012. However, Metro elected to proceed directly under the authority newly provided under SB 1011 and division 27, and nothing in the Metro Code cited by objectors limits Metro’s authority to act directly under the statute and rules. Nothing in state law or rule requires Metro to update its ordinance to reflect the more recent state legislation before it can rely on that legislation.<sup>19</sup>

The cities’ argument is premised on the assertion that *former* Metro Code 3.01.012 reflects Metro’s choice of process. However, the provisions of *former* Metro Code 3.01.012 became effective on February 15, 2006, prior to the enactment of SB 1011, which became effective on June 28, 2007. Thus, *former* Metro Code 3.01.012 cannot reasonably be construed as a “choice” between alternatives made prior to the existence of one of the alternatives. Because the Metro Code does not preclude using a subsequent statutory alternative for designating urban reserves, it should not be construed as including that restriction. *See* ORS 174.010 (statutory construction should not insert a restriction that does not exist).

The cities also contend that the absence of provisions in the Metro Code for designation under ORS 195.145(1)(b) and OAR chapter 660, division 27 means that Metro lacks authority to utilize the provisions of division 27. The cities point to nothing in the Metro Code that precludes Metro from employing the division 27, nor do they establish that the authorizations to designate urban reserves under ORS 195.145(1)(b) and division 27 are contingent on Metro first adopting a process and criteria as it has done in *former* Metro Code 3.01.012 for the other means of designating urban reserves.

The Commission rejects this objection on the grounds that SB 1011 and OAR chapter 660, division 27 authorize Metro to designate urban reserves and the Commission has authority to review the Metro Urban and Rural Reserves Submittal.

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<sup>18</sup> The reference to ORS 195.145 in Metro Code 3.01.010(h) is to that statute as it existed prior to SB 1011. Section 6 of that act amended ORS 195.145 by adding the alternative manner of designating urban reserves described in (1)(b). *See* Or Laws 2007, ch 723, §6.

<sup>19</sup> ORS 197.646 requires Metro, a “local government” under ORS 197.015(13), to amend its acknowledged regional framework plan and implementing land use regulations by a self-initiated plan change to comply with a new statutory requirement. SB1011 authorizes, but does not require, Metro and a county to enter into an IGA to designate urban and rural reserves. Thus, the statute does not require Metro to initiate implementing changes under ORS 197.646.

## B. Commission Review Authority – Re-designation Submittal

The City of Cornelius, and Steve and Kelli Bobosky contend that Metro and Washington County lacked authority to adopt the 2011 re-designations contained in the re-designation submittal because the Commission retained “exclusive jurisdiction” from the time the parties “appealed” the initial submittal in 2010 until the Commission issues a final written order memorializing the 2010 vote to remand. The City of Cornelius and Save Helvetia<sup>20</sup> object that a final written order was statutorily required before Metro and Washington County could consider and adopt the re-designation ordinances.<sup>21</sup> The city also argues the Commission’s failure to adopt an order following the October 2010 hearing violates goal 2 because “there was never any finding of fact addressing non-compliance with the urban reserve factors for Area 7I.” Cornelius Exception, August 8, 2011, at 4. While the Commission acknowledges it is required to issue a written order subject to judicial review on the submittal, the objections misconstrue process and do not establish that as a matter of law Metro and Washington County lacked jurisdiction to amend and submit their designations prior to issuance of the Commission’s written order.

The Boboskys point to case law concerning appellate court jurisdiction that construe the statutes and rules governing appellate judicial jurisdiction. These cases provide that appellate court jurisdiction is exclusive until the appellate court finally disposes of the appeal.<sup>22</sup> Bobosky, June 2, 2011 at 6. The objectors point to no analogous authority in the statutes and rules providing for Commission review of the Metro Urban and Rural Reserves Submittal.

The Boboskys also refer to decisions of the Land Use Board of Appeals (LUBA) holding that absent statutory authority to the contrary, where jurisdiction over an appeal of a land use decision lies with an appellate court, the local government loses jurisdiction to modify that land use decision.<sup>23</sup> These cases likewise are inapposite because they construe specific statutes concerning LUBA and not the statutes governing Commission review of the Metro Urban and Rural Reserves Submittal.

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<sup>20</sup> “Save Helvetia” is a citizen group composed of “a coalition of farmers, business owners, concerned citizens and residents who are working to protect the agricultural lands of the Helvetia community.” Save Helvetia, July 12, 2010, at 1. Save Helvetia asserts that “DLCD failed to write and distribute a written order of remand of the LCDC commissioner’s deliberations of 10-29-10 as per OAR 660-002-0010: Delegation of Authority to Director (DLCD).” Save Helvetia, May 30, 2011 at 19.

<sup>21</sup> The City of Cornelius contends the absence of a written order memorializing the October 2010 Commission review violates ORS 197.644 and ORS 197.650. Cornelius, June 2, 2011 at 4. Save Helvetia asserts that “DLCD failed to write and distribute a written order of remand of the LCDC commissioner’s deliberations of 10-29-10 as per OAR 660-002-0010: Delegation of Authority to Director (DLCD).” Save Helvetia, May 30, 2011 at 19.

<sup>22</sup> The Boboskys cite *Murray Well-Drilling v. Deisch*, 75 Or App 1, 9, 704 P2d 1159 (1985) to point out that appellate jurisdiction “is exclusive and plenary, until such time as the appellate courts have made disposition of the appeal;” and *State v. Jackson*, 228 Or 371, 283, 365 P2d 294 (1961), to note that once jurisdiction is vested in an appellate court, a lower court cannot “proceed in any manner so as to affect the jurisdiction acquired by the appellate court or defeat the right of the appellants to prosecute the appeal with effect.”

<sup>23</sup> *Standard Insurance Co. v. Washington County*, 17 Or LUBA 647, 660 (1989); *Rose v. City of Corvallis*, 49 Or LUBA 260, 270 (2005).

While an analogy to appellate and LUBA cases may be instructive in the event one or more parties seek judicial review of this Acknowledgement Order, they do not apply to the Commission's review of the Metro Urban and Rural Reserves Submittal. ORS 197.626 (1) and (2).<sup>24</sup> Rather, the Commission's review is a statutorily required part of the process established by SB 1011.<sup>25</sup>

The objectors do not identify any provision in ORS chapters 195, 197, 215 or 268 concerning the authority of a county or Metro to act on a decision that is the subject of a pending Commission review proceeding. Metro and Washington County submitted amendments to the initial submittal and the Director referred the re-designation submittal to the Commission for review prior to issuance of a written order by the Commission on the initial submittal. The Commission rejects this objection.

The city objects that *the Commission* did not comply with Goal 2 because it did not provide "any finding of fact addressing non-compliance with the urban reserve factors for Area 7I." Cornelius Exception, August 8, 2011, at 4. The Commission rejects this objection both as a matter of law and a matter of fact. First, the Commission does not construe Goal 2 to provide a basis for this objection because the goal's requirements are not applicable to the Commission's manner of conducting its review of the Metro Urban and Rural Reserves Submittal. Goal 2, Part I does requires in part that all local decisions have an adequate factual base.<sup>26</sup> Thus, in reviewing the Metro Urban and Rural Reserves Submittal, the Commission is considering whether there is an adequate factual base to support the designations. One source of this requirement is Goal 2 and OAR 660-027-0080(4). Another source of that requirement is ORS 197.633(3)(a). However, as a matter of law, the Commission's obligation to make its findings of fact regarding objections stem not from Goal 2, but from the requirement in OAR 660-025-0140(6) to sustain or reject valid objections and to provide an explanation in order to enable the Court of Appeals to perform its judicial review of any challenges to this order contending that it is "[n]ot supported by substantial evidence in the whole record as to facts found by the commission" under ORS 197.651(10)(c). *See 1000 Friends of Oregon v. LCDC*, 244 Or App at 267 (*McMinnville*). As a matter of fact, the Commission does make findings of fact and conclusions of law regarding Area 7I below.<sup>27</sup>

In a related objection, the City of Cornelius contends that the Commission did not have statutory authority to remand the initial submittal based on the city's interpretation of the

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<sup>24</sup> HB 2130 (2011) amended ORS 197.626(2) to expressly provide what *former* ORS 197.644(3)(a) (2009) and *former* ORS 197.633(5) (2009) read together established – that the Commission's final written order will be subject to judicial review upon issuance. Thus, whether under the 2009 or 2011 statutory scheme, an order of this Commission is subject to judicial review.

<sup>25</sup> Also, as distinct from LUBA and appellate courts, the Court of Appeals has held that review of final orders of the Commission may be found moot where further action of the local government occurred with respect to the area in question and superseded the prior action. *Multnomah County v. LCDC*, 43 Or App 655, 603 P2d 1238 (1979); *Carmel Estates, Inc. v. LCDC*, 51 Or App 435, 625 P2d 1367, *rev den* 291 Or 309 (1981).

<sup>26</sup> Goal 2 is "[t]o establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions."

<sup>27</sup> Consequently, in the alternative, the Commission also concludes that this objection is now moot.

periodic review procedures. *See*, Cornelius, June 2, 2011 at 3, citing ORS 197.628 to 197.650. The Commission rejects this objection on the grounds that it misconstrues the applicable law. The city appears to argue that the periodic review statutes authorize the Commission only to either adopt the decision or to modify an approved “work task,” but lacks authority to remand. The Commission disagrees that its authority is limited in this way. *See* OAR 660-025-0150(1); OAR 660-025-0160(6) (authorizing the director and the commission to issue, *inter alia*, remand orders).<sup>28</sup>

### **C. Metro Authority – Designation Outside Service District Boundary**

The Maletis Family, *et al*<sup>29</sup> (Maletis) objects that Metro lacks the authority to designate reserves beyond the metropolitan service district boundary. Maletis argues that provisions of ORS chapter 268 and the Metro Charter constrain Metro in all matters to acting within the district. With respect to SB 1011, Maletis contends that Metro’s designation is void because “the Legislature’s grant of authority in ORS Chapter 195 must be read consistent with the statutory and charter provisions \* \* \*, which clearly confine Metro’s jurisdiction to a limited geographic area.” Maletis, June 2, 2011 at 8.

As Maletis acknowledges, SB 1011 provides specific authorization to Metro and the counties to simultaneously designate urban and rural reserves. Metro may not designate urban reserves in a county until it has entered into an agreement that identifies land to be designated as urban reserve in Metro’s regional framework plan. *See*, ORS 195.143 and ORS 195.145(1)(b). The county is required to adopt a comprehensive plan for all of the land in the county and authorized to revise the plan by geographic area. ORS 215.050(1). The county and Metro must agree regarding the designation and establishment of urban and rural reserves within the county. Nothing in state law or the Metro Charter prohibits Metro from entering into an intergovernmental agreement with a county to act in a coordinated manner in undertaking land use planning. To the contrary, ORS 268.380 and ORS 195.143 are permissive, and provide legislative authorization for Metro to engage in land use planning within the district and to do so in coordination with governments with such authority outside the district. Further, Goal 2 requires county plans and actions related to land use to be consistent with the regional plan adopted under ORS chapter 268.

To construe the ORS 268.380(1) authorization to engage in coordinated land use planning within the district as prohibiting Metro from designating urban reserve outside the district boundaries would require the Commission to ignore at least two maxims of statutory construction. First, ORS 195.137 through 195.145 specifically authorize Metro and a county to designate urban and rural reserves as part of their general authorities to engage in land use planning under ORS 268.380 and ORS 215.050. Even assuming there was any inconsistency between those provisions, the specific authorization of ORS 195.137 through 195.145 would control. ORS 174.020(2) provides “[w]hen a general and particular provision are inconsistent, the latter is paramount to the former so that a particular intent controls a general intent that is inconsistent with the particular intent.” Secondly, in construing the legislative intent underlying

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<sup>28</sup> Alternatively, the Commission denies the objection as moot.

<sup>29</sup> The objectors are Chris Maletis; Tom Maletis; Exit 282A Development Company, LLC; and LFGC, LLC.

ORS 195.137 through 195.145, ORS 268.380 and ORS 215.050, it is possible to understand them to authorize coordinated land use planning for purposes of designating and establishing urban and rural reserves. That construction comports with ORS 174.010, which requires that in construing separate statutory provisions together, “where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.” Finally, the provision of the Metro Charter that Maletis relies upon as a constraint actually provides, “The Metro Area of governance includes all territory within the boundaries of the Metropolitan Service District \* \* \* and any territory later annexed or *subjected to Metro governance under state law.*” Chapter I, section 3 (emphasis added). ORS 195.137 to 195.145 subjects property subject to designation as urban reserves to Metro governance. The Commission rejects this objection.<sup>30</sup>

#### **D. Validity of OAR 660-027-0040(5)**

Oregonians in Action (OIA) challenges the validity of OAR 660-027-0040(5) on the grounds that the rule violates ORS 197.732 and Goal 2 by prohibiting counties from approving exceptions in rural reserve area. OIA, July 14, 2010 at 2. The Commission rejects this objection because the scope of its review of the Metro Urban and Rural Reserves Submittal does not include challenges to the applicable rules. Rather, the Commission determines whether the Metro Urban and Rural Reserves Submittal “on the whole complies” with the applicable rules. ORS 197.633(3). Alternatively, the Commission rejects this objection on the grounds that the rule is valid as determined in the Commission rulemaking proceeding. Further, the Commission amended OAR 660-027-0040(5) to allow the re-designation of land in rural reserves to another use as provided in OAR 660-027-0070 after OIA submitted its objection.

#### **E. Commission Review – Compliance with ORS 197.040(1)(b)(C)-(E)**

Maletis objects to Clackamas County’s re-designation submittal, contending that, under ORS 197.040(1)(b)(C)-(E), Metro must consider all alternatives, including whether leaving property as “undesignated” serves the same state interest as a “rural reserve” designation while imposing fewer burdens on identified economic interests. Maletis, June 2, 2011 at 4. East Bethany Owners<sup>31</sup> raise similar concerns regarding Multnomah County and Metro. East Bethany Owners, May 27, 2011 at 3, August 8, 2011 exceptions at 2. Maletis’s exception acknowledges that ORS 197.040 imposes no requirements on the counties (or Metro), but argues that the statute requires the Commission “to comply with the statute prior to rendering its decision on the

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<sup>30</sup> In an exception to the Director’s report, Maletis asserts that it “not appropriate” to rely on maxims of statutory construction in evaluating this objection because, citing *PGE v. BOLI*, 317 Or 606, 859 P2d 1243 (1993), “resort to maxims of statutory construction is appropriate only as a last step of analysis of legislative intent, to resolve identified ambiguity.” Maletis Exception, August 8, 2011 at 12. According to Maletis, the director did not identify an ambiguity, and therefore could not appropriately resort to statutory construction. However, under *State v. Gaines*, 346 Or 160 (2009) which supersedes *PGE v. BOLI* legislative history is appropriately considered at any stage of statutory interpretation. In addition, Maletis’ argument regarding the interplay between ORS 268.380 and ORS 195.137 to 195.145 that is different than that applied by Metro, the counties and the department, appears to be premised on an ambiguity in the statutory scheme.

<sup>31</sup> The East Bethany Owners includes a group of homeowners and residents in the East Bethany area including Robert Burnham, Vicki Burnham, Janet Burnham, John Burnham, Hank Skade, Dorothy Partlow and Robert Zahler.

matter.” Maletis Exception, August 8, 2011, at 5. Therefore, Maletis argues, the Commission must “assess” alternatives and conclude that the Maletis property must be left undesignated. *Id.*

The Commission rejects the Maletis and East Bethany Owners objections, including as modified by their exceptions, on the grounds that ORS 197.040 applies in rulemaking context and does not modify the scope of review set forth in ORS 197.633(3). When the Commission undertakes rulemaking to carry out its statutory authority and “in designing its administrative requirements,” ORS 197.040(1)(b) guides the Commission’s process consistent with the limitation of ORS 197.040(3). Review of the Metro Urban and Rural Reserves Submittal in the manner of periodic review is not subject to ORS 197.040.

#### **F. City of Cornelius – Area 7I**

The City of Cornelius objects that the Commission did not base its October 2010 oral remand vote upon facts in the public record. Cornelius, June 2, 2011 at 3. The objection itemizes several statements presented to the Commission regarding Area 7I during the Commission’s October 2010 hearings that the City believes to be false. The city identifies other statements in the record that contradict those it portrays as false. The city argues that the 2010 process left the city “without a venue to contradict false testimony;” and that it should have been afforded the opportunity to respond to that testimony during deliberation by the Commission during the 2010 hearings. Cornelius Exception, August 8, 2011, at 2. The city also argues that the Commission did not read or consider supplemental findings supporting the urban reserve designation of Area 7I, which it received the night before the final 2010 hearing. Instead, according to the city, the Commission “listened to privileged testimony from 1000 Friends and Department of Agriculture that was not founded in and contrary to the public record of facts.” Cornelius Exception, August 8, 2011 at 2. Without a chance during the Commission deliberations “to raise a hand and point to a map” the city argues it has not had an opportunity to present necessary evidence. City of Cornelius, June 2, 2011 at 3.

The city essentially argues that the Commission erred in its evaluation and reliance on the evidence in the record, and reached an incorrect decision based on the evidence. The city has not, however, established that it was denied the opportunity to participate, or that there was not substantial evidence in the record to support the Commissions’ decision. The Commission is not required to offer affected local governments (or any party) the opportunity to participate in its deliberations. Although OAR 660-025-0085(5)(c) provides for oral argument, including argument from affected local governments addressing objections raised, nothing in OAR 660-025-0085 provides an unlimited opportunity to interject at any point in the proceeding. Moreover, the City of Cornelius has had multiple opportunities to fully present evidence and argument throughout this review process. As an affected local government, the city presented the Commission facts in the record regarding the nature of Area 7I during both the 2010 and 2011 hearings. During the 2011 proceedings, the city presented testimony and evidence to support its initial position as well as its proposed compromise position. To the extent the city believes it was not adequately afforded the opportunity to respond to “false” testimony at the 2010 hearing, any prejudice it perceived was resolved when it was provided adequate additional opportunities to present its evidence and argument throughout the 2011 proceedings. While the city disagrees with the Commission’s evaluation of the evidence and disagrees with the factual

substantiation of some of the evidence it relied on, the city has not established that the Commission denied the city an opportunity to present its evidence or that the Commission's review proceedings violated the city's right to participate.

The City of Cornelius also objects that in its October 2010 review, the Commission was unfair, inappropriate and exceeded its review authority by substituting its own judgment for that of Metro and Washington County with regard to Area 7I. Cornelius, June 2, 2011 at 4. The city correctly notes that under OAR 660-027-0080(4)(a), the Commission must determine whether a decision complies with the Goal 2 requirement that the local findings include an adequate factual base and whether the evidence in the record, viewed as a whole, would permit a reasonable person to make particular findings, in this case establishing Area 7I as an urban reserve. However, while the city disagrees with the Commission's evaluation of the evidence in the record, it has not established that the Commission's initial conclusions regarding Area 7I violated its standard of review. The Commission considered the evidentiary record and the determinations of Metro and Washington County during its October 2010 deliberations. The Commission considered the entire record, including the evidence highlighted in oral argument, in reviewing the submittal. After deliberations, the Commission concluded that, as to Area 7I, the evidentiary basis for the designation was not supported in the record, and voted to reject that designation. The Commission did not substitute its judgment for that of the local governments when, relying on the evidence in the record, it voted to reject the urban reserve designation for Area 7I. The Commission rejects this objection.

The City of Cornelius also objects that "the process of amending the Urban/Rural Reserves Map for Washington County has not been in compliance with Goals 1 and 2 because it has been closed to public participation in the negotiations and decision making that led to the amended Reserves Map." Cornelius, June 2, 2011 at 5. Specifically, the city argues (1) the public was not provided access to factual information at the times when public hearings were conducted and land use decisions were made; (2) Washington County's process was closed to public participation in the negotiations and decision making that led to the amended reserves map; and (3) none of the governing bodies provided public hearing instructions or procedures prior to a hearing being conducted. *Id.* The Commission rejects the city's objection based on Goal 1. This objection is addressed below at section M(2).

To the extent this objection rests in part on Goal 2—the requirement to provide affected governmental units with opportunities for review and comment during the preparation, review and revisions of plans and implementation ordinances—the Commission rejects the objection. *See* section M(3). The essence of the city's argument is that it lacked a meaningful opportunity to present its proposed compromise for consideration to the Washington County Board of Commissioners.<sup>32</sup> The objection highlights conflicting evidence presented to the county regarding designation of Area 7I but does not establish that the county failed to provide an adequate opportunity for the city to participate in the local proceedings.

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<sup>32</sup> As the city describes the compromise, it would have moved "352 acres of new Urban Reserve that is not wanted on prime farmland north of Sunset Highway in Helvetia to north of Cornelius on less than prime farmland where it is wanted and needed to build a complete and sustainable community. [The farmland north of Sunset Highway in Helvetia has one of the highest concentrations of Class 1 soils in Washington County compared to Area 7I north of Cornelius.]" Cornelius Exception, August 8, 2011, at 1.

Nor does the county's failure to adopt the city's proposed compromise violate the Goal 2 requirement that the county establish an adequate factual base for its decision. Where the evidence is conflicting, the factual base is adequate if a reasonable person could reach the decision that Metro and the Washington County made in view of *all* the evidence in the record. The choice between the conflicting evidence belongs to the decision maker. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995).

The city acknowledges that Washington County provided notice of hearings as required by its comprehensive plan. The city has not established that Goal 2 requires more opportunities for review and comment during the preparation, review and revisions than Washington County and Metro provided. The re-designation submittal findings and the record both demonstrate that Washington County provided public involvement opportunities to the city. *See*, Metro Ordinance No. 11-1255 at 10-13. Metro and Washington County held a joint public hearing on March 15, 2011 prior to signing the IGA. *See*, testimony in Metro Supp Record at 47-187; and summary of deliberation in Metro Ordinance No 11-1255 at 109-119.

### **G. Conflicts of Interest**

Save Helvetia objects that Washington County Board of Commissioners Chair Duyck and Commissioner Terry failed to disclose potential conflicts of interest as required by ORS 244.120(12) and 244.130(1).<sup>33</sup> Save Helvetia, May 30, 2011 at 15-17. The Commission denies this objection on the grounds that its review pursuant to OAR 660-027-0080 does not encompass ORS chapter 244. Alternatively, on the merits, the Commission rejects this objection because (1) owning land subject to a rural or urban reserve designation does not result in a pecuniary benefit or detriment as required by ORS 244.020(12), and (2) even if one or more county commissioner did have a potential conflict of interest with regard to the approval of Washington County Ordinance 740, the resulting decision is not void for failure to disclose according to ORS 244.130(2). Save Helvetia's objection does not substantiate the conclusion the Commission is required to reject the Metro Urban and Rural Reserves Submittal based on the alleged potential conflict of interest requiring disclosure.<sup>34</sup>

### **H. Oregon Public Meetings Laws**

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<sup>33</sup> For Chair Duyck, the alleged potential conflict of interest is that his father owns land designated rural reserves and for Commissioner Terry, the alleged potential conflict of interest is that he owns land designated urban reserve. Save Helvetia argues that the "end product of the reserves process" is tainted unless the Commission requires public disclosure of potential conflicts of interest. Save Helvetia, May 31, 2011 at 17.

<sup>34</sup> As material here, the statutes provide that a "potential conflict of interest" exists if the effect of an action by a public official "could be to the private pecuniary benefit or detriment of the person or the person's relative." ORS 244.020(12). For purposes of the statute, "relative" includes parents of the public official. ORS 244.020(15)(d). Officials facing a potential conflict of interest must announce publicly the nature of the potential conflict prior to taking any official action on the matter. ORS 244.120(2)(a). In any event, "[a] decision or action of any public official or any board or commission on which the public official serves or agency by which the public official is employed may *not be voided by any court solely by reason of the failure of the public official to disclose* an actual or potential conflict of interest." ORS 244.130(2) (emphasis added).

Save Helvetia objects generally that Washington County and Metro did not comply with the requirements of Oregon’s Public Meeting Laws, ORS 192.410 to 192.505. Save Helvetia, May 30, 2011 at 17-18. Save Helvetia does not describe with any particularity the nature of the alleged violation or how the alleged violation provides grounds to reject the Metro Urban and Rural Reserves Submittal under OAR 660-027-0080.<sup>35</sup> Objectors before this Commission must “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App at 268-269 (*McMinnville*). The Commission rejects this objection.

## **I. County Charter Procedures**

Steve and Kelli Bobosky object that Washington County did not comply with applicable county charter provisions or public involvement laws during the re-designation process. Bobosky, June 2, 2011 at 9-12. The Commission rejects this objection on the grounds that its review pursuant to OAR 660-027-0080 does not encompass the charter provisions. Alternatively, if this objection is construed to assert an issue of Goal 2 compliance (“[t]o establish a land use planning process \* \* \* as a basis for all decision and actions related to use of land”), the Boboskys have not established any violation.

The Boboskys argue that the county ordinance designating rural reserves is “deemed rejected” because the county violated Section 103(c) (timelines)<sup>36</sup> and Section 104 (planning commission review) of the Washington County Charter.<sup>37</sup> The Boboskys argument fails to distinguish between the ordinance and the Supplemental Reserves IGA. Tentative decisions in the Supplemental Reserves IGA were subject to consideration and modification in the ordinance process. The Boboskys are correct that the IGA was not adopted under the Section 103 timelines and was not subject to a planning commission hearing. However, the county charter did not require that IGA to comply with those provisions. The IGA and Ordinance No. 740 are distinct documents, and only the ordinance adoption is subject to Sections 103 and 104. The county’s adoption of Ordinance No. 740 complied.<sup>38</sup> The Commission rejects this objection because it

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<sup>35</sup> The *Attorney General’s Public Records and Meetings Manual* states “If a citizen wishes to compel compliance with the meetings law, or believes that a governing body has violated the law, the citizen may file a private civil lawsuit against the governing body.” Page 114 (January 2011).

<sup>36</sup> Section 103(c) provides:

“No proposed land use ordinance shall be adopted on or after November 1 of each calendar year through the final day of February of each subsequent calendar year. If a final decision on a proposed land use ordinance has not been reached by October 31, the proposed ordinance shall be deemed rejected unless the Board, by affirmative act, continues the proposed ordinance to a time and date certain on or after March 1 of the subsequent year.”

<sup>37</sup> Section 104(a) provides in part:

“Upon filing of a land use ordinance, it shall be forwarded to the Planning Commission for at least one public hearing.”

<sup>38</sup> Ordinance No. 740 amends Policy 29 of the Rural/Natural Resource Plan Element of the Comprehensive Plan to modify the Rural and urban reserves map. Section 1(F) of Ordinance 740 establishes that the county followed Sections 103 and 104. The initial public hearing was held on March 2, 2011, and the Board held subsequent

does not establish that Washington County failed to follow the applicable procedures. ORS 197.633(3)(b).

### **J. Predetermined Outcome**

Steve and Kelli Bobosky object generally that the local governments were committed to a predetermined outcome. Bobosky, June 2, 2011 at 12-20. This objection is within the Commission's review authority under OAR 660-027-0080 to the extent it implicates Goal 2 compliance with the requirement for public participation. The Commission rejects this objection because the record supports the conclusion that the local governments engaged the public and deliberated on public input. Metro found that "[e]ach local government held public hearings prior to adoption of the Supplemental IGA and prior to adoption of their respective ordinances amending their maps of urban and rural reserves." Exhibit B to Ordinance No. 11-1255 at 13. Contrary to the suggestion of predetermination is the summary of board and council motions. *Id.* at 111-122. The summary of the deliberations reflect that there was no predetermined outcome.

### **K. Clackamas County Revised Findings**

Maletis objects to the Clackamas County Board of Commissioners' approval of Overall Findings for Designation of Urban and Rural Reserves and Revised Findings for Clackamas County Urban and Rural Reserves on April 21, 2011 on the grounds that the county "did not accept public testimony at the meeting before adopting the [findings]. In addition, the [findings] do not state that they replace or supersede the 2010 Findings." Maletis, June 2, 2011 at 6. The Commission denies this objection to the extent Maletis asserts violation of county code requirements on the grounds that its review pursuant to OAR 660-027-0080 does not encompass the county's code. Alternatively, on the merits the Commission denies the objection because the Maletis refers to inapplicable code provisions. The county did not amend its ordinance in connection with the re-designation submittal (as Metro and Washington County did).<sup>39</sup> Thus the county was not bound to follow "an amendment process that is substantially similar to that used to adopt that ordinance." *Id.* at 5.

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hearings before adopting Ordinance 740 on April 19, 2011. Metro's Response to Objections regarding the re-designation decision explains the record of the public process in adopting that decision:

"The findings for Metro Ordinance No. 11-1255 \* \* \* address public involvement. Findings at 11-13, with citations to materials in the record. Metro and Washington County held a joint public hearing (March 15, 2011) prior to signing the IGA between them. Testimony received may be found at Metro Supp. Rec 47 to 187, with citations to materials in the record. Minutes of the joint meeting may be found at page 188 of that record. The joint deliberations by the two governing bodies are summarized in the findings for Metro Ordinance No. 11-1255 at 109 to 119, with citations to materials in the record, and Wash Co Supp. Rec. 12674. The deliberations demonstrate that there was no pre-determined outcome and that neither governing body had made up its collective mind. Both governments also held hearings prior to adoption of their respective ordinances revising reserve designations [Metro, April 21, 2011; Washington County, March 29, 2011 (Wash Co Supp. Rec. 10912); April 19, 2011 (Wash Co Supp. Rec. 11090); and April 26, 2011 (Wash Co. Supp. Rec. 11587). Testimony received at the Metro hearing may be found at Metro Supp. Rec. 326 to 600. Minutes of the council meeting may be found at page 601 of that record."

<sup>39</sup> The county's supplemental findings are consistent with the previous findings and do not alter or otherwise affect the previously adopted ordinance.

## L. Equal Protection

Maletis and the East Bethany Owners assert that the reserves submittal violates the Equal Protection Clauses of the United States Constitution and the Oregon Constitution, both facially and as applied.<sup>40</sup> Maletis, June 2, 2011, at 6-7, August 8, 2011 at 9; East Bethany Owners, May 27, 2011 at 1; August 8, 2011 at 1-2. Arguing that the land use statutes governing reserves on their face treat farmland differently than non-farmland and that as applied the reserves decisions treated similarly situated properties in a disparate manner, the objectors conclude that the submittal “is unconstitutional and must be remanded.”<sup>41</sup> Maletis, June 2, 2011 at 7.

In *Homebuilders Assoc. v. Metro*, 42 Or LUBA 176 (2002), the Land Use Board of Appeals described the proper analysis of assertions that a challenged decision violates Article I, section 20 of the Oregon Constitution. The Board opined:

“As relevant here, to establish that the challenged decision violates Article I, section 20, of the Oregon Constitution, petitioner must show that (1) another group has been granted a ‘privilege’ or ‘immunity’ that petitioner’s group has not been granted; (2) petitioner’s group constitutes a ‘true class’; and (3) the distinction between the classes does not have a rational relationship to a legitimate end. *Withers v. State of Oregon*, 163 Or App 298, 306, 987 P2d 1247 (1999). A true class is one that is defined in terms of characteristics that are shared apart from the challenged law or action. *Id.* If the true class is one with immutable characteristics, or a distinct, socially recognized group of citizens that has been the subject of adverse social and political stereotyping, then it is a suspect class, subject to a more exacting review standard. *Tanner v. OHSU*, 157 Or App 502, 520, 971 P2d 435 (1998). A true class that is defined by other characteristics, such as geographical residency or employment status, is subject to a less exacting rational relationship test. *Gunn v. Lane County*, 173 Or App 97, 103, 20 P3d 247 (2001); *Sherwood School Dist. 88J v. Washington Cty. Ed.*, 167 Or App 372, 6 P3d 518 (2000).” 42 Or LUBA at 200.

The Commission finds that the objectors have neither established that they are part of a true class nor, even assuming they were, that distinguishing between farmland and non-farmland does not have a rational relationship to a legitimate legislative end (to protect farmland for farm use). In its exceptions, Maletis asserts that the Metro Urban and Rural Reserve Submittal favors a true class: “the group of owners of farmland outside urban growth boundaries in Oregon.” Maletis, August 8, 2011 at 10. The Commission does not understand that to be a “true class” under Article I, section 20. Additionally, such a class based on geographic location of land

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<sup>40</sup> The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution provides in part that a state may not “deny to any person within its jurisdiction the equal protection of the laws.” US Const, Amend XIV, §1. Similarly, Article I, section 20 of the Oregon Constitution provides that “[n]o law shall be passed granting to any citizen or class of citizens, privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.”

<sup>41</sup> The Commission has some question whether state and federal constitutional objections even fall within its scope of review under OAR 660-027-0080(4) and ORS 197.633(3)(c). Objectors assert that because the Court of Appeals review under ORS 197.651(10)(b) requires reverse or remand if this order is unconstitutional requires the Commission to consider objections regarding the constitutionality of the Metro Urban and Rural Reserves Submittal. To the extent that such objections are properly before this Commission, they are considered here.

ownership would seem to be of a nature that a person could choose to enter (or leave) the class. *See Wilson v. Dept. of Rev.*, 302 Or 128, 132, 727 P2d 614 (1986) (“[I]aws which are left open for individuals voluntarily to bring themselves within a favored class do not violate Article I, section 20.”). Even assuming that Maletis could establish that there is indeed such a challengeable class, Maletis must establish under the Equal Protection Clause that any distinction between classes does not have a rational relationship to a legitimate end. *See also New Orleans v. Dukes*, 427 US 297, 303, 96 S Ct 2513, 49 L Ed2d 511 (1976).

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

## **M. Goal Compliance**

The Commission reviews the Metro Urban and Rural Reserves Submittal for compliance with the applicable statewide planning goals pursuant to OAR 660-027-0080(4)(a) and ORS 197.633(3)(c). The rule provides that “compliance with the goals” as provided in ORS 197.747, means “the submittal on the whole conforms with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.” OAR 660-027-0080(4)(a). Additionally, to determine compliance with the Goal 2 requirement for an “adequate factual base”, the rule requires the Commission to consider whether the submittal is supported by “substantial evidence” as that term is used in ORS 183.482(8)(c) (“substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding”).

### **1. General Goal Compliance**

Elizabeth Graser-Lindsey objects that the reserves submittal fails to “consider as a major determinant the carrying capacity of the air, land and water resources” and fails to determine if “the land conservation and development actions provided for by such plans” would “exceed the carrying capacity of such resources” as contemplated by Metro’s 1995 Future Vision plan.<sup>42</sup> Ms. Graser-Lindsey argues that the Metro Urban and Rural Reserves Submittal violates Goals 2, 3, 4, 5, 6, 8, 9, 10, 12, and 14 because Metro and the counties did not “develop alternative means that will achieve the goals” as required by Goal 2 when they failed to follow the vision plan guidelines. Graser-Lindsey, July 6, 2010 at 1.

The Commission agrees with objector Graser-Lindsey that all relevant goals apply to urban and rural reserves designations. Findings of goal compliance are explicitly required for

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<sup>42</sup> The 1995 Metro Future Vision states: “We have chosen to approach carrying capacity as an issue requiring ongoing discussion and monitoring.” Metro’s Notice of Adoption of Urban and Rural Reserves (Metro Ordinance No. 10-1238A, Exhibit E) indicates that Statewide Planning Goals 1–15 apply to this decision, that “these decisions establish a system of urban and rural reserves in the three-county region to guide long-term planning to the year 2060,” and that “the decisions include changes to the comprehensive plans (counties) and regional framework plan (Metro) and maps.”

planning documents designating urban and rural reserves under OAR 660-027-0080(4). This is consistent generally with state land use law because the Metro Urban and Rural Reserves Submittal includes both comprehensive plan amendments for Clackamas, Multnomah, and Washington Counties, and an amendment to Metro’s Regional Framework Plan amendments. Goal 2 requires that such plan amendment decisions must explain why the amendment complies with the relevant goals. *Von Lubken v. Hood River County*, 22 Or LUBA 307, 314 (1991). The Commission also recognizes that the goals at issue include guidelines regarding consideration of carrying capacity.<sup>43</sup>

The Commission rejects this objection for two reasons. First, the decision to designate urban reserves does not immediately commit the lands to urban use. Rather, it makes the lands first priority for inclusion within the Metro UGB if Metro at some point in the future makes a policy decision to expand its urban growth boundary, and if Metro makes the showing required by state law (and Metro’s own authorities) that an expansion is justified. Even then, Metro will decide among lands designated as urban reserves. The Commission construes its goals contemplate consideration of carrying capacity at the time of an amendment of the urban growth boundary, rather than at the time of a decision on urban reserves.

Second, the provisions objector Graser-Lindsey identifies are guidelines and not mandatory requirements. As Goal 2 explains, and ORS 197.015(9) confirms, guidelines are suggested approaches intended to aid local governments in achieving goal compliance in connection with development and implementation of comprehensive plans and related regulations.<sup>44</sup> The word “guideline” is used in its ordinary sense of guidance and not mandate or limitation. As the statute provides, “[g]uidelines shall be advisory and shall not limit state agencies, cities, counties and special districts to a single approach.” ORS 197.015(9).

The Commission previously acknowledged Metro’s Regional Framework Plan and Regional Urban Growth Goals and Objectives (RUGGOs) as complying with the statewide planning goals. The RFP and RUGGOs include provisions directed at the overall carrying capacity of the lands making up the Metro region. RFP amendments that are part of the Metro Urban and Rural Reserves Submittal do not alter that compliance. As noted above, the Metro Urban and Rural Reserves Submittal does not commit any lands to urbanization and, as a result, Metro’s existing planning provisions remain adequate to address carrying capacity to the extent that such a consideration is required by the statewide goals.

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<sup>43</sup> For example, the Goal 3 guidelines provide that plans “should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.”

<sup>44</sup> Goal 2 provides:

“Guidelines are *suggested directions* that would aid local governments in activating the mandated goals. They are *intended to be instructive, directional* and positive, *not limiting local government to a single course of action* when some other course would achieve the same result. Above all, guidelines are not intended to be a grant of power to the state to carry out zoning from the state level under the guise of guidelines.” (Emphasis added).

Joseph Rayhawk also objects generally that the submittal violates Goals 1-15 generally, and Goals 1, 2, 3, 6, 11, 12 and 13 specifically. Mr. Rayhawk's specific objections are addressed below. The Commission finds Mr. Rayhawk's general objections lack particularity. Objectors before this Commission must "make an explicit and particular specification of error by the local government." *1000 Friends of Oregon v. LCDC*, 244 Or App at 268-269 (*McMinnville*). The Commission rejects this objection.

## **2. Goal 1: Citizen Involvement**

The City of Cornelius, Save Helvetia, Thomas Black, Joseph Rayhawk and Linda Peters object that the reserves process violated Goal 1. Several objectors allege a lack of opportunity for meaningful public participation. The City of Cornelius particularly identifies the Washington County process that led to the re-designation submittal, which it asserts "has not provided the public access to factual information used by LCDC, Metro and the County at the times when public hearings were conducted and land use decisions made on Reserves." Cornelius, June 2, 2011 at 2. Thomas Black also objects that Washington County violated Goal 1 because it did not involve "a true cross-section of the citizens of Washington County in the initial review and decision making process." Objector Black feels that city representatives were given undue influence, that public hearings were "only a formality," and that decisions were made prior to the hearings. Black, June 1, 2011 at 5.

Goal 1 requires local governments to develop a citizen involvement program. None of the objections contend that any of the local governments did not have a program, or did not comply with their citizen involvement program. Rather, they object to the results of Washington County's implementation of its program. That, however, does not establish a Goal 1 violation.<sup>45</sup> To demonstrate a Goal 1 violation the objector must establish a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995). The objectors have not done so. Specifically, the City of Cornelius contends the Metro and Washington County public hearings violated Goal 1 because neither governing body provided public hearing instructions or procedures prior to conducting a hearing and never began any of the public hearings by asking whether the hearing body whether there were any *ex parte* conflicts or other conflicts of interest to declare. However, the city does not identify any state or local requirements applicable to the proceedings before Metro or the county that required them to provide those instructions. The hearings before Metro and the County were not quasi-judicial land use proceedings; they were legislative proceedings.

Metro Ordinance No. 11-1255 (at 10- 13) describes the overall process of analysis and public involvement in two sections titled "analysis and decision making and public involvement":

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<sup>45</sup> LUBA repeatedly has held that where amendments to a local government's comprehensive plan or land use regulations do not amend or affect the local governments acknowledged citizen involvement program, the only way a petitioner can demonstrate a violation of Goal 1 is by demonstrating a failure to comply with the acknowledged citizen involvement program. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998); *Churchill v. Tillamook County*, 29 Or LUBA 68 (1995).

“The public involvement plan provided the public with more than 180 discrete opportunities to inform decision makers of their views urban and rural reserves. A fuller account of the public involvement process the activities associated with each stage may be found at Staff Report, June 9, 2010, Metro Rec. 123-155; Metro Supp. Rec. 47.”

Washington County’s Supplemental Record (at 12664-12667) addresses the county’s public involvement process. Metro and Washington County held a joint public hearing on March 15, 2011, prior to signing the amended IGA; testimony from this hearing is included in the Metro Supplemental Record (at 47-187). Both governments held public hearings prior to adoption of their respective ordinances revising the reserves decision – Metro on April 21, 2011 and Washington County on March 29, April 19, and April 26, 2011. Washington County Supp. Record at 10912, 11090 and 11587. Based on the above the Commission finds that Metro and Washington County followed their public involvement programs throughout the reserves process, in compliance with Goal 1. The objections are rejected.

### **3. Goal 2: Land Use Planning**

Numerous objectors assert that various portions of the submittal violate the Goal 2. Goal 2 requires both an adequate factual base and that citizens and affected governmental units be provided opportunities for review and comment during the preparation, review and revisions of plans and implementation ordinances. For the most part, objections to the Goal 2 requirement that the decision have an adequate factual base are addressed below, in the context of specific findings. Objections based on lack of an opportunity for public participation are addressed here. Goal 2 provides in part,

“Opportunities shall be provided for review and comment by citizens and affected governmental units during the preparation, review and revisions of plans and implementing ordinances.”

Steve and Kelli Bobosky object that they had no opportunity to participate in the process Metro and Washington County used in reaching the re-designation submittal. Bobosky, June 2, 2011 at 8-9. Metro and Washington County limited the re-designation proceeding to issues responding to their understanding of the October 2010 Commission vote to remand specific components of the initial submittal. Washington County lawfully was permitted to re-evaluate its rural reserve designations, including the designation of the Bobosky’s property. However, Goal 2 does not require the county to reconsider or reevaluate all elements of a prior decision in its re-evaluation and reconsideration of a portion of that decision. The county’s decision not to re-evaluate the Bobosky’s property designation or allow additional testimony concerning areas that chose not to reevaluate or re-designate does not violate Goal 2. The Commission rejects this objection because the Boboskys had a full opportunity to participate in the local proceedings that lead to the designation of their property and have had the opportunity to provide both written and oral testimony regarding their opposition to the designation of their property, during the Commission’s initial and supplemental review of the Metro Urban and Rural Reserves Submittal.

The City of Cornelius also objects that Metro and Washington County proceeded with reconsideration and reevaluation of some designations after the Commission voted to remand a portion of the initial submittal. With respect to the participation requirement of Goal 2, the city fails to demonstrate that it was denied opportunities to review and comment during the process leading to the re-designation submittal. To the contrary, the city confirms that it “testified against this Urban/Rural Reserves adjustment by Washington County and Metro in public workshops and the following public hearings that led to approval of the new Reserves recommendation to LCDC this summer” and lists six separate instances where it was provided the opportunity to present testimony and evidence into the record. Cornelius, June 2, 2011 at 1. The Commission rejects this objection.

#### **4. Goal 3: Agricultural Lands**

Several objectors, including Joseph Rayhawk, Thomas Black, Linda Peters and Save Helvetia object that the reserves decision violates Goal 3 because it does not preserve farmland for farm use and will cause adverse impacts on nearby farm uses. Joseph Rayhawk and Save Helvetia argue that to satisfy Goal 3, all land that satisfies the rural reserve factors must be designated as rural reserves. Helvetia, July 12, 2010 at 13; Rayhawk, June 1, 2011 at 7-8, Black, June 1, 2011 at 3.

Goal 3 does not prohibit the designation of farmland, Foundation Agricultural Lands or otherwise, as an urban reserve, nor does it require that all land that meets the rural reserve factors must be designated rural reserve. Exclusive Farm Use (EFU) zoned land designated as an urban reserve remains subject to Goal 3 until and unless Metro adds the land to the regional urban growth boundary. OAR 660-027-0070. Likewise, undesignated Goal 3 resource land remains subject to the protections of Goal 3. Rather than contributing to adverse impacts, the designation of urban and rural reserves provides better certainty, and limits uses that might conflict with farm uses. OAR 660-027-0070.

Further, nothing in state statute or rule requires that a county designate a particular property or area as either an urban or a rural reserve. To the contrary, division 27 provides Metro and the counties discretion regarding whether to designate any lands. Metro may designate Foundation Agricultural Land as an urban reserve under specified conditions. OAR 660-027-0040(11). The rule requires a county to indicate which land was considered for designation as rural reserves and for which purpose, and the counties satisfied this requirement. OAR 660-027-0060. Nothing in the reserves statutes or rules or Goal 3 mandates designation of particular land as a rural reserve – only that there be some rural reserves designated if the county utilizes the urban reserves authorization provided by SB 1011. ORS 195.143(3). The Commission rejects these objections.

#### **5. Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces**

Thomas Black alleges the urban and rural reserves submittal violates Goal 5 because it will allow urbanization of natural resources, cultural and historic areas, and open spaces. Metro addressed Goal 5. Exhibit B to Ordinance No. 11-1255 at 182. Goal 5 applies only to “significant” resource sites, including regional resources, that are included in an inventory

adopted as part of a comprehensive plan or a Metro regional functional plan. OAR 660-023-0080. If Metro were to expand the regional UGB, or a county were to amend its comprehensive plan designations for reserve areas, Goal 5 would apply at that time. Goal 5 does not apply to the decisions to designate an area as an urban reserve because that decision does not authorize any new use of the land that could conflict with an inventoried Goal 5 resource. If inventoried resources exist in the subject area, Goal 5 requires Metro and the county to evaluate them in light of conflicting uses at the time amendment of the UGB or the comprehensive plan is under consideration to allow new conflicting uses. OAR 660-027-0070. The Commission rejects this objection.

## **6. Goal 9: Economic Development**

Maletis objects that there is no substantial evidence or related findings, in either the initial or re-designation submittal, to meaningfully assure that the submittal, as it will be implemented by the counties, is in compliance with Goal 9. Maletis, July 14, 2010 at 15; June 2, 2011 at 5. Specifically, Maletis contends that although the Metro Urban and Rural Reserves Submittal includes summary conclusions by each of the counties as to how the reserve designations comply with Goal 9, no facts support the conclusions.<sup>46</sup> Further, Maletis argues that it does not appear Metro made any effort to acknowledge and coordinate the counties' findings and substantive mapping decisions regarding Goal 9 into its own analysis to ensure that regional goal objectives and obligations are met; and that there are no independent findings by Metro to demonstrate, based upon substantial evidence in the whole record, that the submittal complies with Goal 9 on a regional basis.

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.” The implementing rule “does not require or restrict planning for industrial or other employment uses outside of urban growth boundaries.” OAR 660-009-0010. Generally, Goal 9 does not establish planning requirements for local governments outside of urban growth boundaries. OAR 660-009-0020. All urban and rural reserves lie outside the Metro regional UGB.

Maletis does not cite any authority that requires independent findings by Metro to demonstrate compliance with Goal 9 on a regional basis. To the extent Goal 9 is implicated through this process, the applicable requirement for determining potential future land need for employment is contained in OAR 660-027-0050(2). Metro analyzed the need for employment

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<sup>46</sup>To the extent Maletis’ requested relief for this objection is to remand the decision to Clackamas County, in its supplemental findings, Clackamas County states:

“The proposed text amendment is consistent with Goal 9 because it, in itself, does not propose to alter the supply of land designated for commercial or industrial use. However, the text does establish urban reserves, which include lands suitable for both employment and housing. In Clackamas County, specific areas were identified as appropriate for a mixed use center including high intensity, mixed use housing (Borland area of Stafford) and for industrial employment (eastern portion of Clackanomah). These areas will be available to create new employment areas in the future if they are brought into the UGB.” Revised Findings for Clackamas County Urban and Rural Reserves April 21, 2011 at 28-29.

land for the planning period and accommodated it. Metro Record at 22. Metro also made findings relative to Goal 9 in the Urban Growth Report on which it relied in evaluating land needs under the rule. Metro Record at 626. It also made findings regarding Goal 9 compliance for each of the counties in Exhibit E to Ordinance No. 10-1238A: Metro record at 45 (Clackamas County), 57 (Multnomah County) and 113 (Washington County), and a general finding of goal compliance.<sup>47</sup> However, the specific provisions of Goal 9 generally apply inside UGBs, and “implementation” of the urban reserves submittal for purposes of Goal 9 will take place at the time the UGB is amended by Metro. Metro may, at that time, designate specific lands for employment use in order to be consistent with Goal 9.

In contrast to the Maletis objection, Joseph Rayhawk contends the Metro Urban and Rural Reserves Submittal violates Goal 9 because Washington County asked for more urban reserve land than is needed for economic development; and because the submittal “took flat Foundation Farmland rather than the more challenging Important or Conflicted Lands.” Rayhawk, June 1, 2011 at 8. As a result, Mr. Rayhawk opines that “they may be contributing to the current decline of the County has a job growth engine, especially for high-tech jobs.” *Ibid.* While he offers opinions regarding Washington County’s economic development efforts, the objection does not offer any evidence undermining Metro’s analysis, or establishing how Goal 9 is implicated or violated by the Metro Urban and Rural Reserves Submittal.

The Commission rejects both the Maletis and Rayhawk objections.

## **7. Goal 12: Transportation (and OAR chapter 660, division 12)**

Tim O’Callaghan, Maletis and the Metropolitan Land Group (MLG) object that the Metro Urban and Rural Reserves Submittal violates Goal 12 because it lacks findings regarding OAR chapter 660, division 12 (the “Transportation Planning Rule” or “TPR”). O’Callaghan, July 14, 2010 at 16; Maletis, July 14, 2010 at 15; MLG, July 14, 2010 at 18. The objectors argue that Metro and the counties must show compliance with the TPR because the submittal includes amendments to the RFP and the counties’ acknowledged comprehensive plans. According to these objectors, none of these local governments determined whether the proposed amendments would “significantly affect” any existing or proposed transportation facilities.

Maletis, MLG and O’Callaghan argue that neither Metro nor Clackamas County made any independent findings regarding Goal 12 or the TPR, and that, while Multnomah County and Washington County adopted Goal 12 findings, the counties did not address the TPR. As a result, the objectors assert that it is unclear whether any of the adopted policies or designations

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<sup>47</sup> For Goal 9 generally, Metro found:

“The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations for lands subject to Goal 9. All urban and rural reserves lie outside the UGB. No land planned and zoned for rural employment was designated rural reserve. Designation of land as urban reserve helps achieve the objectives of Goal 9. Much urban reserve is suitable for industrial and other employment uses; designation of land suitable for employment as urban reserve increases the likelihood that it will become available for employment uses over time. The designation of reserves is consistent with Goal 9.” Exhibit B to Ordinance No. 11-1255 at 183.

“significantly affect” any existing or planned transportation facilities. Maletis and MLG also argue that the local governments cannot defer this analysis to a later stage of development on the grounds that no development is currently proposed.

The Commission rejects this objection because the local governments were not required to address the TPR in the Metro Urban and Rural Reserves Submittal. By its own terms the TPR does not apply directly to urban and rural reserves designations. The rule reflects the Commission’s position that a land use decision that does not commit lands to an urban use and that, in fact, maintains existing land uses, does not affect any transportation system or facility. The same reasoning applies here: since the zoning of the property included in an urban reserve will not (and cannot) change by virtue of the reserve designation, the land use action will generate no new vehicle trips.

The “significantly affect” language appears at OAR 660-012-0060. Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation will “significantly affect” an existing or planned transportation facility, the local government adopting the amendment must preserve the “identified function, capacity, and performance standards” of the facility. OAR 660-012-0060(1) and (2). The rule also identifies the circumstances that would result in a significant affect.

None of the categories listed in the rule<sup>48</sup> describe the urban and rural reserve amendments adopted by Metro and the counties. Additionally, OAR 660-012-0060(1)(c) provides that the determination of whether an action will significantly affect a transportation facility is “...measured at the end of the planning period identified in the adopted transportation system plan[.]” Here, the Regional Transportation System Plan (RTSP), acknowledged November 24, 2010, includes a planning period to 2035. Thus, the Metro Urban and Rural Reserves Submittal addresses potential land uses well past that horizon. Finally, OAR 660-024-0020(1)(d) provides:

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<sup>48</sup> OAR 660-012-0060(1) provides in part:

“A plan or land use regulation amendment significantly affects a transportation facility if it would:

“(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

“(b) Change standards implementing a functional classification system; or

“(c) As measured at the end of the planning period identified in the adopted transportation system plan:

“(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

“(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

“(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.”

“The transportation planning rule requirements under OAR 660-012-0060 need not be applied to a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the boundary or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the boundary.”

While this rule does not apply directly to urban and rural reserves designations, it supports the Commission’s conclusion that the Metro Urban and Rural Reserves Submittal which does not commit lands to an urban use and that, in fact, maintains existing land uses, does not affect a transportation system or facility. The Commission rejects these objections.

## **N. Urban Reserves**

### **1. Failure to allocate land needs by geographic subarea**

The Coalition for a Prosperous Region<sup>49</sup> (CPR) objected during the initial proceedings and reasserted their objection following the re-designation submittal that (1) Metro failed to balance urban needs as required by OAR 660-027-0005(2) by failing to allocate land needs by geographic subarea to meet long-term needs for population and employment; and by doing so, (2) Metro failed to adequately consider the urban reserves factor requiring sufficient development capacity to support a healthy economy (OAR 660-027-0050(2)) and (3) failed to adequately consider the urban reserves factor requiring that lands designated for urban reserves can be developed in a way that makes efficient use of existing and future infrastructure investments (OAR 660-027-0050(1)). CPR therefore alleges Metro failed to comply with Statewide Planning Goals 9, 10 and 14. CPR, July 14, 2010 at 14–16; June 2, 2011, at 1-2.

CPR contends the three counties that comprise the Metro region are projected to grow at different rates, yet the reserves submittal does not expressly allocate land needs by geographic area, or even allow sufficient flexibility to address such sub-regional growth rates. CPR asserts that the submittal provides insufficient urban reserves and undesignated lands to meet the region’s needs over the next 50 years, particularly in the western part of the region. This objection focuses on the need to increase urban reserves in Washington County consistent with its sub-regional growth needs.

According to the CPR, the failure to allocate growth among the counties means that the reserves submittal fails to properly apply the urban reserves factor that lands designated for urban reserves can be developed in a way that makes efficient use of existing and future infrastructure investments. CPR argues that the failure to allocate growth among the counties also means that the reserves submittal failed to properly apply the urban reserves factor that sufficient development capacity for a healthy economy and sufficient land suitable for a range of housing choices.

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<sup>49</sup> The Coalition for a Prosperous Region is “a consortium of business and labor organizations that includes the Columbia Pacific Building Trades Council, the Commercial Real Estate Association (NAIOP), Commercial Real Estate Economic Coalition, Home Builders Association of Metropolitan Portland, Portland Metropolitan Association of Realtors, Portland Business Alliance, and Westside Economic Alliance.” CPR July 14, 2010, at 1.

CPR proposes that to properly allocate lands under OAR 660-027-0050(2), the Commission should remand the submittal to require Metro and the Counties to designate additional land in Washington County as urban reserves based on unmet need in a process that considers all relevant factors, including historic population growth, economic aspirations of the individual communities, and housing equity. In the alternative CPR argues the Commission should acknowledge the designated urban reserves for all three counties, but remand with direction to remove rural reserve designations in Washington County so there is sufficient land available to accommodate possible increases to the urban reserves, or to retain these as undesignated until they may be needed for conversion to urban reserves at a later time.

OAR 660-027-0005(2) requires findings based on substantial evidence and supported by an adequate factual base that there is a balance between designated urban and rural reserves that, “in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents.” OAR 660-027-0005(2). CPR contends that “balance” should mean or include assigning land needs across the region by geographic area. Perhaps Metro and one or more county could have chosen to strike the balance in the manner CPR advocates. However, because neither the initial submittal nor the re-designation submittal assign land needs by geographic area, in order to sustain this objection, the Commission must determine that as a matter of law, the “balance” required by OAR 660-027-0005(2), must be done at a sub-regional level. The Commission concludes however that the text of the rule does not compel CPR’s preferred interpretation, but instead, expressly allows the balance to be considered “in its entirety.”

CPR’s arguments might have merit if the submittal under review was a Metro regional urban growth boundary amendment. As CPR notes, in that context the courts have found Metro may consider regional balance. (*See, e.g., City of West Linn v. LCDC*, 201 Or App at 438; *Citizens Against Irresponsible Growth*, 179 Or App at 17 n 6; *D.S. Parklane Development, Inc.*, 35 Or LUBA at 556-60). Here, however, neither Goal 14 nor the related statutes concerning housing and employment apply and the relevant authorities do not contemplate a sub-regional balancing methodology. The statutory and rule criteria are much less prescriptive, and direct Metro only to assure that the amount of land “be planned to accommodate estimated urban population and employment growth in the Metro area for at least [40 to 50 years] \* \* \*, [and that the amount] consist of the combined total supply provided by all lands designated for urban reserves in all counties that have executed an intergovernmental agreement with Metro[.]” OAR 660-027-0040(2).

The designation of urban reserves in the Metro region provides a large inventory of land that has the potential to become urbanizable in the future, when, and to the extent that Metro is able to demonstrate a need for additional land during future proceedings. To the extent that one part of the Metro region grows faster than expected, either in terms of residents or jobs, Metro retains the ability to adjust its UGB to reflect differences in growth rates. Further, Metro has built in a twenty-year review of its urban reserves designations offering the opportunity to consider what lands to designate potentially urbanizable as well. Metro and the counties have (collectively) also left some undesignated lands around the entire region in order to allow for this type of correction. In short, unlike an UGB amendment, an urban reserve designation provides

an overall amount of land for potential urban needs for a 30-year year period beyond the 20-year UGB; it does not designate lands as urbanizable, let alone for specific future uses or sub-regional needs.

CPR also misconstrues the joint state agencies' October 14, 2009 letter to the Metro Regional Reserves Steering Committee and Core 4.<sup>50</sup> Metro Record at 1370-1390. CPR mistakenly interprets that letter to mean that the urban reserves submittal must designate specific lands or areas for specific future urban uses in specific parts of the region. But the state agencies were expressing only that sub-regional needs were an important policy consideration that the agencies urged Metro to take into account as part of its deliberations.<sup>51</sup> In fact, the findings show that county and local needs were presented and extensively considered in the process and analysis leading up to the final designation of urban and rural reserves. *See, e.g.*, Metro Record at 20-21, 25-39, 48-49 and 71-95. The Commission finds that Metro did not violate OAR 660-027-0005(2) or other relevant goals and rules by not designating urban reserves by geographic area.

CPR also objects that, by not designating urban reserves on a geographic basis, Metro did not adequately consider the urban reserves factor requiring sufficient development capacity to support a healthy economy in OAR 660-027-0050(2). The objection relies on the fact that the Washington County Reserves Coordinating Committee recommended an urban reserves amount of 34,300 acres in Washington County to the Reserves Steering Committee and the Core 4, but Metro ultimately relied on the Core 4's recommendation for approximately 13,561 acres in

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<sup>50</sup> The state agencies that signed that letter include: The Oregon Departments of Agriculture, Forestry, Transportation, Business Development, Fish and Wildlife, Environmental Quality, Water Resources, State Lands, and Land Conservation and Development.

The "Core 4" was comprised of one elected official from each of Metro and the three counties. The group provided policy level project oversight and management, and was charged with assuring that the regional reserves designations represented a reasonable balance of the guiding factors of OAR chapter 660, division 27. The Regional Steering Committee was comprised of management level professionals representing a diverse array of interests, including representatives of the nine agencies listed above. The committee was co-led by the Core 4, and was charged with overseeing the study of urban and rural reserves to make recommendations related to the final designation of reserve areas to Metro and the three counties. Washington Co. Record at 5; Exhibit B to Ordinance No. 11-1255 at 55.

<sup>51</sup> The Joint Agency letter identified "equity and efficiency concerns in deciding where and how the region will grow (population and employment)" by stating:

"Metro has a responsibility to allocate land needs by geographic area within the region to meet long term needs for population and employment. We understand that this responsibility is complicated by the reserves process. Metro and the counties should first achieve consensus on how much lands the region will need for population and employment, and then (separately) decide how those lands should be allowed between the three counties. In making these regional-scale decisions, Metro and the counties need to keep both housing equity (Goal 10) and employment (Goal 9) considerations (including the aspirations of individual communities) in mind as well as fiscal equity and environmental justice in determining how to distribute urban reserve areas across the region.

"Each county should address housing equity and employment considerations by having some reconciliation of the supply and demand for housing and employment uses as part of their submitted analysis. Metro has done this on a macro level, but should supply the counties with the adequate tools to address these issues on a sub-regional basis." Agency Joint Letter, October 14, 2009, at 6; Metro Record at 1638.

Washington County urban reserves. Metro Record at 71-73. The initial submittal included approximately 13,800 urban reserve acres in Washington County. During the re-designation process, Metro reduced urban reserves in Washington County by 299 acres and 391 more acres were left undesignated. After the re-designation, about 13,525 acres in Washington County are designated urban reserve. Metro Supp. Record at 3. CPR claims that a healthy regional economy requires Metro to adopt a much higher number for urban reserves land supply in Washington County, and the correct number is the one recommended by the Washington County Reserves Coordinating Committee.

In designating urban reserves, Metro is not required to adopt the recommendation of any party to the reserves process. In designating urban and rural reserves respectively, Metro and three counties must apply, weigh and balance the urban and rural reserve designation factors in the administrative rule to lands in the study area, and make a decision based on findings that demonstrate that the submittal meets the criteria for urban reserves and the overall objective in OAR 660-027-0005(2). Metro specifically addressed this factor with regard to employment lands. Metro Record at 16-17, 23. The record contains adequate findings to demonstrate that Metro applied OAR 660-027-0050(2) in analyzing whether the urban reserves “include sufficient development capacity to support a healthy economy” and concluded it does, citing Metro Record at 16-17, 27, 29, 31-32, 34, 37-38, 48-49, 69, 71, and 73-94.

CPR also objects that Metro’s failure to allocate growth among the counties means that Metro did not properly apply the urban reserves factor requiring that lands can be developed in a way that makes efficient use of existing and future infrastructure investments. CPR makes the point that “the City of Hillsboro has developed sophisticated infrastructure to support substantial industrial development.” CPR, July 14, 2010, at 15. The objection does not cite to facts in the record supporting this conclusory statement; and even assuming factual substantiation for this statement, it does not compel the conclusion that Metro improperly applied the factors to study areas around the entire region.

Finally, CPR argues the findings are not adequate to show Metro applied OAR 660-027-0050(3) in its analysis. OAR 660-027-0050(3) requires consideration of whether the land proposed for urban reserves “can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers[.]” The Commission finds that the record establishes that Metro applied that urban reserve factor in its analysis, and that analysis is reflected in Metro’s findings. Metro Record at 27, 29, 31-32, 35, 38, 48, 69-71, and 73-94. The Commission concludes that those findings demonstrate that Metro adequately considered OAR 660-027-0050(3) in its urban reserves analysis.

The Commission finds that Metro’s failure to designate urban reserves on a geographical basis does not violate the cited goals and rules and rejects this objection.

## **2. Failure to Evaluate Re-designation Land Needs Region-wide**

In contrast to CPR’s objection, Save Helvetia objects to the re-designation submittal contending Metro failed to reconsider land needs region-wide when it re-designated lands in

Washington County in response to the Commission's October 2010 vote to remand the initial submittal with regard to some lands in Washington County. Save Helvetia argues that Metro's submittal "utterly fails to explain how altering the overall need and location of urban [] reserve designations by trading Cornelius lands for those in Helvetia in Washington County will affect the region as a whole." Save Helvetia Exception, August 8, 2011, at 2. It also faults the submittal for failing "to analyze the qualitative impacts from urbanizing these lands and does not explain how such impacts will alter the overall livability within the region. The impact the Metro decision will have on the viability and vitality of the region was not considered and was in no way coordinated with the other affected counties." *Id.*

First, as described above, the re-designation submittal did not significantly change the amount of land designated for either urban or rural reserves, either in Washington County or in the region as a whole and, therefore, did not significantly alter the overall the balance or otherwise affect the livability, viability or vitality in the region as a whole. As a continuation of the reserves designation process that did not significantly impact the overall balance within the region, Metro was not required to re-evaluate the needs of the entire region when it adjusted the designations in Washington County. Secondly, while Save Helvetia might prefer that the urban and rural reserves process include the level of scrutiny described in its list of "failures," in fact neither the statute nor the rules requires the type of detailed and comprehensive comparative analysis Save Helvetia faults Metro for not conducting. The Commission rejects this objection.

### **3. Amount of Urban Reserve Land**

#### **a. Oversupply of Urban Reserve Land**

The City of Portland objects that the Metro Urban and Rural Reserves Submittal includes an oversupply of urban reserves that represents more than a 30-year supply of land in violation of OAR 660-027-0040(2). Portland, July 14, 2010 at 2 (page unnumbered). The city asserts that the oversupply error is the result of what it considers to be three faulty assumptions in the December 2009 Urban Growth Report, which result in an overestimate of the future urban land need. Portland identifies those assumptions as:

"1. The existing urban growth boundary requires a four percent vacancy rate to provide needed housing, even though urban reserves will be readily available to meet unanticipated needs.

"2. The calculation on need for urban reserves requires a four percent vacancy rate, even though these lands are, by definition, completely vacant of urban housing.

"3. There will be no up-zonings of existing urban land, even though the [2035 Regional Transportation Plan] contains new [High Capacity Transit] corridors, with assumptions of up-zoning and redevelopment at new transit stations." Portland, July 14, 2010 at 3 (page unnumbered).

Thus, the city argues that Metro underestimated the capacity of existing urban land.

As an initial matter, the Commission notes that the 2009 Urban Growth Report is not the subject of this review. To the extent the city's underlying request is that this Commission

require that the 2009 Urban Growth Report be revised to reflect the city's preferred assumptions, the Commission's authority in this review does not extend to review of that report.

To the extent the city's objection relates to Metro's analysis and conclusions regarding compliance with OAR 660-027-0040(2), that rule establishes the timeframe Metro is to utilize in determining the amount of land to include as urban reserves if it designates reserves under division 27. The amount is a quantity of land based on the estimated land supply necessary for "urban population and employment growth in the Metro area for at least 20 years, and not more than 30 years, beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in the most recent inventory, determination and analysis performed under ORS 197.296." OAR 660-027-0040(2).

Metro established a 50-year time period for its urban reserves, starting January 1, 2010 and ending December 31, 2059. Metro Record at 14, 22. Consistent with OAR 660-027-0040(2), Metro based the starting date on the date that it completed its "inventory, determination and analysis performed under ORS 197.296." On December 10, 2009, the Metro Council adopted this report by Resolution 09-4094 and subsequently as part of the capacity ordinance on December 16, 2012 by Ordinance No. 10-1244B. The 2009 Urban Growth Report served as a basis for its decision on urban reserves.

OAR 660-027-0040(2) requires that urban reserves are "planned to accommodate estimated urban population and employment growth" but the rule does not prescribe a methodology for how Metro is to estimate the land supply necessary for urban population and employment growth in the Metro area through the fifty-year period. The general methodology Metro used in the Urban Growth Report is consistent with the methodology used to determine the capacity of the existing urban growth boundary. While the City of Portland may have preferred a different methodology, it has not established that Metro's methodology is not consistent with OAR 660-027-0040(2).

Communities determining their needs for employment and residential lands for purposes of UGB management use a vacancy factor to recognize that land markets require some level of vacancy to function. The City of Portland does not provide any basis for determining that a four percent vacancy factor is too high, but instead contends that a long-term supply of land outside of the UGB designated as urban reserves is a functional equivalent of vacant land within the UGB. But that argument ignores that the process of bringing land into an urban growth boundary and then providing the urban services necessary for the land to develop is not instantaneous. If there is no vacant land within the regional UGB in the meantime, then the region would confront difficulty complying with Goals 9 and 14 which require a long-term supply of land for housing and employment needs (and, under Goal 9, for cities to provide a competitive short-term supply).

The City of Portland also argues that Metro's assumption that there will be no up-zoning of land over the planning period is inconsistent with the 2035 Regional Transportation Plan (RTP), which contains new High Capacity Transit (HCT) corridors, with assumptions of up-zoning and redevelopment at new transit stations. Metro adopted the 2035 RTP on June 10, 2010 by Metro Ordinance No. 10-1241B, after Metro made its initial submittal but prior to

making the re-designation submittal decision. Pursuant to ORS 197.274(2), the department approved the 2035 RTP as an amendment to the RFP on November 24, 2010. DLCDC Order No. 001797. Although the department approved the 2035 RTP prior to the completion of the reserves designation process, the Commission concludes that the city has not established that Metro erred in not accounting for up-zoning associated with HCT corridors in the 2035 RTP when it determined the capacity of the existing UGB under OAR 660-027-0040(2) in 2009, prior to the 2010 approval of the 2035 RTP. The objective of Goal 2 is to make the planning process and the planning documents the “basis for all decisions and actions related to land use.” *D.S. Parklane Development, Inc.*, 165 Or App at 22; *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207, 214, 124 P3d 1249 (2005). The city’s contention that Metro erred by not relying on the HCT corridors in the 2035 RTP prior to the approval of that planning document is contrary to Goal 2. The Commission considered and rejected these objections at the October 2010 hearing. The department’s subsequent approval of the 2035 RTP in November 2010 did not require Metro to begin the need determination anew when it undertook responding to the Commission’s initial review of the submittal. The Commission rejects that basis of objection.

Finally, the City of Portland objects that Metro failed to coordinate the 50-year range forecast for population and employment based on the December 2009 Urban Growth Report with the 2035 RTP.<sup>52</sup> The city alleges that this lack of coordination results in violation of Goal 2, ORS 197.015(5), and ORS 268.380(2). Portland, July 14, 2010 at 3 (page unnumbered). The city premises its argument on Metro’s requirement to adopt plans that are coordinated with each other.

The 2035 RTP is not before the Commission in this review, so to the extent the objection questions the assumptions and conclusions in that planning document, the Commission does not consider those. Moreover, the Commission finds that Metro made the assumptions in the submittal under review consistent with the planning documents, including the then acknowledged RTP, at the time it made the decision. Metro was not required to revise the most recent ORS 197.296 analysis, or its reliance on it, to reflect assumptions made in the 2035 RTP. Because the HCT corridors strategies contained in the 2035 RTP were neither approved nor implemented through changes to Metro’s other functional plans at the time Metro determined the capacity of the existing UGB, Metro was not required to and reasonably did not modify its assumptions regarding planned or zoned densities based on those strategies. The Commission rejects this objection.

#### **b. Urban Reserve Supply Exceeds Statutory 50-year Limit**

1000 Friends of Oregon (1000 Friends)<sup>53</sup> and City of Wilsonville also challenge the amount of urban reserve lands designated by Metro in its initial reserves submittal. 1000 Friends also objects that the re-designation submittal did not correct that over-supply of land designated

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<sup>52</sup> The most recent ORS 197.296 analysis presented in the December 2009 Urban Growth Report contains population and job growth assumptions that differ from those underpinning the RTP, because the RTP contains up-zoning and redevelopment projections along HCT corridors that are different from those included in the latest ORS 197.296 analysis.

<sup>53</sup> The 1000 Friends objection is on behalf of 1000 Friends of Oregon, the Washington County Farm Bureau, and Dave Vanasche, Washington County Farm Bureau President.

for urban reserves. Both objectors argue that the amount of land proposed for urban reserves exceeds the statutory 50-year limit on urban reserves in violation of ORS 195.145(4). 1000 Friends, July 12, 2010 at 2; June 1, 2011 at 7; City of Wilsonville, July 14, 2010, at 2-5. The objections contend:

(1) Metro assumes that the existing urban zoning, adopted and acknowledged by each city and county, will not be realized within the 20-year time period of the urban growth boundary (UGB), at least absent a demonstration that public investments or policies are currently in place or underway to cause the zoned level of urban development to happen.

(2) Metro assumes that cities will meet their current zoning only if certain investments are made - such as in infrastructure, urban renewal, various subsidies, or waivers - and Metro requires a level of certainty about those investments before relying on them to assume that higher densities are achieved in any city.

The result of assumptions that do not fully account for up-zoning, rezoning, and meeting zoned densities over the reserves time period, objectors contend, is an overstated identified need and corresponding oversupply of land for the stated 50-year planning period.

Metro's submittal explains that it based its analysis of the existing UGB capacity on a projection that development within the current UGB will occur at levels allowed by current zoning during the 50-year planning period. Metro found:

“The region will focus its public investments over the next 50 years in communities inside the existing UGB and, as a result, land within the UGB would develop close to the maximum levels allowed by existing local comprehensive plan and zone designations. This investment strategy is expected to accommodate 70 to 85 percent of growth forecasted over that period. No increase in zoned capacity within the UGB was assumed because, at the time of adoption of reserves ordinances by the four governments, the Metro Council will not have completed its decisionmaking about actions to increase the capacity of the existing UGB as part of Metro's 2009 capacity analysis. For those areas added to the UGB between 2002 and 2005 for which comprehensive planning and zoning is not yet complete, Metro assumed the areas would accommodate all the housing and employment anticipated in the ordinances that added the areas to the UGB over the reserves planning period. Fifty years of enhanced and focused investment to accommodate growth will influence the market to use zoned capacity more fully.” Metro Record at 23.

Metro projects that 100 percent of the maximum zoned capacity of the existing UGB will be used during the reserves planning period. Metro Record at 23, 600. In addition, in calculating the amount of land needed for urban reserves, Metro assumed that: (1) future residential development in urban reserves would develop at higher densities than has been the experience in the UGB in the past, and (2) that employment lands over the next 50 years would be used with greater efficiencies than in the past. Metro Record at 23-24. Although the re-designations submittal resulted in slightly less property designated for urban reserves, the re-designation submittal did not significantly alter the calculations.

The state agencies reviewed Metro's estimate of its projected range of land needs for residential and employment uses in the combined state agency comments. The state agencies assessment concluded that Metro's projections were reasonable:

"The state agencies support the amount of urban reserves recommended by the Metro COO. That recommendation is for a range of between 15,000 and 29,000 acres. We believe that Metro and the counties can develop findings that, with this amount of land, the region can accommodate estimated urban population and employment growth for at least 40 years, and that the amount includes sufficient development capacity to support a healthy economy and to provide a range of needed housing types." Metro Record at 1373.

1000 Friends and Wilsonville argue that Metro's projections do not meet the requirements of ORS 197.296 and Goal 14. However, the objectors have not established how those authorities apply to the urban reserves submittal, and the Commission finds that, by their terms, they do not. The need factors of Goal 14, and the requirements of ORS 197.296 relate to urban growth boundaries, not to urban reserve designations. Further, even if those requirements were applicable, Metro's use of current zoned capacity is consistent with ORS 197.296 and this Commission's Goal 14 rules, which require communities to first use current zoned capacity in determining what proportion of future projected land needs can be met within the existing UGB (looking to up zoning as a possible efficiency measure once current capacity is determined). There is no legal inconsistency between Metro's projections and ORS 197.296 or Goal 14.

While some of Metro's planning projections may be characterized as somewhat conservative, others are best described as somewhat aggressive. On balance, the Commission finds that the projection of land needs over the 50-year period is reasonable and is supported by an adequate factual base. In contrast to the statutes and rules relating to land need projections for the amendment of urban growth boundaries, neither SB 1011 nor the division 27 rules proscribe any particular method for estimating housing and employment needs over a fifty-year period, and Metro has documented that there is a significant range in terms of likely outcomes over such a long planning period. *See generally*, Metro Record at 1922-1931. Instead of requiring a specific method for estimating long-term need, SB 1011 and division 27 rely principally on the requirement for a broad regional consensus among decision-makers to achieve balance in the urban and rural reserve designations. The Commission finds Metro's planning projections and assumptions are reasonable and consistent with the statutory and rule framework.

1000 Friends also objects that Metro projected that development during the first 20 years of the 50-year period will occur at zoned capacity only if certain investments are made. 1000 Friends specifically argues that Metro should rely on full zoned capacity, with no projected underbuild, because the cities all have acknowledged public facilities plans. Metro's findings explain that it did not project higher density because it had not yet adopted measures to increase the capacity of the current UGB. Metro Record at 23. Metro's findings make it clear that it did project that even areas that have recently been added to the UGB (such as Damascus) will develop at full planned densities over a 50-year period. *Id.* 1000 Friends' preference that Metro *should* have employed different assumptions does not establish that Metro's projections are either inconsistent with OAR 660-027-0040 or unsupported by substantial evidence.

Finally, 1000 Friends points out that Metro could choose a time span less than the maximum 50 years, or an estimate of future growth that is not at the top of its population and employment growth forecast. If choosing the outer limit of the allowable time span and the upper end of the population and employment forecasts results in a designation of urban reserves that does not conform to the law, which 1000 Friends believes it does not, then they assert that Metro must choose a lesser time span, a lower point within the forecast, or both.

The Commission agrees with 1000 Friends that Metro could have chosen a time span of less than 50 years or chosen an estimate of future growth that is not at the top of its population and employment growth forecast. However, 1000 Friends has not established that Metro's choice to rely on a 50-year time span or its estimate of future growth are not allowed by the statute or rules. Applicable law authorizes Metro to designate urban reserves for up to a 50-year period, and 1000 Friends has not identified any legal basis that would preclude Metro from deciding to plan for the upper end of that range. This Commission reviews the local government's submittal to determine whether that decision complies with that law; not whether there are other decisions the local government could have made that could have also complied. The Commission rejects this objection.

### **c. Basis for Planning Projections**

Maletis, O'Callaghan and MLG object that that the reserves submittal violates Goals 2 and 14 because Metro and the counties based projected population growth, employment growth, densities of development, and land needs on "unacknowledged documents extraneous to" Metro's acknowledged urban growth management functional plan and the acknowledged comprehensive plans of the counties. Maletis, July 14, 2010 at 12; Maletis, October 8, 2010 at 7-9. The objectors assert Metro's reliance on the 2009 Urban Growth Report and the COO Recommendation, Urban Rural Reserves in Appendix 3E-C of Metro's record are in "clear contravention of" *D.S. Parklane Development, Inc.*, 165 Or App 1 and *1000 Friends of Oregon v. City of Dundee*, 203 Or App 207.

In *D.S. Parklane*, Metro relied on a draft report that was not approved by the Metro Council to determine whether its existing UGB had a 20-year supply of land in determining its needed lands estimate. See *D.S. Parklane*, 35 Or LUBA at 538. In *1000 Friends of Oregon v. City of Dundee*, the city relied on a buildable lands inventory study contemplated by but not incorporated into the comprehensive plan in rendering a land use decision. 203 Or App at 216. In both cases, the court determined that the draft report and study were "not a plan or planning document of the kind that Goal 2 contemplates." 165 Or App at 22; 203 Or App at 216. The Commission understands objectors to assert that Metro's use of the 2009 Urban Growth Report in the Metro Urban and Rural Reserves submittal suffers the same defects.

Unlike the draft report at issue in the *D.S. Parklane* case, the Metro Council has adopted the 2009 UGR by Resolution No. 09-4094 and subsequently by Ordinance No. 10-1244B. However, the Metro Council's adoption of the 2009 Urban Growth Report is not the end of the inquiry. In *1000 Friends of Oregon v. Metro*, the court considered whether Metro's incorporation of urban growth report capacity numbers into the RFP allow Metro to use those numbers in assessing whether an expansion of the UGB was justified. 174 Or App at 421. The

court concluded it was not because the urban growth report conflicted with the text and context of the RFP, specifically the “target capacities” requirements that prescribed mandatory densities. *Id.* at 424. Here, however, objectors have directed the Commission to no text or context in either the RFP or the Urban Growth Management Functional Plan<sup>54</sup> with which the 2009 UGR is in conflict. Objectors before this Commission must “make an explicit and particular specification of error by the local government.” *1000 Friends of Oregon v. LCDC*, 244 Or App at 268-269 (*McMinnville*). In its review, the Commission does not find that the 2009 UGR conflicts with the RFP or the UGMFP. In *1000 Friends of Oregon v. Metro*, the court identified the “target capacity” provisions in *former* MC 3.07.120, MC 3.07.150 and Table 1.07 as providing Metro’s assessment of the capacity of the UGB. 174 Or App at 424. Metro has amended the UGMFP several times since that case, and it no longer contains “target capacity” provisions. The Commission does not identify any provisions that conflict with the 2009 UGR regarding assessing the capacity of the UGB and objectors have not otherwise established that the 2009 UGR is not a planning document of the kind that Goal 2 contemplates. Because the Commission finds that Metro properly considered and established the population growth, employment growth, densities of development, and land needs projections used as the basis for urban reserve designations, it rejects this objection.

d. **Objective to Achieve Balance**

1. **Too much urban reserve**

1000 Friends, Save Helvetia and the Audubon Society of Portland object that Metro’s findings, do not adequately address the balancing required by OAR 660-027-0005(2), and that Metro misunderstands that balancing is a qualitative analysis. 1000 Friends further asserts that Metro and Washington County incorrectly responded to the Commission’s October 2010 decision as an exercise in replacing “lost acres,” and that the lost acres should not necessarily come from Washington County. They further argue Metro and Washington County compounded the error by misapplying the factors and Washington County’s practice of using undesignated lands as a “holding zone” for future urbanization when those lands qualify for rural reserve designation. 1000 Friends contends Metro improperly discounted alternatives to Foundation Agricultural Land for urban reserve designation and improperly failed to consider reducing the urban reserve time period.

The context for 1000 Friends’ specific contentions is that the submittal is not “balanced” as required by OAR 660-027-0005(2). The initial consolidated findings contained few statements that explicitly address balance, though the findings sections entitled “Background” and “Overall Conclusions,” as a whole, adequately explained why Metro and the counties determined that their designation of urban reserves and rural reserves best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents. Exhibit E to Ordinance No. 10-1238A, Metro Record at 14-19. In the re-designation submittal, Metro made additional findings to further explain how it designations further the objective of achieving balance under OAR 660-027-0005(2). Exhibit B to Ordinance No. 11-1255 at 3-5.

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<sup>54</sup> The Urban Growth Management Functional Plan is Section 3.07 of the Metro Code.

Although the Commission may have preferred a more explicit statement addressing the balance required by OAR 660-027-0005(2), the consolidated findings of Metro and the counties do establish that the submittal is intended to strike the “best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents” balance. The findings demonstrate that the submittal achieves the objectives of accommodating nearly a 75 percent population increase by increasing the area within the regional UGB merely 11 percent. To achieve that quantitative success, the region recognized the need to build great communities – those that offer residents a range of housing types and transportation modes from which to choose. Such offerings are available in compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems. A healthy economy providing family-wage jobs may mean attracting certain industries that prefer large parcels of flat land. Although it is easiest to build great communities and provide for employment on flat land in large parcels without a rural settlement pattern at the perimeter of the existing UGB, such lands are almost all Foundational Agricultural Lands which also contribute greatly to the economy and livability of the region in their resource use. Thus, to promote the viability and vitality of the agricultural and forest industries, the submittal designated more than half of the urban reserves on lands that, although they may be more difficult and expensive to urbanize, are not Foundational Agricultural Land. Ultimately, the counties and Metro came to an agreement that the “adopted system of urban and rural reserves, in its entirety, achieves the region’s long-range goals and a balance among the objectives of reserves: to accommodate growth in population and employment in sustainable and prosperous communities and neighborhoods, to preserve the vitality of the farms and forests of the region, and to protect defining natural landscape features.” Metro Record 18-19. The Commission finds that the Metro Urban and Rural Reserves Submittal has demonstrated the balance required by OAR 660-027-0005(2).

As a factual matter, the “balance” of the urban and rural reserves in the re-designation submittal has been altered little from the initial submittal. The total number of acres, and the locations of urban and rural reserves and undesignated land both in Washington County and the region as a whole has not changed significantly. However, in the re-designation submittal, Metro made additional findings to further explain the balance. Washington County also further addressed its reasoning for designating Foundation Agricultural Lands as urban reserve in the supplemental reserves findings at pp. 9616-9695 and 12732-12735. Metro cited findings relating to designation of Foundation Agricultural Lands at Ordinance No. 11-1255 at 3-5 and in the supplemental record at 172-178, 181-288, 298-300, 440-481, 799-805, 1105-1110, and 1163-1187. Metro cited to findings explaining why certain lands were left undesignated in Metro supplemental findings at 124, 127, 155, and 163-166. Metro, June 24, 2011.

Whether Metro and Washington County were attempting to “make up” for “lost” acres of urban reserve is not material to the Commission’s evaluation. Rather, the Commission must review the designations to determine whether Metro adequately considered the factors in determining the amount of urban reserve land, based on the demonstrated need and whether the areas designated have been adequately justified. The Commission determined at the close of initial 2010 hearings that Metro had appropriately inventoried buildable lands and determined need, designated urban reserves for a period authorized by statutes and rules, and used appropriate population and employment projections. While the amount was not significant, in

fact the amount of urban reserve land designated by Metro in the region and in Washington County declined in the re-designation submittal. The Commission found in 2010 that Metro justified the amount of land included and used an authorized planning period for establishing urban reserves and has been presented no reason to change that conclusion.

1000 Friends also contends Washington County improperly left land that qualified as rural reserve undesignated in order to make a “holding zone” for future urban reserves. The objection does not state that this practice, by itself, violates any provision of statute or rule, but rather states that it further compounds other problems, leading to the package of urban and rural reserves not striking the proper balance. Objections regarding the designation of rural reserves, and Metro’s choice to leave some lands undesignated are addressed below. However, for purposes of the objection that this results in a lack of “balance”, the Commission rejects that objection. As explained above, while some parties would have preferred to strike the balance differently, the Commission finds that the balance reflected in the reserves submittal is based on substantial evidence, and that Metro and the counties have established an adequate factual base for the submittal.

Finally, Save Helvetia objects that the submittal did not achieve the required balance and results in excessive urban reserve designation as a result of Metro’s failure to “simultaneously consider” the urban and rural reserve factors. Save Helvetia, July 12, 2010 at 13. Save Helvetia argues that OAR 660-027-0040(10) requires that both urban and rural reserve factors must be applied “concurrently and in coordination with one another.”<sup>55</sup> Save Helvetia argues that it is improper to solely consider a case in favor of urbanization without simultaneously considering whether these same lands might be more suitable for rural land protections.” *Id.* The Commission disagrees. The Commission interprets the “simultaneous consideration” requirement in OAR 660-027-0040(1) to mean that the county and Metro must consider urban and rural reserve designations in the entire county and region at the same time and adopt a single, joint set of findings, reasons and conclusions for its designations. It does not imply any particular outcome and does not require both urban and rural reserve factors to be considered for each and every property, or for each and every area. In contrast, in OAR 660-027-0040(11), the Commission has expressly required that if Metro designates Foundation Agricultural Land as urban reserves, it must explain under both the urban and rural reserve factors why such land was chosen. Thus, the context of the regulatory scheme establishes that a requirement to apply both urban and rural reserve factors to a particular will be expressly stated. The Commission rejects this objection.

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<sup>55</sup> OAR 660-027-0040(10) provides:

“Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OASR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-0005(2) and the factual and policy basis for the estimated land supply determined under section (2) of this rule.”

## 2. Insufficient urban reserve

In contrast to the objections that the reserves submittal designates too many acres of urban reserves to achieve an appropriate balance, CPR asserts the submittal fails to designate sufficient urban reserves to achieve the balance of urban and rural reserves and that the findings are inadequate to demonstrate compliance with OAR 660-027-0005(2). CPR, July 14, 2010 at 4–8; June 2, 2011 at 1-2. In furtherance of that objection, CPR argues that the “Overall Conclusions” section of the initial reserves findings is almost exclusively devoted to a discussion of the tradeoffs and considerations related to the designation of rural reserves, failing to describe the trade-offs or considerations of its designation of urban reserves. Metro Record at 14-19. CPR argues further that the initial submittal does not describe how it “balanced” the designation of urban and rural reserves to “best achieve” the region’s urban and rural needs, noting that OAR 660-027-0005(2) is cited only once; and the only two statements concerning balance are purely conclusory. Metro Record at 2, 18, 22. CPR describes considerable testimony not mentioned in the reserves findings that argues that urban needs are not met and disproportionately suffer in comparison with rural needs and that reserve findings concerning tradeoffs for individual urban reserve areas are not enough to demonstrate overall balance. CPR notes that the reserves findings mention OAR 660-027-0050(2) in only three places, and then only to state that the balance has been achieved. Metro Record at 2, 18, 22.

The Commission agrees with CPR that OAR 660-027-0005(2) requires findings supported by an adequate factual base that there is a balance between designated urban and rural reserves that, “*in its entirety, best achieves* livable communities, the viability and vitality of the agricultural and forest industries and protection of the most important landscape features that define the region for its residents.” OAR 660-027-0005(2) (emphasis added). The objection suggests that “balance” means some kind of quantitative reckoning of the amount of urban reserve versus the amount of rural reserves.

As discussed above, the Commission construes OAR 660-027-0005(2) to require a qualitative balance in terms of long-term trade-offs between the further geographic expansion of the Portland metro urban area and the conservation of farm, forest and natural areas that surround the metro area. This is not a balance in terms of the quantitative amount of urban and rural reserves, but a balance between encouraging further urban expansion versus land conservation.

The real issue is whether the findings in support of the reserves submittals demonstrate compliance with the overall objective in OAR 660-027-0005(2). As discussed above with regard to the opposite argument, the Commission finds that Metro and the counties have established that the submittal demonstrates an appropriate balance and rejects this objection.

CPR next asserts that Metro underestimates urban land need by overestimating the development capacity within the existing UGB and relying on faulty assumptions to dramatically increase projected development efficiency and density. Consequently, CPR argues the urban reserves submittal fails to designate enough urban reserves to balance urban and rural needs as required by OAR 660-027-0005(2); to properly apply the urban reserves factors, particularly OAR 660-027-0050(2) and (6); and to satisfy the requirements of Goals 2, 9, 10, and 14 rendering it inconsistent with OAR 660-027-0080(4). CPR, July 14, 2010 at 9–14.

In contrast to the City of Portland's opposite argument, CPR also asserts that Metro's 2009 Urban Growth Report, Reserves Residential Range Methodology, and Reserves Employment Range Methodology rely on overly optimistic and never-achieved refill rates, very aggressive floor-to-area ratios (FARs), availability of housing subsidies, and decreased underbuild rates. The result, CPR contends, is an overestimation of the capacity within the existing UGB and an underestimation of reserves land needed to accommodate housing and employment demand through the 2060 planning horizon. The objection also challenges the assumption that there will be a higher proportion of infill housing in the future, arguing that more infill negatively affects housing choice (both by unit type and location) and affordability and prevents achievement of "livable communities" as "attractive places to live and work."

Notably, CPR's arguments are essentially the reverse of the arguments made by 1000 Friends and the cities of Wilsonville and Portland. Like those reverse arguments, while CPR's suggested methodology could possibly have been supported, had Metro chosen to employ it, CPR has not established that the goals it cites or the urban reserve rules dictate its suggested methodology. Regarding CPR's requested schedule for designating additional urban reserves, even if the Commission found it appropriate or reasonable for Metro to do so, CPR does not establish that the Commission has the authority to require Metro to adopt additional urban reserves if Metro's assumptions prove incorrect. Under OAR 660-27-0040, the designation of urban reserves is not a mandatory requirement, and neither the statute nor its implementing rules require or contemplate the type of periodic adjustment schedule CPR prefers. However, Metro amended the RFP by adding Urban and Rural Reserve Policy 1.7.6, which states that it is the policy of the Metro Council to:

"Twenty years after the initial designation of the reserves, in conjunction with Clackamas, Multnomah and Washington Counties, review the designated urban and rural reserves for effectiveness, sufficiency and appropriateness." Exhibit B to Ordinance No. 10-1238A at 1; Metro Record at 4.

The Commission concludes that Metro RFP Policy 1.7.6 largely addresses CPR's stated concerns. The objection is rejected.

In considering this objection, as well as the converse objections by 1000 Friends and the cities of Portland and Wilsonville, the Commission must determine whether Metro made reasonable assumptions in calculating the amount of land needed for urban reserves. Metro assumed that: (1) future residential development within the UGB would be at full or almost full zoned capacity over the 50-year period, (2) future residential development in urban reserves would develop at higher densities than has been the experience in the UGB in the past, and (3) employment lands over the next 50 years would be used with greater efficiencies than in the past. Metro Record at 23-24. Although CPR claims that these assumptions were inappropriate and unsupported factually, leading Metro to designate an inadequate amount of land for urban reserves, the Commission finds that Metro provided adequate findings supported by substantial evidence in explaining the reasons for making the above-described assumptions. Metro Record at 23-24 (findings); 117-122 (staff report); and 597-610 (technical analyses for COO recommendations). Metro's policy choice to project its 50-year land needs in the middle of its

forecasted range does not conflict with any state statute, goal or rule, and is supported by an adequate factual base.

CPR has established neither that projecting a higher proportion of infill housing in the urban reserves than has occurred in the UGB violates Goal 10 or the urban reserve designation factor<sup>56</sup> by negatively affecting housing choice and affordability, nor that the higher proportion of infill housing prevents achievement of the overall objective of “livable communities” as “attractive places to live and work” under OAR 660-027-0005(2) and 660-027-0010(4). Goal 10 requires communities to provide land for needed housing. The evidence in the record does not establish that communities with infill housing are not “livable,” that infill housing prevents those communities from being “attractive places to live and work,” or that more infill will prevent flexibility of location in the region.

CPR also asserts that Metro did not include “sufficient development capacity to support a healthy economy” in violation of urban reserve designation factor OAR 660-027-0050(2). In order for the Commission to sustain this objection, CPR must establish that Metro did not base the submittal and re-designation submittal on a consideration of this factor at all. However, Metro’s findings consider development capacity and specifically determine that there is more than sufficient development capacity within its current UGB to meet projected employment needs over a 50-year period. Metro Record at 609. Nevertheless, Metro also determined that for one general type of employment land need (large lots, over 25 acres) there is not sufficient capacity in the existing UGB beyond 20 years. To address this general, long-term employment land need, Metro added 3,000 acres to its total estimate of land supply, equating to its estimate based on historic trends and future projections regarding the amount of land needed for this type of use. The Commission finds that the projections Metro used to determine the amount of urban reserves land are reasonable and supported by an adequate factual base, and therefore the objections do not establish that the Metro Urban and Rural Reserves Submittal violate the cited goals and rules.

Finally, CPR objects that Metro’s adoption of the top end of the “middle third” of the population and employment forecasts is arbitrary and thus violates the Goal 2 requirement that decisions be supported by an adequate factual base. CPR asserts the reserves findings do not describe how Metro arrived at its decision to use the “middle third” of its population and employment projections, and that instead the reserves findings simply state Metro’s estimated demand in ranges for new dwelling units and new jobs. Because these forecasts are the basis for the projected urban needs, CPR asserts that the reserves decision also fails to comply with OAR 660-027-0005(2), or demonstrate that the urban reserves factors in OAR 660-027-0050(2) and (6) were correctly applied. CPR, July 14, 2010 at 8.

CPR directs the Commission to nothing in the statute or rules that precluded Metro from using the range forecast for the initial phases of its analysis of the amount of land needed for long-term population and employment, provided it ultimately decided (based on an adequate factual base and appropriate policy determinations) on a specific projection of need. Metro decided to use the top end of the “middle third” of its population projection. Metro Record at 24, 118-119, 601-603, 607-610. Metro explains the range forecast and the policy questions involved

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<sup>56</sup> OAR 660-027-0050(6): “Includes sufficient land suitable for a range of needed housing types.”

in deciding where within the range to plan for in its 20 and 50-year Regional Population and Employment Forecasts. Metro Record at 1918-2007. Metro based its determination of the amount of employment land needed on its estimate of the portion of its long-term need that will be for large sites (as explained above), and not on its range forecast. The Commission finds the Metro's reasoning and findings are supported by substantial evidence in the record, and that Metro has demonstrate an adequate factual base for its conclusion

#### **4. Challenges to Bases for Designation of Urban Reserves**

##### **a. Use of Road Rights of Way as Urban Reserves**

Linda Peters objects that Washington County amendments to its Metro IGA converted the rural sides and rights-of-way of 22 rural roads, including land adjacent to rural reserves, to urban reserves. Ms. Peters objects that Washington County neither adopted policies to implement these reserves nor made adequate findings to support the need for this land as urban reserves; that the designation fails to buffer urban from rural uses in violation of Goal 3 and OAR 660-027-0050(8); and the exact amount of designated land has not yet been determined.

Specifically, Ms. Peters challenges Washington County Findings II.B.3) Proposed Adjustments to Ordinance No. 733, Technical Amendments 4), at 25, which states:

*“Rural reserve designations of public road Rights-of-Way (ROW) adjoining urban or future urban areas could result in management and/or maintenance issues. Staff recommended during the hearings process for Ordinance No. 733 that in instances where roadways are utilized as boundaries for either urban reserves or undesignated lands, the entire ROW be designated urban reserve or remain undesignated. The Board of County Commissioners agreed with this issue and directed county staff to have the changes reviewed through the process defined in the Intergovernmental Agreement with Metro (Washington County Record Pages 8533-8554).”* (Emphasis in original).

Ms. Peters asserts there has been no showing of need for these urban reserve expansions, citing Washington County's only justification as “Rural reserve designations of public road rights-of-way (ROW) adjoining urban or future urban areas could result in management and/or maintenance issues.” She also argues that placing “urban reserves” on the rural reserve side of the road provides no buffer or edge to the farming activities on the rural reserve side of the road, which fails to “avoid or minimize adverse effects on farm and forest practices...on nearby land including land designated as rural reserves” under OAR 660-027-0050(8).

Ms. Peters contends that including both sides of certain rights-of-way within urban reserve designations will increase conflicts with nearby farm uses. Placing urban infrastructure, particularly roads built to urban standards, through or alongside rural reserves, fails to protect the resource uses to encourage long-term investment. Citing the DLCD director's April 19, 2010 comment to the Commission, Peters argues that “the urban and rural reserves concept is intended not only to protect rural reserves from urbanization, it is also intended to provide a greater degree of protection of resource uses in rural reserves relative to other resource lands in order to encourage long-term investment in farm and forest uses and conservation of important natural

resources.” Linda Peters, July 14, 2010, at 7 (unnumbered pages.) Ms. Peters asserts the deficiency violates OAR 660-027-0040(7), OAR 660-027-0050(8), Goal 2 and Goal 3. Peters, July 14, 2010 at 6 (page unnumbered) and requested that this Commission reverse urban reserve designations on rural sides and rights-of-way of the 22 subject rural roads in Washington County, or, in the alternative, remand for an adequate factual base and compliance with all other statutory and rule requirements for urban reserve designations.<sup>57</sup>

Metro adopted Regional Framework Plan Policies 1.7, 1.9, and 1.11 and a map with the urban reserve designations. Exhibits A and B to Ordinance No. 10-1238A, Metro Record at 3–6; *see also* Metro Record at 24.<sup>58</sup> Metro’s adoption ordinance describes the map as follows: “The areas shown as ‘Rural Reserves’ on Exhibit A are the Rural Reserves adopted by Clackamas, Multnomah and Washington Counties and are hereby made subject to the policies added to the Regional Framework Plan by Exhibit B of this ordinance.” Metro Record at 2. Thus, rural reserves are subject to Regional Framework Plan policies. Metro’s findings state:

“The region’s urban and rural reserves are fully integrated into Metro’s Regional Framework Plan and the Comprehensive Plans of Clackamas, Multnomah and Washington counties. Metro’s plan includes a map that shows urban and rural reserves in all three counties. Each of the county plans includes a map that shows urban and rural reserves in the county. The reserves shown on each county map are identical to the reserves shown in that county on the Metro map.” Metro Record at 15.

These findings adequately reflect that the reserves map is adopted as part of the Regional Framework Plan.

The Commission understands this objection to be that neither Metro nor Washington County has adopted policies that specifically address rights-of-way and adjoining lands. OAR 660-027-0040(6)<sup>59</sup> and (7)<sup>60</sup> require Metro and the counties to adopt policies to “implement the

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<sup>57</sup> Because OAR chapter 660, division 27 authorizes Metro to designate urban reserves and the three Metro-area counties to designate rural reserves, OAR 660-027-0020(1) and (2), the Commission understands Ms. Peters to argue for remand to Metro.

<sup>58</sup>The Ordinance states: “The Regional Framework Plan is hereby amended, as indicated in Exhibit 13, attached and incorporated into this ordinance, to adopt policies to implement Urban Reserves and Rural Reserves pursuant to the intergovernmental agreements between Metro and Clackamas, Multnomah and Washington Counties, respectively, and ORS 195.141 to 195.143.” Ordinance No. 10-1238A, Metro Record at 2.

<sup>59</sup> OAR 660-027-0040(6) provides:

“If Metro designates urban reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its regional framework plan map. A county in which urban reserves are designated shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps.”

<sup>60</sup> OAR 660-027-0040(7) provides:

“If a county designates rural reserves under this division it shall adopt policies to implement the reserves and must show the reserves on its comprehensive plan and zone maps. Metro shall adopt policies to implement the rural reserves and show the reserves on its regional framework plan maps.”

reserves.” Although Regional Framework Plan policy 1.9.8, related to UGBs advises Metro to “Use natural or built features, whenever practical, to ensure a clear transition from rural to urban land use”, the Commission has not identified either a Washington County or Metro policy that expressly addresses the interplay of rights-of-way as a buffer between reserves and adjoining lands. Neither OAR 660-027-0040(6) nor (7) specify the contents of the urban and rural reserve policies adopted by Metro or the counties, other than that they must implement the reserves.

However, although Ms. Peters may be correct that Metro and county policies expressly addressing the boundary of reserves that adjoin or include rights-of-way would be beneficial, she has not established that failure to adopt such a policy violates any applicable statute or rule regarding the designation of reserves. Metro’s amendments to its Regional Framework Plan, Metro Record at 4, and to Title 11 of its Urban Growth Management Functional Plan, establish policies to implement the reserve designations. Metro Record at 8-13. Neither the statute nor the rule requires that Metro or the county adopt policies to address this detail of reserve designations. The Commission rejects the first part of this objection.

Ms. Peters also argues that Washington County did not adopt adequate findings, and that the county’s findings “tell us no more than that county staff thought there might be a problem, and the Board and IGA partners said in effect, ‘well, OK then, make the rural sides of the road urban.”” Linda Peters, July 14, 2010, at 7 (unnumbered.) Again, the referenced finding states:

“Rural reserve designations of public road Rights-of-Way (ROW) adjoining urban or future urban areas could result in management and/or maintenance issues. *Staff recommended during the hearings process for Ordinance No. 733 that in instances where roadways are utilized as boundaries for either urban reserves or undesignated lands, the entire ROW be designated urban reserve or remain undesignated.* The Board of County Commissioners agreed with this issue and directed county staff to have the changes reviewed through the process defined in the Intergovernmental Agreement with Metro (Washington County Record Pages 8533-8554).” (Emphasis in original).

While the Commission might understand how the quoted finding could be read as either perfunctory or conclusory, or perhaps both, nevertheless the finding does identify a potential issue and explains the rationale for the county’s decision to exclude rights-of-way from the boundary of rural reserves where a roadway is used as a boundary. Washington County’s data and findings for Metro’s urban reserve designation of certain rural rights-of-way and adjacent lands are in the record. WC Record at 9643-9644; Metro Record at 63, 67. More directly, this is a legislative land use decision by Metro regarding whether to include certain areas within its designation of urban reserves. That decision does not require findings that explain the details of each segment of the boundary selected by Metro. Rather, the Commission construes OAR 660-027-0050 to require Metro to make its decisions by applying and considering the listed factors to the lands it identifies for study. Metro selected the urban reserves on the basis of areas that it defined for purposes of its analysis and decision-making process. Ms. Peters does not establish that Metro erred by analyzing the application of the urban reserve factors at the geographic level of these areas, and the Commission finds that Metro’s use of areas as its basis for analysis was reasonable given the legislative and regional nature of its decision. Neither the statute nor the

rule contemplates the unrealistic, if not impossible task of applying the factors to every parcel or every part of the edge of urban reserve areas.

Ms. Peters also objects that Metro's failure to determine the amount of land designated violates Goal 2. The findings for the amount of land needed for urban reserves in Washington County provided exact acreage figures, locations, and reasons why the urban reserve areas were designated as such (e.g., 4E, 4F, 4G, 5A, 5B). Metro Record at 58-95; and the decision describes the boundary of the designated urban reserves and the amount of land included. However, as described in more detail below, after review of the initial reserves submittal, the Commission determined that, in part, the findings did lack an adequate factual base, in violation of Goal 2. The Commission also voted to remand a portion of the decision that prompted Metro and Washington County to amend their designations in a manner that addresses Ms. Peter's objection. Accordingly, and as addressed in more detail below, the Commission finds that, as a whole, with regard to the designation of Washington County right-of-ways the finding include an adequate factual base, in compliance with Goal 2.

Finally, Ms. Peters objects that the reserves decision violates Goal 3 and OAR 660-027-0050(8) because of adverse effects on nearby farm uses. The Commission rejects that objection. OAR 660-027-0050(8) is one of the urban reserve designation factors. It does not require a finding that designation of the site will avoid or minimize adverse effects on nearby farm uses and rural reserves. It is not a criterion that must be satisfied on its own. Rather, it is one of the factors that Metro must consider in conjunction with all of the other urban reserve designation factors in OAR 660-027-0050. Metro adopted general findings addressing OAR 660-027-0050(8) in connection with the Bethany West area. Metro Record at 92-95. The findings state "concept and community level planning in conformance with established county plan policies can establish a site design which will avoid or minimize adverse impacts on farm practices and natural landscape features in the area." *Id.* The record includes the county's basis for adjusting the boundary to include both sides of the rights-of-way in question are further explained in a staff memo. Washington Co. Record at 8559. That county record explains that if the reserves boundary was placed at the centerline of roadways it may mean that only half of the right-of-way could be improved if and when the land was added to the urban growth boundary. The Commission rejects this objection.

#### **b. Need for Large-Lot Industrial Use**

1000 Friends of Oregon objected to the initial reserves submittal on the basis of a finding of a need for 3,000 or more acres of urban reserves for large-lot industrial use. 1000 Friends argues that the alleged need for 3,000 or more acres for urban reserves for large-lot industrial use is not supported by law and is without substantial evidence; and that the designation of lands to meet this alleged need violates the reserve rule and statute by improperly using large blocks of farmland. 1000 Friends, July 12, 2010 at 6-9. 1000 Friends objects that the re-designation submittal furthers this error.

1000 Friends first objects there is no legal basis for providing for any specific type of land use in the urban reserves; that there is no legal basis to make any urban reserve decision based on "preferences" of some employers; and that there is no provision allowing for setting

aside large blocks of land for industrial use. 1000 Friends further argues that the overwhelming majority of urban reserve land proposed for large-lot industrial uses is on Foundation Agricultural Lands in Washington County and that Metro has not adequately established the need to designate Foundation Agricultural Lands as urban reserves. 1000 Friends contends the deficiency violates ORS 215.243(2) and OAR 660-021-0030(1). 1000 Friends, July 12, 2010 at 8.

1000 Friends first argues that under OAR 660-021-0030(1), the alleged need for 3,000 or more acres of industrial land in urban reserves is not supported by substantial evidence. OAR 660-021-0030(1) is substantively the same as ORS 195.145(4) and OAR 660-027-0040(2) in establishing the time period for the urban reserves' land supply.<sup>61</sup> However, OAR 660-021-0030(1) is not applicable to this urban reserves decision because Metro may use OAR chapter 660, division 21 or division 27 to designate urban reserves, but it may not use both at the same time. OAR 660-027-0005(1) and OAR 660-021-0020(2). The Commission assumes that 1000 Friends intended to cite OAR 660-027-0040(2) and not 660-021-0030(1).

In a previous Commission review, the City of Newberg calculated its land supply for urban reserves based (in part) on the projected long-term need for large-lot industrial sites with particular site characteristics in particular locations. The Commission remanded the city's decision. The order stated: "The City's decision designating URAs is remanded to remove identification of specific industrial, commercial, institutional, and livability needs." (*See* LCDC Remand Order 010-REMAND-001787, April 22, 2010 at 9.) The Commission's order in Newberg was based on the OAR chapter 660, division 21 rules for designating urban reserves. The following is the pertinent part of the Commission's order on Newberg's urban reserves:

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<sup>61</sup> OAR 660-021-0030(1) provides:

"Urban reserves 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 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land."

ORS 195.145(4) provides:

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

OAR 660-027-0040(2) provides:

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

“The City of Newberg determined its long-term need for land (through 2040) by developing a population forecast coordinated with Yamhill County, and assessing its need for land in several categories along with the existing supply of land within the city’s UGB. Based on this analysis, the City determined that its total long-term need for land (through 2040) was for 1,665 acres. Of this amount, however, a significant portion also was identified as being for uses with unique and specific site requirements - particularly for large tracts of land and in some cases for relatively flat lands.

“The Department argued, based on the history of the urban reserve rule, that OAR 660-021-0030(1) does not authorize a city’s long-term land need to be based on specific siting requirements for particular uses, and that (instead) the amount of land in a city’s urban reserves must be based on generalized long-term population and employment forecasts. The City disagreed, but nevertheless agreed to a voluntary remand in order to revise its determination to remove reliance of projected land needs of future uses with specific site requirements.

“The Commission interprets OAR 660-021-0030(1) as requiring local governments to make an estimate of its need for developable land over a 10 to 30 year planning period beyond the 20-year time frame used to establish the UGB. This is to be an estimate, based on long-term forecasts of overall population and employment needs for the planning period. The Commission recognizes that the rule authorizes local governments to choose the length of the planning period (within the specified limits), and that the longer the planning period the greater the amount of land that is likely to be justified for inclusion in URAs.” LCDC Remand Order 010-REMAND-001787 at 6-7.

In contrast to the Newberg reserve decision, here Metro found that there was no long-term need for additional land beyond the current UGB as a result of overall employment growth. However, Metro’s analysis showed that there was a need, based on its buildable lands inventory, its determination of long-term employment growth, and its analysis of the capacity of the existing UGB, for an additional 3,000 acres of land:

“Based on this analysis, the UGB contains adequate capacity to accommodate overall employment growth in the reserves timeframe \* \* \*. However, one key issue remains, regarding providing lots over 25 acres for larger users. This issue was analyzed in the draft urban growth report. It is likely, that single-tenant and multi-tenant employment users in this size range will need to be largely accommodated on vacant buildable lands because redevelopment and infill (refill) appears to be a more likely source of capacity for smaller lot needs. It is impossible to predict with any certainty the number of large lot users expected to come to this region 50 years from now, so this analysis proposes an extension of the analysis described in the UGR. The 20-year UGR analysis shows a rough match between supply and demand for large lots, so it is reasonable to assume that much of the region’s large lot supply in the reserves timeframe would come from urban reserves. A reasonable extension of historical demand informed by future growth estimates suggests that approximately 100 acres per year would be appropriate over the reserves timeframe, equating to 2,000 acres for the period 2030-2050 and an additional 1,000 acres for 2050 – 2060.” Metro Record at 609. *See also*, Metro Record at 118-119.

In the Newberg matter, the city projected a need for land for specific industries with specific site needs that could only be met in specific locations. In contrast, here Metro is projecting that one aspect of its general land needs for employment over the next fifty years cannot be met within the existing UGB. Metro did not base its determination on a specific need, nor did it identify any particular location where this need will be met within its urban reserve areas. Instead, Metro has determined that in order to accommodate its estimated employment growth, it will need 3,000 acres of land in urban reserves in the 2030-2060 period. The Commission finds that Metro's projection complies with ORS 195.145 and OAR 660-027-0040(2).

1000 Friends further argues that the designation of large-lot industrial land on Foundation Agricultural Land violates the statute and rule. However, no specific urban reserve area is designated for future large-lot industrial use. That determination would need to be made by Metro in conjunction with an amendment of its urban growth boundary.

The Commission acknowledges that the initial consolidated findings contain the following statement:

“Urban Reserve Area 8A was specifically selected for its key location along the Sunset Highway and north of existing employment land in Hillsboro and also because of the identified need for large-lot industrial sites in this region. WC Rec. 3124-3128. This area's pattern of relatively large parcels can help support the Metro recommendation for roughly 3,000 acres of large-parcel areas which provide capacity for emerging light industrial high-tech or biotech firms such as Solarworld and Genentech.” Metro Record at 90. *See also*, Metro Record at 118-119.

In addition, the re-designation findings include the following statement, in its finding regarding urban reserve factor (2):

“The city views Urban Area 7B as the location for employment expansion, particularly industrial. The reason is that the David Hill Urban Reserve Area 7A is too hilly to accommodate any substantial employment growth and is too far away from main roads needed to connect to the regional transportation system for freight and employment movement. Area 7B is the best location for significant employment expansion due to its size, flatness of the area, proximity to the Town Center and proximity to the regional road network. Further, there are large parcels to meet the city's large lot industrial needs.

“The City's Economic Opportunities Analysis (EOA) report (Washington County Record page 11129-11249) provided a justification for the amount of land need beyond current supply in the community for office, industrial, retail and other industrial employment sectors. When taking into account current vacant land supply in the community, there is still a need for 284 to 1,520 acres of additional industrial land in order to meet the City's industrial need over the next 50 years. (Washington County Record page 11192). Thus, this land in Area 7B is needed to achieve a 'healthy economy.'

“The City’s EOA report also addressed the community’s 20 year need by parcel size. The report indicates there is a need for at least one large lot industrial site (50 to 100 acres in size) sometime during the next 20 years (Washington County Record page 11183). Currently, no such site exists in the community. The only parcel within the study area that could accommodate this large-lot need without having to assemble the land is a 115 acre parcel located in the northwest portion of 7B. *Further, the property owner has indicated that the orchard currently on the property is nearing the end of its useful life and would be available for development within the next 2 to 5 years*

“Besides the large-lot industrial need, the urban reserve area provides for a range of potential industrial sites for large, medium and small employers. In addition, locating industrial land near the Highway 47 corridor complements public investments in transportation made to improve traffic circulation in western-Washington County. \* \* \* \* \*” Ordinance No.11-1255, Exhibit B, at 134-135 (Emphasis added.)

1000 Friends cites this finding, and the italicized language in particular, as impermissibly designating land for large lot industrial use. 1000 Friends, June 1, 2011, at 9.

However, nothing in Metro’s decision or the policies adopted by Metro or Washington County to implement the urban reserves commits it or Washington County to use this area for any particular future urban use. As the City of Forest Grove noted in its hearing testimony,

“1000 Friends objection about specific uses was curious from one perspective. Aside from DLCD staff correctly noting that Metro did not adopt a specific land use, it also appears that some of the factors require the consideration of land use types to make the necessary finding (*e.g.*, sufficient development capacity to support a healthy economy and sufficient land suitable for a range of housing types.) Specific uses were discussed to demonstrate how those urban reserve factors are met.” Forest Grove, August 18, 2011, at 1.

Contrary to 1000 Friends’ characterization, Metro’s identification and discussion of the evidence in evaluating these factors does not establish that the submittal impermissibly designates land for large lot industrial use. Metro’s evaluation of the urban reserve factors does not require it to ignore the size or qualities of the land under consideration. Metro’s findings do not impermissibly designate any urban reserve area for future large-lot industrial use.

In addition, while the Commission did not remand the initial decision on this basis, the re-designation decision included additional explanation that further clarifies that Metro’s determination of a need for an additional 3,000 acres of large-parcel areas was not based on a particularized need for any particular type of urban use. Ordinance No. 11-1255, Exhibit B at 67. These findings adequately identify and rely on substantial evidence in the record to support its projections and designations. This objection is rejected. To the extent this objection more generally challenges Metro’s designation of Foundation Agricultural Lands as urban reserves, that issue is addressed below.

### c. Need for Diversity of Employment Sites

In contrast to 1000 Friends' argument that the decision does not justify the need for 3,000 acres for large-lot sites, CPR asserts the decision fails to provide for a sufficient diversity of employment sites necessary for a healthy economy, and that the findings are not adequate to establish that the 3,000-acre target for large lot industrial sites is sufficient to meet employment land needs. CPR, July 14, 2010 at 16.

The urban reserve factor relating to employment lands, OAR 660-027-0050(2), requires that urban reserves "Include sufficient development capacity to support a healthy economy." Numerous parties presented evidence that to have a healthy economy – that is, be able to attract new employers and support the growth of existing employers – it is necessary to have enough diversity of sites to provide for varying needs (*e.g.*, infrastructure; access to labor force; size; proximity to customers, suppliers, and like companies; market choice, *etc.*). According to CPR, the reserves decision fails to account for the needed diversity of employment sites, instead assuming a shift from production to more research and development and administration/marketing, which have more employees per square foot and demand a higher proportion of office space.

CPR asserts that Metro's reliance on new assumptions without an explanation of how existing sites provide the necessary diversity is inadequate to demonstrate that it correctly applied OAR 660-027-0050(2) to provide for a healthy economy, or OAR 660-027-0005(2) to "best achieve" urban needs. For the same reasons, CPR believes that the reserves decision does not comply with Goal 9.

As explained above, the Commission rejects CPR's objections regarding compliance with Goal 9. The applicable requirements are the general provisions of the reserves rules: OAR 660-027-0005(2) (a balance of urban and rural reserves that best achieves livable communities), and OAR 660-027-0050(2) (that the urban reserves alone or in conjunction with lands inside the current UGB include sufficient development capacity to support a healthy economy).

Metro's analysis showed that the existing UGB has a substantial surplus in the overall amount of employment land that it projected will be needed over the fifty-year planning period (by a factor of 2:1). Metro Record at 609. Recognizing that a portion of the general need for employment lands is for larger sites, Metro also analyzed that component of its general employment land need, and determined that there is adequate capacity within the existing UGB for the next twenty years. Metro Record at 609-610. Finally, Metro analyzed the demand for this component of its employment land need and, based on an extrapolation of trend data, found that approximately 100 acres per year were needed for large-sites that could not be met within the existing UGB, for a total need of 3,000 acres. *Id.*

The Commission finds that there is substantial evidence in the record to demonstrate that the amount of urban reserves designated "includes sufficient development capacity to support a healthy economy," a consideration Metro must make under OAR 660-027-0050(2). However, following the initial hearings, and as explained in further detail below, the Commission voted to remand a portion of the urban reserves designations in Washington County. That remand vote

did not contemplate any increase in the ultimate number of urban reserves. It did, however, also include a vote to remand the Washington County rural reserves to allow the county to adjust the amount of land designated for rural reserve and give the county the option to designate other urban reserves, or leave more undesignated land. In fact, in its re-designation decision, the county did increase the amount of undesignated land, which could, as CPR contemplates, potentially be included in a request to amend the UGB should Metro's assumptions prove to be incorrect.

However, the City of Hillsboro objects to the re-designation submittal on the basis that following the re-designation, Metro designated too little urban reserve near the "Silicon Forest" in Washington County. The City of Hillsboro reiterates the objections CPR made to the initial decision, contending that additional urban reserve, or additional undesignated land as an alternative to urban reserve, is needed in the area to meet long-term demand for large industrial sites. The objection contends Metro's urban reserves re-designation submittal continues to fail to satisfy ORS 195.145(5)(b) and the urban reserves factors contained in OAR 660-027-0050 because it does not provide sufficient suitably located urban reserve land to provide for livability and a healthy economy over the planning period.

The record for the analysis of this area is at Metro Ordinance No. 10-1238A, Metro Record at 22-24 and Metro supp. record at 13-15. The Commission concludes that, while the City of Hillsboro disagrees with Metro's policy choices regarding the location and amount of urban reserves, it has not established that Metro could not reach the conclusion it did. The Metro findings adequately address OAR 660-027-0050, and there is substantial evidence to support Metro's findings.

Hillsboro's objection includes an additional argument not made previously by the CPR. The city states:

"On October 29, 2010, the Land Conservation and Development Commission (LCDC) orally remanded the Washington County element of the Metro and Washington County Reserves Decision. The draft minutes of this LCDC proceeding includes an LCDC/DLCD staff discussion questioning the adequacy of "Undesignated" land in Washington County.

"This dialogue on the record raises critical doubt whether the final Washington County Rural Reserves set (and boundaries) are too tight to ensure that *a balance* has been reached by the Washington County Urban and Rural Reserves designations that, *in its entirety, best achieves livable communities* in this County, and adequately supports a *healthy economy* locally and regionally.

"\* \* \* \* \*

"LCDC and DLCD discussions during the Reserve proceedings noted concern regarding the sufficiency of employment-oriented urban reserves in Washington County, particularly if such proposed reserves north of the City of Cornelius were not going to be

included in the final set of County urban reserves acknowledged by LCDC.” (Emphasis in original.) Hillsboro, May 31, 2011 at 5.

The city notes the 2011 re-designation submittal includes 299 fewer acres of urban reserve and 391 more acres of undesignated land than did the initial submittal.

The Commission did express some concern regarding the overall flexibility for Washington County to designate new urban reserves in the future. However, in 2010, the Commission did not direct the county to reduce the amount of rural reserves or increase the amount of undesignated land. While the amount of land designated as urban reserve has been reduced by a small amount (a net of 299 acres) the amount of undesignated land has been increased by a total of 391 acres. These changes do not fundamentally alter the ability of the region to provide land needed for industrial or other future urban land needs over the planning period. They represent changes on the order of one percent to the regional total for urban reserves, well within the forecasting range of variability over the planning period.

The Commission finds that Washington County’s and Metro’s decision regarding the amount of urban reserve and undesignated land adequately applies the urban reserve factors with regard to the amount of land needed for future employment needs, and is based on substantial evidence in the record. Therefore, the Commission rejects these objections.

#### **d. Designation of Foundation Agricultural Land as Urban Reserves**

1000 Friends and Save Helvetia object that Metro’s designation of Foundation Agricultural Land as urban reserves violates ORS 195.137 to 195.145 and OAR chapter 660, division 27. 1000 Friends, July 12, 2010 at 3; 1000 Friends and Save Helvetia, June 1, 2011 at 5-6. They also object regarding the initial submittal that Metro did not make adequate findings to justify its designation of Foundation Agricultural Lands as urban reserves over other non-foundation lands, in violation of OAR 660-027-0040(11).

1000 Friends and Save Helvetia assert that the amount of Foundation Agricultural Land designated as urban reserve is unbalanced and disproportionate region-wide and in Washington County in particular, they argue that, unlike other land needed for urban uses, Foundation Agricultural Lands are limited in their quantity and in their locational attributes. They assert that this difference between Foundation Agricultural Lands and lands for urban uses is recognized in the statutes and Commission rules, and that Metro has failed to recognize the significant damage that its designations will do to the agricultural industry in this part of the state. 1000 Friends identifies alternative areas that Metro could have designated as urban reserves that are not Foundation Agriculture Land. Finally, they argue that these failures have had the result that the decision lacks the overall balance required by the Commission’s rule at OAR 660-027-0005(2).

To support their argument, 1000 Friends points out that of the 28,615 acres of urban reserves, 11,915 acres are Foundation Agricultural Lands, of which 9,730 acres are in Washington County. In contrast, very little Foundation Agricultural Land was designated as urban reserves in Multnomah or Clackamas counties. They also note that much of the undesignated land in Washington County is Foundation Agricultural Land that is under the threat

of urbanization. According to 1000 Friends, “[t]he result is that the land most threatened by urbanization in Washington County is now proposed as urban reserves, while many acres not under threat of urbanization in the planning period are designated as rural reserves, turning the law on its head.” 1000 Friends, July 12, 2010, at 5.

The Commission does not agree with 1000 Friends that only agricultural and natural resource lands are placed-based under the reserves statutes and rules. Urban reserves also are to reflect place-based needs of the region in terms of future livability and efficiency of public facilities and services. These characteristics are reflected both in the Commission’s rules defining the terms “urban reserves” and “livable communities” and in the legislature’s establishment of the factors that Metro must consider for urban reserves, which include the efficient use of existing infrastructure, lands that can be provided with cost-effective public facilities and services, lands that can be designed to be walkable and served by well-connected streets, and lands where development can be designed to preserve and enhance natural ecological systems. ORS 195.145(5). These are all factors that are dependent on natural and economic geography, just as the rural reserve factors are.

Under OAR 660-027-0060(4), identification of land by Oregon Department of Agriculture (ODA) as Foundation Agricultural Land is a sufficient basis for the county to designate land rural reserve within three miles of a UGB without consideration of other factors. However, the rules also allow for Foundation Agricultural land to be designated as urban reserves, and specify a process for that evaluation. If Foundation Agricultural Land is considered to rate favorably under the urban reserve factors, the Commission’s rule require that if Metro designates such land as urban reserves, its findings and statement of reasons must explain, by reference to both the urban and rural reserve factors, why Metro chose those lands as urban reserves rather than other lands. OAR 660-027-0040(11). Metro’s findings include analyses and conclusions explaining why it designated Foundation Agricultural Lands as urban reserves rather than using other lands. Metro Record at 14–18. Specifically, Metro summarized its decision in the following terms:

“Why did the region designate *any* Foundation Agricultural Land as urban reserve? The explanation lies in the geography and topography of the region, the growing cost of urban services and the declining sources of revenues to pay for them, and the fundamental relationships among geography, topography and the cost of services. The region aspires to build ‘great communities.’ Great communities are those that offer residents a range of housing types and transportation modes from which to choose. Experience shows that compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems offer the best range of housing and transportation choices. *State of the Centers: Investing in Our Communities*, January, 2009. Metro Rec.181-288. The urban reserves factors in the reserves rules derive from work done by the region to identify the characteristics of great communities. Urban reserve factors (1), (3), (4), and (6) especially aim at lands that can be developed in a compact, mixed-use, walkable and transit-supportive pattern, support by efficient and cost-effective services. Cost of services studies tell us that the best geography, both natural and political, for compact, mixed-use communities is relatively flat, undeveloped land. \* \* \*

“\* \* \* \* Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development is not only very expensive, it is politically difficult. There is no better support for these findings than the experience of the city of Damascus, trying since its addition to the UGB in 2002 to gain the acceptance of its citizens for a plan to urbanize a landscape characterized by a few flat areas interspersed among steeply sloping buttes and incised stream courses and natural resources. Staff Report, June 9, 2010, Metro Rec. 289-300.

“Mapping of slopes, parcel sizes, and Foundation Agricultural Land revealed that most flat land in large parcels without a rural settlement pattern at the perimeter of the UGB lies outside Hillsboro, Cornelius, Forest Grove, Beaverton, and Sherwood. These same lands provide the most readily available supply of large lots for industrial development. \* \* \* Had the region been looking only for the best land to build great communities, nearly all the urban reserves would have been around these cities. \* \* \*

“\* \* \* \* \*

“Despite these geopolitical and cost-of-services realities, the reserves partners designated extensive urban reserves that are *not* Foundation Agricultural Lands in order to meet the farm and forest land objectives of reserves, knowing they will be more difficult and expensive to urbanize:

“Urban Reserve 1D east of Damascus and south of Gresham (2,716 acres);

“Urban Reserve 2A south of Damascus (1,239 acres);

“Urban Reserves 3B, C, D, F and G around Oregon City (2,232 acres);

“Urban reserves 4A, B and C in the Stafford area (4,699 acres);

“Urban reserves 4D, E, F, G and H southeast of Tualatin and east of Wilsonville (3,589 acres);

“Urban Reserve 5F between Tualatin and Sherwood (572 acres);

“Urban Reserve 5G west of Wilsonville (203 acres); and

“Urban Reserve 5D south of Sherwood (447 acres).

“This totals approximately 15,697 acres, 55 percent of the lands designated urban reserve.” Exhibit E to Ordinance No. 10-1238A at 3-4; Metro Record at 16-17 (footnote and some citations omitted).

Metro also included some findings concerning why it chose the Foundation Agricultural Lands that it did, considering the rural reserve factors in the Commission’s rules. The Commission interprets this aspect of its rules to require Metro to consider whether Foundation Agricultural Lands considered as urban reserves are best-suited as urban reserves or rural reserves, considering both the urban and rural factors. Metro’s initial findings indicate that it believes that its designations satisfy this requirement. Specifically, Metro found that:

“Urban reserves, if and when added to the UGB, will take some land from the farm and forest land base. But the partners understood from the beginning that some of the very same characteristics that make an area suitable for agriculture also make it suitable for

industrial uses and compact, mixed-use, pedestrian and transit-supportive urban development. \* \* \*

“Some important numbers help explain why the partners came to agree that the adopted system, in its entirety, achieves this balance. Of the total 28,615 acres designated urban reserves, approximately 13,981 acres are Foundation or Important Agricultural Land. This represents only four percent of the Foundation and Important Agricultural Land studied for possible urban or rural reserve designation. If all of this land is added to the UGB over the next 50 years, the region will have lost five percent of the farmland base in the three-county area.” Metro Record at 15 (citations omitted).

In its initial designations, of the 194,350 acres of land identified as Foundation Agricultural Lands in the three-county area and designated as rural or urban reserves, 11,931 acres are urban reserves and 182,439 acres were rural reserves. Metro Record at 179. In Washington County, the numbers are 130,944 total Foundation Agricultural Lands as reserves, with 121,214 acres as rural reserves, and 9,730 as urban. *Id.* The Commission determined, considering the entirety of the submittal, that, with two significant exceptions, Metro’s initial decision was based on adequate findings and supported by substantial evidence in the record.

However, following the initial hearings, the Commission determined that the designation of Area 7I was not based on substantial evidence, and rejected that designation. The Commission also determined that Metro had not made adequate findings to justify an urban reserve designation of Foundation Agricultural Land (Area 7B) in Washington County. The Commission determined that for Area 7B Metro had not adequately considered all of the rural reserve factors prior to designating that Foundation Agricultural Land as urban reserve. Consequently, the Commission voted to remand the decision to Washington County for the development of findings.

Metro and Washington County responded by reconsidering the urban reserve designation of Area 7B and removed the urban reserve designation from 28 of the 508 acres in that Area, leaving those 28 acres undesignated. For the remainder of Area 7B, for which Metro retained the urban reserve designation, the re-designation findings further specifically address each of the urban and rural reserve factors and made specific findings to establish a factual basis to designate that land as urban reserves. Ordinance No. 11-1255 at 132-153. With regard to Area 7I, Metro re-designated the northern 263 acres of that area as rural reserves, and left the remaining 360 acres undesignated. Following the re-designations, 11,551 acres of the total 28,256 acres of urban reserves are Foundation Agricultural Land. Exhibit B to Ordinance No. 11-1255 at 3; Metro Supp Record at 799, 804-805.

1000 Friends’ specific objection to the re-designation decision regarding Area 7B is addressed below. However, more generally 1000 Friends objects that the re-designation findings continue to inadequately justify the use of Foundation Agricultural Land as urban reserves. 1000 Friends and Save Helvetia contend that the findings for designating some Foundation Agricultural Land as urban reserve continue to be conclusory and legally flawed. The Commission rejects this objection.

Metro and the counties have adopted findings based on the factors regarding the location of urban reserves throughout the region, including on Foundation Agriculture Land. The record includes substantial evidence to support Metro’s findings, and the findings themselves have an adequate factual base. 1000 Friends has made reasonable counter arguments based on these same criteria, which could support findings justifying a different decision. However, the Commission finds that the statutory and rule provisions directing designation of urban and rural reserves provide the region with considerable discretion in making the reserves decisions. 1000 Friends’ arguments, while reasonable, do not establish that, as a matter of law, Metro and the counties could not reach a different conclusion. The Commission finds that findings on the initial reverses submittal, as supplemented by the findings in the re-designation submittal, adequately address each of the urban and rural reserve factors, and are based on substantial evidence in the record.

## **O. Rural Reserves Decisions**

### **1. Clackamas County**

#### **a. Use of Three-Mile Urbanization Guideline**

Maletis, Tim O’Callaghan, MLG and Michael J. Wagner all object that the reserves decision does not comply with Goal 2 because the findings do not include an adequate factual base to support Clackamas County’s methodology and conclusion that all lands within three miles of the UGB are necessarily “subject to urbanization” for purposes of OAR 660-027-0060(2)(a). Maletis, July 14, 2010 at 14; June 2, 2011 at 8-9. MLG, July 14, 2010 at 18<sup>62</sup>; O’Callaghan, July 14, 2010, at 16; Wagner, July 3, 2010 at 1.

The objectors all maintain that to comply with ORS 195.141(3)(a) and OAR 660-027-0060(2)(a), a county must consider whether lands are “subject to urbanization” through 2060. The parties assert that Clackamas County’s determination that all lands located within three miles of the Regional UGB and within one-half mile of an outlying city UGB are necessarily “subject to urbanization” fails to satisfy the statute and rule. According to Maletis, this bright-line, “one size fits all” conclusion is not based on substantial evidence in the record to support the selected distances or to explain why properties within three miles of a UGB were more or less subject to the varied factors that influence urbanization. In the absence of any evidence at all to support Clackamas County’s characterization of this factor, Maletis, MLG and O’Callaghan argue there is no adequate factual base for purposes of Goal 2 to support Clackamas County’s application of this factor in the rural reserves analysis. Accordingly, they argue that the County’s methodology resulted in too much land being designated as rural reserves.

Conversely, Mr. Wagner argues that by relying on this methodology, the county did no analysis of lands “potentially subject to urbanization” and that it erred when it limited rural preservation to an “arbitrary” three miles based on the concept that traffic studies use the three-

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<sup>62</sup> Although the property subject to MLG’s objection is in Multnomah County, the MLG objection challenges Clackamas County’s compliance with OAR 660-027-0060(4), and generally requests that the decision be remanded to Metro and the counties “to correct the identified errors and designate the Property as ‘urban reserve.’” MLG July 14, 2010 at 8.

mile limit. Mr. Wagner uses the U.S. Census definition of “urbanized area” to argue that many areas beyond the three-mile limit are potentially subject to urbanization. He further states that the county erred when it did not perform any analysis of fair market values, providing an example of comparative information on differing land values for EFU, forest and rural residential-zoned lands. Mr. Wagner concludes that this methodology resulted in too little land being designated as rural reserves.

The reserves rule includes four factors counties must consider when designating rural reserves intended to provide long-term protection to agricultural or forest industry under OAR 660-027-0060(2) and ORS 195.141(3). Threat of urbanization is one of those factors, and specifically requires that when the county is identifying and selecting lands for designation as rural reserves, it must consider whether the lands proposed are “situated in an area that is otherwise potentially subject to urbanization during the applicable period \* \* \* as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land[.]” OAR 660-027-0060(2)(a); *see also* ORS 195.141(3)(a). Like the other factors, the threat of urbanization is not a criterion or standard that the county must show has been satisfied. Neither the statute nor the Commission’s rule mandate that the county “conclude” the land is subject to urbanization in order to designate it as a rural reserve. Instead, the county must take that factor into consideration in making its decision.

Clackamas County’s initial decision identifies material addressing the “three-mile urbanization” guideline used by the county Rural Reserves Policy Advisory Committee. Clackamas Co. Record at 365. The county’s findings indicate that it relied on OAR 660-027-0060(4) to determine that lands should be designated as rural reserves if they are identified as Foundation Agricultural Land, and are located within three miles of an urban growth boundary. *See, e.g.*, Clackamas Co. Record at 4-5 (French Prairie area should be a rural reserve because it is Foundation Agricultural Land within three miles of a UGB, and because it contains prime agricultural soils and is one of the most important agricultural areas in the state). OAR 660-027-0060(4) provides:

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

This “safe harbor” provision which allows a county to designate Foundation Agricultural Lands or Important Agricultural Lands within three miles of a UGB as rural reserve by dint of such status and proximity alone represents a policy choice by this Commission that such lands are under threat of urbanization. Clackamas County made additional findings, rather than utilizing the OAR 660-027-0060(4) safe harbor alone.

Based on its guideline, Clackamas County determined that all lands within a distance of three miles from the Regional UGB and one-half mile from a non-Metro UGB are subject to the threat of urbanization over a fifty-year period. However, while Clackamas County may have studied rural reserve candidate areas, and determined that land within three miles of the Metro

UGB and one-half mile of other cities was subject to urbanization for purposes of addressing the rural reserve factors, it did not designate all land within these radii as rural reserves when the factors as a whole were evaluated and applied. Rather, Clackamas County's findings reflect that it used the 3-mile radius as an initial screen in its evaluation.

The great majority of lands designated rural reserve in the county are within three miles of a UGB, with smaller areas extending beyond the three miles and some areas extending one mile or less from a non-Metro UGB. Part of the county's choice of three miles was not that traffic studies use the three-mile limit, but to account for the impact of transportation access on state highways. Clackamas Co. Record at 365. The county was not required to use the U.S. Census definition of urbanized area as an indicator of lands subject to urbanization. The former includes urban as well as urbanizing (low-density lands), while the latter often includes completely undeveloped farmland that is nevertheless under threat of development.

The October 14, 2009 joint state agency letter commented on the amount of land designated rural reserve and stated:

“In general, the approach used by Clackamas County is consistent with how the agencies believe rural reserve designations should be used (to “steer” urban development away from or toward particular areas, rather than as a blanket treatment of everything that is not an urban reserve).” Metro Record at 1375.

The Commission finds that the Clackamas County methodology and use of the “three-mile urbanization guideline” was consistent with OAR 660-027-0060(2) and (4) and that its findings regarding the designation of rural reserves based in part on that guideline are supported by an adequate factual base. While the County could have chosen other methodologies, none of the objectors have established that the county's methodology, and the findings it made based on that methodology, are inconsistent with the statute and rules. Moreover, the objections do not establish how this single factor, when applied in conjunction with the other three factors Clackamas County was required to consider, could compel a conclusion that the County designated either too much or too little rural reserve land. The Commission rejects these objections.

#### **b. Misapplication of Reserve Factors**

Elizabeth Graser-Lindsey objects that the decision designating the urban and rural reserves is based on a misapplication of the rural reserve factors “to provide long-term protection to the agricultural industry or forest industry” under OAR 660-027-0060(2). Graser-Lindsey, July 6, 2010 at 5 (page unnumbered). The objection alleges deficiencies in both urban and rural reserve designations, but the rules cited in the text of the objection address only rural reserve factors in OAR 660-027-0060, specific to Clackamas County.

Ms. Graser-Lindsey states that Clackamas County erroneously used the farmland categories from the January 2007 ODA report to Metro entitled “Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands” (*i.e.*, Foundation, Important and Conflicted Agricultural Land) to define farmland instead of considering the rural

reserve factors in OAR 660-027-0060. Ms. Graser-Lindsey contends that specific facts that provided evidence of quality agricultural or forest lands were ignored in areas designated as “Conflicted” in the ODA mapping units, resulting in OAR 660-027-0060 being misapplied.

The Commission finds that ORS 195.137 to 195.145 and OAR chapter 660, division 27 do not require or contemplate that the counties would make a parcel-by-parcel analysis of reserve areas, as Ms. Graser-Lindsey suggests. Additionally, as discussed above, the rural reserve factors in OAR 660-027-0060(2) are not criteria with which the counties must show compliance, but rather factors to be considered in the reserves decisions. Even if an area contains quality agricultural or forest land, nothing in the statute or rules compel a rural reserve designation. Clackamas County made findings regarding the rural reserve factors in OAR 660-027-0060(2) for each designated area, and those findings demonstrate that the county considered the factors listed in statute and rule. Clackamas County was not required to make findings for areas that were not designated. Metro Record at 39. This objection is rejected.

## **2. Washington County**

### **a. Objective to Achieve Balance – Too Little Rural Reserve**

The Oregon Department of Agriculture and Board of Agriculture (collectively, ODA) objects that Metro’s urban reserve designations and Washington County’s rural reserves designations are not consistent with the purpose and objective provided in OAR 660-027-0005(2) and result in too little land being designated as rural reserve. ODA, July 14, 2010 at 2. OAR 660-027-0005(2) includes the division’s purpose statement, which is to achieve “a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries, and protection of the important natural landscape features that define the region for its residents.” ODA argues that as to Washington County, the decision does not achieve that balance. ODA asserts that Metro and Washington County “extended if not expanded support for this imbalance” in the re-designation decision. ODA, June 2, 2011 at 2.

ODA notes that in the initial decision,

“\* \* \* 63.5 percent of the lands located adjacent to the UGB located in Washington County (includes Forest Grove and Cornelius) has been designated by Metro as urban reserve (55%) or left as ‘undesigned’ lands (8.5%) with no protection from future designation as additional urban reserve land. If one removes the Forest Grove/Cornelius UGB, 67.1 percent of the lands has been designated by Metro as urban reserve (61%) or left as ‘undesigned’ land (6.1%).” ODA, July 14, 2010 at 2.

ODA believes that the amount of rural reserves was inflated in Washington County in order to justify a larger amount of urban reserves in that part of the region. Specifically, ODA identifies and suggests that acreage not identified as Foundation Agricultural Land could have been designated as urban reserve, instead of the Foundation Agricultural Lands that were. ODA recommends that non-foundation acreage that could have been designated as urban reserves are

southwest of Borland Road, southeast of Oregon City, in the Clackamas Heights area, east and west of Wilsonville, and between Wilsonville and Sherwood. ODA, July 14, 2010 at 2-3.

Although ODA disagrees with the outcome, in fact Washington County completed an in-depth analysis of potential rural and urban reserves, first evaluating land based on a variety of quantitative assessments reflected in two tables and a series of maps. Washington Co. Record at 2281-2282. The county then refined this analysis to provide a qualitative analysis, including five means of determining potential rural reserve areas: urbanization, productivity, parcelization, physical features and dwelling density. The County then ranked these various subareas by tier. Washington Co. Record at 2300. Tier 1 indicates which subareas are most suitable for rural reserves, followed by Tier 2, Tier 3 and Tier 4 areas. The county designated extensive areas up to five miles from UGBs for rural reserves, although several outer subareas were assessed by the county as having “low” or “medium” potential for urbanization and were ranked Tier 4 – least suitable for rural reserves.

Contrary to ODA’s suggestion, the designation of a large amount of rural reserve land in Washington County has not enabled the county to designate more urban reserve land than population projections and land use need analyses will support. As discussed above, the purpose of OAR chapter 660, division 27 is to achieve a balance in the designation of urban and rural reserves to apply to the entirety of the region and not to the individual counties. The large amount of rural reserve land within Washington County reflects a region-wide balance, and neither Metro nor Washington County relied on the amount of rural reserve in that county to increase the amount of urban reserves. The county has made findings explaining its consideration of all the factors in its designation of rural reserves, including consideration of whether the lands are subject to urbanization. Washington Co. Record at 2294–2306.

The fact that, as originally submitted, 7.4 percent of the Foundation Agricultural Lands designated as reserves in Washington County were urban reserves, and 92.6 percent are rural reserves, indicates that most of the county’s key agricultural lands have been protected. While the re-designations did not significantly alter those percentages, it did reduce the amount of land designated for urban reserve by 299 acres, compared to a reduction of 120 acres of rural reserve land. On a regional basis, the percentages are even more weighted toward protection of agricultural lands, with 6.1 percent of the Foundation Agricultural Lands designated as urban reserves and 93.9 percent rural reserves. Metro and Washington County also appropriately considered other Washington County characteristics in their evaluation, including: (1) the much greater extent of Foundation Agricultural Lands adjacent to the UGB relative to the other two counties in the region, (2) the very limited amount of “conflicted” agricultural land, (3) the higher population and land need projections, and (4) fewer topographic challenges for compact development than in Clackamas and Multnomah Counties. For these reasons, the Commission rejects ODA’s objection that Metro and Washington County’s reserve designations did not achieve an appropriate balance, as contemplated under OAR 660-027-0005(2). The Commission finds that Washington County has adequately explained its rural reserve designation decision with regards to consideration of the factors in OAR 660-027-0060(2) and (3) in designating lands more than three miles from the current UGB.

ODA and 1000 Friends also object that the analysis and designation of key agricultural lands as urban reserves in Washington County uses elements not included in applicable statutes or rules. They also argue that the county relied on a weighting analysis that is inconsistent with the applicable law and involves elements not in the law in evaluating the rural reserve factors in a manner that results in an excess of land designated for urban reserves. 1000 Friends adds that all of the lands the county designated as urban reserves are under a high threat of urbanizations, while almost all rural reserves are under “low” or “medium” threat of urbanization. 1000 Friends, July 12, 2010 at 10.

ODA argues that the county’s analysis inappropriately uses the “subject to urbanization” factor to downgrade the importance of agricultural lands under the rural reserve factor in OAR 660-027-0060(2)(a). ODA asserts that while its identification of Foundation Agricultural Land took into account the long-term viability of agricultural operations and the overall stability of agriculture, Washington County’s analysis failed to do so. ODA also argues that “The county’s analysis gives too much weight to whether lands are located within the Tualatin Valley Irrigation District and inappropriately ranks lands within water-restricted areas lower,” in contravention of OAR 660-027-0060(2)(c). Further, ODA objects that the analysis and conclusions confuse “large block of agricultural land” with “large parcels,” and inappropriately considers residential density without determining whether dwellings were authorized in conjunction with farm use or as nonfarm dwellings when determining whether there is a “large block of agricultural land” under OAR 660-027-0060(2)(d)(A). With regard to OAR 660-027-0060(2)(d)(D), ODA argues that “the analysis does not adequately address the sufficiency of agricultural infrastructure the area. The only information provided concerns the need to protect a critical mass of operations, and the county disregarded this information.” And finally, ODA argues that “[t]he analysis makes conclusory statements that urban reserve areas “can be designed to avoid or minimize adverse effects on farm and forest practices” without providing evidence or discussion as to how adequate protection is provided in considering OAR 660-027-0050(8). ODA July 14, 2010, at 4-5.

Regarding the requirement in OAR 660-027-0060(2)(b) and (d) to consider whether rural reserves are “capable of sustaining” and “suitable to sustain” long-term agricultural operations, 1000 Friends also notes that much of the lands designated as urban reserves are the productive heart of Washington County agriculture, and that the value of production from these lands has continued to grow. 1000 Friends argues that the lands should be designated as rural reserves to sustain this production, not as urban reserves.

Regarding OAR 660-027-0060(2)(c) (agricultural infrastructure), 1000 Friends states that the availability of water for irrigation is a relevant consideration only “where needed.” 1000 Friends argues that the county places inappropriate weight on this factor, and does not recognize that many high-value crops do not need irrigation. In addition, 1000 Friends objects that the county looks too narrowly at parcelization in addressing whether there is a “large block” of agricultural land in designating rural reserves under OAR 660-027-0060(2)(d)(A). Finally, 1000 Friends states that agricultural infrastructure is not adequately considered as required in OAR 660-027-0060(2)(d)(D).

The consolidated findings regarding application of the rural reserves factors in Washington County address each of the subsections in OAR 660-027-0060(2). Metro Record at 95-97 (generally describing how the county considered each of the factors in the rule). Washington County's analysis of how it considered the factors is provided in detail at Washington Co. Record at 2970-2988 in the recommendations from the county's coordinating committee. Contrary to ODA's and 1000 Friends' arguments, the Commission finds that the reserves decisions findings do not consider elements not contemplated by the statute or rule. While the interpretations and application of the rule are not those ODA and 1000 Friends would prefer, the findings establish that Metro and Washington County considered each of the factors, and reached conclusions based on substantial evidence in the record, with an adequate factual base. Specifically, the county and Metro considered each of the four factors in OAR 660-027-0060(2) as follows:

OAR 660-027-0060(2)(a); Threat of Urbanization: Despite 1000 Friends' generalization that the lands the county designated as urban reserves are under a high threat of urbanizations, while almost all rural reserves are under "low" or "medium" threat of urbanization, the analysis reflected in the county's findings demonstrate that the county did consider the threat of urbanization in evaluating areas for rural reserve designations. Although Washington County initially used a weighting that ascribed little significance (maximum of 10 percent) to proximity to a UGB, the county later changed that approach to ascribe greater weight to this factor. The county also considered land values. Washington Co. Record at 2971-2972. There is substantial evidence in the record to show that the county adequately considered this factor, and that Metro and Washington County had an adequate factual basis in reaching their conclusions based on the consideration of OAR 660-027-0060(2)(a).

OAR 660-027-0060(2)(b) and (c); Capability of sustaining long-term agricultural operations: 1000 Friends considers that much of the lands designated as urban reserves are the productive heart of Washington County agriculture, which are capable of sustaining agricultural operations in the long term, and that those lands should have been designated for rural reserves instead of urban reserves. ODA argues that in evaluating the capability of sustaining agricultural operations, the county gave too much weight to the availability of water for Irrigation. ODA is correct that Washington County gives its highest agricultural productivity rating only to lands with access to water, even where high-value crops are grown without irrigation and even for high-value farmland. The county states in its findings that it anticipates water availability will become increasingly important in the future and uses this as a contributing factor under OAR 660-027-0060(2)(b) as well as (c). Washington Co. Record at 2972. ODA and 1000 Friends correctly note that the consideration is for water "where needed" in subsection (c), but fails to recognize that this is not the primary way the county used this consideration. The county found that "water availability appears to be a significant factor in preservation of farmland over the long-term" in its consideration of subsection (b). Washington Co. Record at 2972. The Commission finds that the statute and rule do not preclude the county from considering water availability when determining whether land is "capable of sustain long-term agricultural operations." As one of the four factors the county must consider, the Commission interprets OAR 660-027-0060(2)(b) as giving a county

substantial discretion in determining how it evaluates the “capability of sustaining long-term agricultural operations.” The Commission finds that Washington County and Metro adequately evaluated that capability in its consideration of this factor, in conjunction with evaluation of all four of the OAR 660-027-0060 factors.

OAR 660-027-0060(2)(d); Suitability to sustain long-term agricultural operations: OAR 660-027-0060(2)(d)(A) and (D) provide that two of the considerations that counties must take into account when deciding whether to designate land as a rural reserve are the existence of large blocks of resource land with a concentration of farms, and the sufficiency of agricultural infrastructure in the area. Both 1000 Friends and ODA object that Washington County did not adequately evaluate these factors. However, while ODA and 1000 Friends disagree with the county’s conclusions, the record establishes that Washington County analyzed both parcelization and ownership patterns, but concluded that parcelization is a better long-term indicator of the sustainability of agricultural operations. Washington Co. Record at 2975; 2976; 2978; 3019-20 (maps of parcelization and ownership); 3815. Washington County has considered whether lands proposed as rural reserves are suitable to sustain long-term agricultural operations, taking into account both large blocks of agricultural operations and the sufficiency of agricultural infrastructure in the area. The county also considered the ODA Agricultural Lands inventory, finding that almost all lands within five miles of existing urban areas is inventoried as Foundation or Important Agricultural Lands. Washington Co. Record at 2972. The county also considered specific comments from the Washington County Farm Bureau, Washington Co. Record at 2980-2983, that reflect ODA’s objection. Although Washington County may not have considered large blocks of agricultural land, and agricultural infrastructure in the way that ODA and 1000 Friends may have preferred, the fact is that the county did consider these factors. The statute and rule do not require the analysis ODA and 1000 Friends prefer.

In addition to its objections regarding specific rural reserve factors, ODA’s objection also asserts that in deciding to designate some areas for urban reserves rather than rural reserves, the county violated the intent of OAR 660-027-0050(8), which requires that urban reserves be designed to avoid or minimize adverse effects on farm or practices. The Commission also disagrees with this portion of the objection. Washington County initially addressed this factor through the “Pre-qualified Concept Plan” process. Each of these concept plans addressed the factor in section (8). Washington Co. Record at 3036–3141. Additionally, Metro requires concept planning for all new UGB expansions, and one of the considerations in this concept planning exercise is, “avoidance or minimization of adverse effects on farm and forest practices and important natural landscape features on nearby rural lands.” Metro Record at 9 and 24–25. For these reasons, the Commission finds that, in general, the initial submittal adequately considered OAR 660-027-0050(8).

However, as discussed below, as applied to specific urban reserve designations in Washington County, the Commission voted to remand the submittal, requesting that Metro and Washington County re-evaluate those conclusions as to those specific areas. That re-evaluation resulted, in part, in the county’s decreased reliance on the pre-qualified concept plan for the City of Cornelius. It also resulted in other changes to the Washington County reserve designations,

and Metro's urban reserve designations in Washington County. Those specific changes are addressed below.

Nonetheless, ODA continues to object to Metro's and Washington County's analyses and conclusions in the re-designation submittal, reasserting its objection to the balance achieved in the reserves. ODA alleges generally that the decision is not consistent with the purpose and objectives of OAR chapter 660, division 27, and that the analysis and designation of certain agricultural lands as urban reserve, and failure to designate qualified lands as rural reserve, continues to be flawed.

ODA first argues that the re-designation submittal continues to not be consistent with the purpose and objectives of OAR chapter 660, division 27 because it does not achieve a balance "in the designation of urban and rural reserves that in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2). The objection asserts that Metro and Washington County have a responsibility to balance the reserves and that:

1. Metro and Washington County's decision to replace the acreage of urban reserve lost when Area 7I outside Cornelius was re-designated made a current imbalance worse;
2. Metro should have looked outside of Washington County for land to replace the re-designated urban reserve Area 7I. ODA, June 2, 2011 at 2.

The findings for Metro Ordinance No. 11-1255 (at 3-10) and Washington County Ordinance No. 740 (Washington County Supp. Record at 12732) show how the choices were made to designate Foundation Agriculture Land as urban reserves and how these choices achieve the objective of OAR 660-027-0005(2).

While the Commission voted to remand the initial submittal for re-designation and further analysis of specific areas, the Commission did not dispute the overall amount of urban reserve designations in Washington County. The re-designation findings do not significantly change the amount of urban reserve land; rather the acreage of urban reserve in the region and in Washington County is slightly decreased in the re-designation submittal. ODA's renewed objection does not establish an additional basis to find Metro and Washington County failed to achieve the balance in the overall amount of urban and rural reserves.

ODA also asserts that Metro should have looked to land that is not Foundation Agricultural Land to replace the urban reserve designation that was removed from Area 7I, even if the land is outside Washington County. However, Metro explained its reasons for including Foundation Agricultural Land within urban reserves. Overall, Metro decreased the amount of urban reserve land in Washington County by almost 300 acres. ODA's objection does not identify any error by Metro in reducing the overall acreage of urban reserves. The Commission rejects this objection.

Joseph Rayhawk objects to the removal of any of the initially designated rural reserves re-designation submittal. Mr. Rayhawk argues Washington County should not have changed any

rural reserve designation to undesignated or urban reserves. He contends that a map of urban and rural reserves presented during the public hearings process leading to the initial designations better achieved the balance of urban and rural reserves than does the re-designation submittal.

The supplemental reserve findings for urban reserves area and undesignated areas in Washington County are in the record at Metro Ordinance No. 11-1255 pages 163-165, 167-169. The objection cites general and specific examples of changes made to designations by Washington County late in the initial decision process the Mr. Rayhawk believes are inconsistent with the reserves rules. However, while Mr. Rayhawk disagrees with the analysis and conclusions, he has not established that, as a matter of law, Metro and the county could not reach the decisions it did. The Commission finds that Mr. Rayhawk has not established any statutory or rule violation in Washington County's re-designation submittal.

## **b. Objective to Achieve Balance – Too Much Rural Reserve**

### **1) Failure to consider zoning/Exceptions land**

In direct contrast to objections from ODA, 1000 Friends and Joseph Rayhawk, Oregonians in Action (OIA) also objects that Washington County misapplied the factors in OAR 660-027-0060 and reaches the opposite conclusion: that Washington County's analysis resulted in too many areas being designated for rural reserves. Specifically OIA objects that the county inappropriately failed to consider the zoning of the property, or whether exceptions lands or non-resource lands are included. OIA, July 14, 2010 at 1. OIA argues that the OAR 660-027-0060 rural reserves factors may only be applied to resource lands.

OIA states that the county's findings do not distinguish between those properties in each of the study areas that are not agricultural land as defined by Goal 3 or forest land as defined by Goal 4, and those that are resource land. OIA argues that the county must study exception areas within proposed rural reserves individually, to determine if they qualify based on having important natural landscape features and, specifically, buffers between Goal 3 and Goal 4 parcels and urban areas.

While the Commission agrees with OIA that a county could possibly evaluate areas in the manner OIA prefers, the counties were under no statutory or rule mandate to do so. Neither the reserves statute nor the rules require that non-resource lands be distinguished from agricultural or forest lands when designating rural reserves, and the fact that Washington County has not done so is not a basis for the Commission to remand the decision. The statutory definitions of "rural reserve" and "urban reserve" and the statutory factors do not distinguish between resource and non-resource land, and neither do the Commission's rules. *See* ORS 195.137(1) and (2), ORS 195.141(3), and OAR chapter 660, division 27. The Commission interprets the factors to apply to both resource and exception land, and a county must consider both when determining whether to designate lands as rural reserves. Similarly, Metro must consider both resource and non-resource lands when evaluating lands for designation as urban reserves. Contrary to OIA's suggestion, there is no inherent reason why non-resource lands may not sustain or contribute to sustaining, agricultural operations and (as OIA notes) exception lands may also be important in

sustaining forest uses or in terms of natural resources, hazards, or the region's sense of place. The Commission rejects this objection.

Similarly, Steve and Kelli Bobosky object that the decision unlawfully fails to identify agricultural land subject to Goal 3. Rather, they argue the decision improperly considers land "Agricultural land" regardless of whether it is subject to Goal 3 or to an acknowledged exception to Goal 3, making it impossible to lawfully apply the urban and rural reserves "criteria." They argue that, in designating acknowledged exception lands as "rural reserve," the county improperly assigned exception lands equal status with acknowledged EFU-protected agricultural lands, and that this unlawfully undermines Goal 3 and the agricultural land use policy in ORS 215.243 because it repeals regional protection for agriculture. They argue that instead the county must first identify resource land subject to Goal 3 before it can designate rural reserves, and that only resource land is eligible for the reserve designation. Because the reserves decision designates parcels that have been subject to exceptions to Goal 3, they contend that the reserves decision violates Goal 3, ORS 195.141(3), OAR 660-0027-0050 and OAR 660-0027-0060. Bobosky, July 7, 2010 at 15; June 2, 2011 at 12-14; 38.

The Commission's evaluation of the objection as it applies to the Bobosky's specific property is discussed below. However, as it applies to the Bobosky's challenge to the county's inclusion of exceptions property, the Commission finds no authority in statute or the rule to support a finding that exceptions lands cannot or should not be eligible for designation as rural reserves. Similarly, neither the statute nor the rule support the Bobosky's contention that exception land must be prioritized as urban reserves. The legislature has found that rural reserves are intended "to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization." ORS 195.137(1). The intent of rural reserves is to afford greater long-term protection of the agricultural industry, the forest industry and important natural landscape features from urbanization. OAR 660-027-0060(2) and (3). The status of particular lands as exception lands or agricultural lands is not determinative as a matter of law to the counties' decisions. Rural reserves may be designated to protect the agricultural or forest industries (not lands), or to protect important natural features of the lands. These purposes are consistent with Goal 3 and the agricultural land use policies enunciated in ORS 215.243, and do not require a property-by-property consideration of whether lands are exception lands.

The Commission disagrees with the Bobosky's assertion that designating exception areas as rural reserve undermines this intent. Uses that take place in rural areas, even if not zoned EFU, affect farming operations and practices. While Washington County was not required to designate exception areas (or any other areas) as rural reserve, nothing in OAR chapter 660, division 27 prohibits rural reserve designation of exceptions areas. The Bobosky's arguments regarding the scope of the inquiry required under the reserves factors is simply not supported by the language of the rule. Nothing in OAR chapter 660, division 27 requires any inventory of "resource land" or "compelling reasons founded in protecting inventoried important natural resources" prior to including exceptions land in the reserves evaluation. The effect of the rural reserves designation is greater protection of agricultural industry, forest industry, important natural resource features or any combination thereof, regardless of whether those areas may include lands that are subject to exceptions. Accordingly, the Commission find that Washington

County's designation of exception areas as rural reserves does not violate Goal 3, ORS 195.141(3), OAR 660-0027-0050 or 660-027-0060, or ORS 215.243.

The Boboskys also object to Metro's repeal of RFP Policy 1.12 and argue that the Commission should require Metro to restore its Policy 1.12 protecting Agricultural Land.<sup>63</sup> Bobosky, July 7, 2010 at 19; June 2, 2011 at 44-45. The Metro Urban and Rural Reserves Submittal repealed RFP Policy 1.12. Exhibit B to Ordinance No. 10-1238 at 3; Metro Record at 6. The Metro staff report explains:

"Metro Ordinance No. 10-1238A includes amendments to the Regional Framework Plan (RFP) and Urban Growth Management Functional Plan (UGMFP) to conform these policy and regulatory documents to the adoption of reserves. Under this ordinance, Policies 1.7 (Urban/Rural Transition), 1.9 (Urban Growth Boundary) and 1.11 (Neighbor Cities) of the RFP would be completely revised to reflect the establishment of reserves; Policy 1.12 (Protection of Agriculture and Forest Resource Lands) would be repealed (Findings, Exhibit B)." Metro Record at 121.

The Commission understands the Boboskys to argue that by repealing RFP Policy 1.12, Metro is attempting to avoid protecting Goal 3 agricultural land and that this Commission should require Metro to prioritize exception areas for designation as urban reserves. The Commission rejects this objection because it is not consistent with the statutory and regulatory scheme for adopting urban and rural reserves. As discussed above, in designating urban reserves, ORS 195.131 to 195.145 and OAR chapter 660, division 27 do not mandate that Metro prioritize the consideration of exception areas over resource lands the way the statutory scheme for including land within an UGB does. *See* ORS 197.298(1) (establishing hierarchy of lands and generally requiring exception areas to be included prior to land designated in acknowledged comprehensive plans for agriculture or forestry). As such, this objection does not establish a basis for the Commission to remand the submittal and is rejected.

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<sup>63</sup> The repealed Policy 1.12 stated:

"It is the policy of the Metro Council that:

"1.12.1 Agricultural and forest resource lands outside the UGB shall be protected from urbanization, and accounted for in regional economic and development plans, consistent with this Plan. However, Metro recognizes that all the statewide goals, including Statewide Planning Goal 10 Housing and Goal 14 Urbanization, are of equal importance to Goal 3 Agricultural Lands and Goal 4 Forest Lands which protect agriculture and forest resource lands. These goals represent competing and, sometimes, conflicting policy interests which need to be balanced.

"1.12.2 When the Metro Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Metro Council shall choose agricultural land deemed less important to the continuation of commercial agriculture in the region.

"1.12.3 Metro shall enter into agreements with neighboring cities and counties to carry out Council policy on protection of agricultural and forest resource policy through the designation of Rural Reserves and other measures.

"1.12.4 Metro shall work with neighboring counties to provide a high degree of certainty for investment in agriculture and forestry and to reduce conflicts between urbanization and agricultural and forest practices."

## 2) Misapplication of “important natural landscape features” considerations

OIA objects that Washington County wrongly designated areas as rural reserves by applying the “important natural landscape features” considerations at OAR 660-027-0060(3) in a “hopelessly overbroad” way to features that are under low threat of urbanization and that contain no Goal 5 resources. OIA argues that ORS 197.137(1) limits rural reserves designated to protect important landscape features to lands that “limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes, and floodplains.” OIA, July 14, 2010 at 2.

In applying OAR 660-027-0060(3), Washington County created a three-tier prioritization of natural landscape features. The analysis gives heavy weight to land with an elevation above 350 feet, which results in a high-priority rating for a majority of the five-mile study area and particularly lands far from UGBs. Washington Co. Record at 2306 and Map 33. The county explained its decision to consider elevation as important to protect lands that provide a sense of place for the region, as well as providing headwater protection for streams. Washington Co. Record at 2987. OIA is correct that the county did not consider Goal 5 resources, but the rule does not require delineation of Goal 5 resources or otherwise limit the county to only those resources in making its determinations.

Although the Commission agrees with OIA that Washington County’s application of the “subject to urbanization” factor at OAR 660-027-0060(3)(a) appears to have been quite broad, the Commission finds that it is not unlawful in substance and is within the scope of the county’s discretion allowed under the rule. The county found that:

“\* \* \* [F]actor (3)(a) [OAR 660-027-0060(3)(a), the factor for rural reserves to protect natural resources] is worded differently than Factor (2)(a) [the factor for rural reserves to protect farm or forest lands]. Factor (2)(a) requires the consideration of proximity to a UGB or proximity to land with fair market values that significantly exceeds agricultural values for farmland or forest values for forest land. Factor (3)(a) simply states that reserve lands ‘are situated in an area that is otherwise potentially subject to urbanization.’ Thus, ‘subject to urbanization’ can be defined differently than how staff defined it in Factor 2. Two approaches in defining ‘subject to urbanization’ were therefore considered. One approach was to use the same definition as used in Factor 2 - land that is rated as high subject to urbanization (HU), medium subject to urbanization (MU), and low subject to urbanization (LU). A disadvantage to this option is that some natural feature areas may be strong candidates for inclusion in a rural reserve but be in an area of low urbanization potential. Weighting of values used to make a decision would be one way of addressing this issue. A second approach is to broadly define ‘subject to urbanization’ as all of the 5 mile study area. This allows for all natural features to be considered equally relative to this factor. The Washington County Farm Bureau has advocated that some of the hillside areas should be in urban reserves rather than farmland on the valley floor. Given this perspective, all of the 5 mile study area may be subject to some degree of potential urbanization.” Washington Co. Record at 2986.

Washington County is correct that the wording of OAR 660-027-0060(3)(a) differs from 0060(2)(a) and that, accordingly, the analytical framework allows for the broader consideration the county used. While the Commission is concerned that the broad construction the county gave the term “subject to urbanization” appears to have rendered the term meaningless in application as it relates to natural features, the Commission nevertheless finds that county’s application of the factor in this manner is allowed under the current rule language. Further, the Commission finds that the county findings provide an explanation why a construction that deems the entire study area “subject to urbanization” is factually supported. Therefore, the Commission rejects this objection.

### **c. Reliance on 2007 Agricultural Lands Inventory**

ODA, Save Helvetia and 1000 Friends object that Washington County relied on analysis of data that allegedly discounts the value of agricultural land for protection as rural reserve. ODA urges instead that the Commission consider only the analysis done by ODA and require re-designation of certain lands to rural reserve. Specifically, they allege that Washington County improperly relied on a 2007 Agricultural Lands Inventory, an outdated study prepared by Herbert Huddleston, and factors other than ODA’s soil quality analysis to classify farmland. ODA, July 14, 2010 at 34-35; June 2, 2011 at 3; 1000 Friends Exception, August 8, 2011 at 10; Save Helvetia Exception, August 8, 2011 at 10.

Metro Ordinance No. 11-1255, Exhibit B at page 123, explains why Washington County and Metro used additional information to distinguish among the areas of Foundation Agricultural Land at the perimeter of the portion of the UGB in the county. Virtually all of the lands surrounding the existing UGB are identified as Foundation Agricultural Land and the findings reflect that to more fully differentiate and distinguish between those agricultural lands, the county relied on additional, more intensive analysis.<sup>64</sup> There is no legal error in the county’s use of additional data and analysis to more fully evaluate the statutory and rule factors. Those data and analyses provide additional substantial evidence for the county’s and Metro’s decisions. The Commission rejects this objection.

### **d. Consideration of Undesignated Areas in Washington County**

#### **1) Too much undesignated land**

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<sup>64</sup> Metro Ordinance No. 11-1255 explains the county’s use of additional information to supplement ODA’s analysis as follows:

“The map results from the ODA analysis (Washington County Record pages 9748-9818) are limited to a total of three classifications in the 2007 Agricultural Lands Inventory: Foundation, Important, and Conflicted lands. The overwhelming majority of the acreage in Washington County was considered foundation land; this designation was broadly applied and made no further distinction among those agricultural areas. (As an example, the entirety of Hagg Lake and relatively large blocks of forestland were classified as foundation land.) To better apply the rural reserve factors found under OAR 660-027-0060(2), staff believed a more intensive agricultural analysis was important to the rural reserve designation process. Some components of this analysis included parcelization, dwelling density, potential crop productivity based on successive agricultural inputs, and possession of a water right or inclusion within the Tualatin Valley Irrigation District. (Washington County Record Pages 2971-2980).” Exhibit B to Ordinance No. 11-1125 at 123.

Save Helvetia, ODA, 1000 Friends and Joseph Rayhawk object that Washington County improperly left undesignated areas that should have been designated as rural reserves. In the initial submittal, Washington County did not designate lands around both North Plains and Banks as either urban or rural reserves. In addition, the county left another sizable area of undesignated land adjacent and to the west of urban reserve area 8B and across Highway 26 from urban reserve area 8A. ODA and 1000 Friends both objected to the county's failure to designate those areas as rural reserves. ODA, July 14, 2010 at 7. 1000 Friends objects to "most" of the undesignated lands around North Plains and Banks. 1000 Friends, July 12, 2010 at 17. In the re-designation submittal, Washington County increased the amount of undesignated land by 419 acres by removing the urban reserve designation from three areas, and the rural reserve designation from an additional area. All three objectors object to these additional undesignated areas in particular, and more generally to Metro and the County's decision to leave areas undesignated.

ODA states that the decision to not designate farmland located south of North Plains and Highway 26 and lands located north of Highway 26 and west of Helvetia Road, and the removal of rural reserve designation South of Rosedale Road fails to protect Foundation Agricultural Land that qualifies for protection as rural reserve. These areas include large, commercially viable farming operations and are contiguous to and part of larger blocks of farmland that the county designated rural reserve. ODA asserts that both areas are under threat of urbanization. ODA faults Metro and the county by leaving undesignated lands that ODA considers appropriate for rural reserve designation, and for failing to explain in its findings its basis for leaving those lands undesignated.

1000 Friends argues generally against the undesignated status of lands around North Plains and Banks, and, in particular, the undesignated land south of Highway 26. 1000 Friends states that much of this land qualifies for rural reserve designation and that the impact of leaving undesignated lands must be evaluated, not only on those lands, but on the farm and forest lands around them, citing OAR 660-027-0060(2)(d)(B).

Referring specifically to Area 8-SBR, Save Helvetia argues that the lack of designation will have an adverse impact on adjacent farming activities, and that it is not necessary to compromise this land by reserving it as undesignated land without any analysis of why this land is not suitable for protection as rural reserve. Save Helvetia stated that there is no reasonable basis to assume that Goal 3 does not require the same protections of Foundation Agricultural Lands that are imposed on other neighboring lands without any further explanation. Save Helvetia argues that under the statutory scheme, "All lands that would qualify for rural reserves that are subject to urbanization pressure within the 50 years must be designated for rural reserves. . . Nothing authorizes a county or Metro to elect not to apply rural reserves to lands that would otherwise qualify." (Save Helvetia Exception, August 8, 2011 at 10.) Both Save Helvetia and Joseph Rayhawk argue that the failure to designate lands that qualify as rural reserves violates Goal 3.

Save Helvetia further urges that the statute and rule should be interpreted to require application of the urban and rural reserve factors to undesignated lands, arguing that otherwise,

the purpose of the long-term protection of farm uses “is entirely frustrated if local governments can elect to leave undesignated those lands that would otherwise qualify for rural reserve protecting setting these lands up for urbanization through the Goal 14 urbanization process.” Save Helvetia Exception, August 8, 2011 at 9.

While it was under no statutory or rule obligation to do so, Washington County has explained its decision not to designate lands around North Plains and Banks, with findings that: (1) the lands are outside of Metro’s jurisdiction to designate urban reserves, (2) analysis of these lands did not identify them as the highest priority for rural reserves, and (3) it was deemed appropriate to retain some undesignated lands to address the potential long-term population and employment needs of communities outside of Metro but inside of Washington County (given the county’s coordinating role). Washington Co. Record at 2308.

Despite the objectors’ policy preferences, even if land is suitable for designation as rural reserve, nothing in the statute or rules compels Washington County to so designate any particular land. While ODA and the other objectors make reasonable arguments why some of the land should not be left undesignated, those objections reflect a policy disagreement with Washington County. While those disagreements may reflect legitimate, competing views, they do not provide a basis for the Commission to remand the county’s decision or require designation of any particular lands. Contrary to Save Helvetia’s conclusion, leaving land undesignated does not result in priority for urbanization or otherwise frustrate the preservation of farmland. As Save Helvetia correctly acknowledges, any lands proposed for urbanization must be reviewed through the Goal 14 process.

1000 Friends argues that the county must consider OAR 660-027-0060(2)(d)(B) (relating to adjacent land use patterns and buffers) in determining whether to designate these areas. Washington County did evaluate the area for possible rural reserve designation and decided to maintain the existing plan and zone designations. Washington Co. Record at 8239. Nothing in statute or the Commission’s rules requires the county to adopt findings concerning lands that it did not propose to designate as rural reserves. *See* OAR 660-027-0060(2) (“\* \* \* a county shall base its decision on consideration of whether the lands proposed for designation:”).

Finally, Exhibit B to the intergovernmental agreement between Metro and Washington County states:

“Special Concept Plan Area B:

“Undesignated lands surrounding the City of Banks and the City of North Plains provide the opportunity in the future for Washington County and each respective city to undertake Urban Reserve planning under OAR 660-021. It is the County's expectation that such planning will result in application of Urban Reserve and Rural Reserve designations in appropriate locations and quantities.” Washington Co. Record at 8838.

In other words, Washington County anticipates that future decisions will lead to either urban or rural reserve designations for some of these undesignated areas. Nothing in ORS 195.137 to 195.145 or OAR chapter 660, division 27 prohibits that approach and given the

county's responsibilities to coordinate land use planning under ORS 195.025, such an approach is apt with respect to cities that are not included within Metro's boundary.

Nothing in the statute or rule requires that a county designate any particular property or area as a rural reserve, and nothing precludes Metro and the counties from leaving areas undesignated. Division 27 requires the county to indicate which land was considered for urban and rural reserves, which the county has done. The rule requires that the county consider the listed rural reserve factors, which the county has done. Undesignated EFU areas continue to be planned and zoned for exclusive farm use, in compliance with Goal 3. There is nothing in Goal 3 that requires the applicable statutory and rule provisions to be interpreted to require rural reserve designation of lands that could qualify under the rural reserve factors. The Commission finds no basis to sustain these objections; therefore, they are rejected.

## **2) Insufficient amount of undesignated land**

In contrast to Save Helvetia and 1000 Friends objections, CPR and the City of Hillsboro both object that the submittal leaves an inadequate amount of undesignated land. During review of the initial submittal, CPR argued that:

“[T]he Coalition believes additional land should be left undesignated to provide the necessary safety value for the uncertainty inherent in this 50-year decision. Since so little urban reserve acreage was designated relative to projected population and employment growth, and since the assumptions relied upon to meet this projected growth were so aggressive compared to past experience, retaining more undesignated land will require a reduction in the amount of rural reserve. Such a reduction, however, is not the threat to rural needs that it might at first appear to be. If Metro's current projected land needs are correct, the designated urban reserves will suffice, no additions will be necessary, and the undesignated lands will protect rural needs under existing resource zoning. But if the projections fall short of actual performance, future decision-makers will have the flexibility to look to undesignated lands to adjust the urban reserve acreage upward to accommodate demand that would have been met by initial urban reserves acreage if the projections were more accurate.” CPR, July 14, 2010 at 4 (footnote omitted).

CPR objected that the failure to leave more land undesignated violated the OAR 660-027-0005(2) requirement that the decision establish a “balance” that “best achieves” urban and rural needs.

The Commission does not interpret OAR 660-027-0005(2) to require any specific amount of undesignated land. As discussed above, the designation of urban and rural reserves does not mandate evaluation of lands that Metro and the counties determine, in their discretion, to not designate. Neither does the “best achieves” balancing requirement mandate or compel any amount of undesignated land. However, during the initial October 2010 hearing, some Commission members expressed some concern regarding the limited amount of land left undesignated, and opined that leaving lands undesignated could be used to provide for future flexibility. While recognizing that the Commission could not substitute its judgment for that of Metro and the counties, in voting to remand the decision, the Commission left open the option

for Metro and Washington County to leave additional undesignated land to allow for that flexibility. In response, the re-designation decision increased the amount of undesignated land by 391 acre. Exhibit B to Ordinance No. 11-1255 at 2.

The City of Hillsboro continues to object that the amount of undesignated land in the re-designation decision is insufficient to satisfy the OAR 660-027-0005(2) “best achieves” balancing requirement. The city argues that the Commission’s dialogue during the October 2010 hearing “raises critical doubt whether the final Washington County Rural reserves set (and boundaries) are too tight to ensure a balance has been reached by the Washington County Urban and Rural Reserves designations that, *in its entirety, best achieves livable communities* in this County, and adequately supports a *healthy economy* locally and regionally.” City of Hillsboro, May 31, 2011 at 5 (emphasis in original.) The city argues that the additional 391 acres of undesignated lands is inadequate, and that “modified set of Washington County Reserve designations is insufficient to meet the needs of the region” under ORS 195.145(5)(b) and OAR 660-027-0005(2). *Id.*

As discussed above, while the Commission opined at its October 2010 hearing that leaving more lands undesignated could provide for future flexibility, the Commission does not agree with the city’s interpretation of its discussion at that hearing, or that the Commission found or inferred that additional undesignated lands were necessary to comply with OAR 660-027-0005(2) or to ensure a healthy economy under ORS 195.145(5)(b). In fact, the re-designation submittal does increase the amount of undesignated land by 391 acres, which does increase the flexibility should Metro’s assumptions and projections prove inadequate. However, it is not within the Commission’s review authority to substitute its judgment for that of Metro or the counties in evaluating whether, or how much, land to leave undesignated. OAR 660-027-0005(2) does not require any set amount of urban, rural or undesignated land, and leaves substantial discretion to Metro and the counties to evaluate and determine the amount of urban and rural land that “in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” The Commission finds that OAR 660-027-0005(2) and the urban reserve factors do not compel additional undesignated land to achieve that balance. These objections are rejected.

**e. Compliance with ORS 197.298(2).**

The Boboskys object that because the urban and rural reserve designations directly influence how Goal 14 and the priorities for locating UGB expansions are applied, the urban and rural reserve designations must comply with ORS 197.298<sup>65</sup> and Goal 14. Save Helvetia also

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<sup>65</sup> ORS 197.298 provides in part:

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

objects that the reserves decision is inconsistent with the priority scheme set forth in ORS 197.298. In general, the Boboskys argue that ORS 197.298 would compel removal of the rural reserve designation from their property, while Save Helvetia relies on ORS 197.298 to argue that more land should be preserved as rural reserve.

ORS 197.298(2) requires that when determining where to expand the urban growth boundary, higher priority must be given to those lands of lower productive capability. Save Helvetia argues that although ORS 197.298(1)(a) makes urban reserve lands first priority for inclusion in the UGB, that designation cannot be used to “trump the priority process” required under ORS 197.298. Save Helvetia, July 12, 2010 at 17. The Boboskys argue that designating their property, located in a developed residential subdivision as a “rural reserve,” and leaving thousands of acres of high quality farmland subject to Goal 3 undesignated “makes it impossible for the region to comply with ORS 197.298 when adding land to the UGB.” Bobosky, July 7, 2010 at 23. The Boboskys assert that, “[l]ocking up all the subject exception land having poorer agricultural soils, as well as all exception lands in Washington County, as rural reserves, but leaving high quality EFU land all over the region ‘undesignated’ leaves only high quality EFU zoned land for urbanization in violation of ORS 197.298(2).” Bobosky, *Id*; June 2, 2011 at 48-49.

The Boboskys’ request with regard to their specific property is addressed below. However, as it applies more generally, neither Save Helvetia nor the Boboskys have established any basis for remand of the decision based on ORS 197.298. By its own terms, ORS 197.298 applies only to consideration of including land in a UGB. ORS 197.298 does not compel or dictate the evaluation of urban reserves under ORS 197.145. Neither the reserves statutes nor rules incorporate a requirement for the local governments to consider ORS 197.298 in making urban or rural reserve location decisions. This proposal is for the designation of urban and rural reserves under OAR chapter 660, division 27. The objective of this division, described in OAR 660-027-0005(2) “... is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” ORS 197.298 will become applicable at the time any land is proposed for inclusion within a UGB. At that point, lands designated urban reserve will be given first priority. The Commission finds that ORS 197.298 does not dictate the urban reserve decisions made under ORS 197.145, and cannot be appropriately relied on to mandate or prohibit reserve designations. These objections are rejected.

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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.

“(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.”

## **P. Area-Specific Objections**

### **1. Clackamas County**

#### **a. Stafford Area (Areas 4A-D)**

The Cities of Tualatin and West Linn objected and filed exceptions to Clackamas County's designation of areas 4A–D, also known as the Stafford Basin, as an urban reserve. The City of Wilsonville objects to the urban reserve designation of area 4D of the Stafford Basin.

Area Description. Urban Reserves 4A, 4B and 4C are named Stafford, Rosemont and Borland. These three areas comprise approximately 4,700 acres. Area 4A (Stafford) is located north of the Tualatin River, south of Lake Oswego, and west of West Linn. Area 4B (Rosemont) is a 162-acre area located adjacent to West Linn's recently urbanized Tanner Basin neighborhood. Area 4C (Borland) is located south of the Tualatin River, on both sides of I-205. Area 4C is adjacent to the cities of Tualatin and Lake Oswego on the west and West Linn on the east. The southern boundary generally is framed by the steeper terrain of Pete's Mountain. There are very few parcels greater than 20 acres. The terrain of this area is varied. Most of area 4B is gently rolling, while the rest of the area east of Wilson Creek has steeper terrain. The area south of Lake Oswego, along Stafford Rd. and Johnson Rd., generally has more moderate slopes. The Borland area, south of the Tualatin River, also is characterized by moderate slopes.

Wilson Creek and the Tualatin River are important natural landscape features located in this area. This entire area is identified as Conflicted Agricultural Land, although approximately 1,100 acres near Rosemont Road are zoned Exclusive Farm Use. The Oregon Department of Forestry Development Zone Map does not identify any Mixed Forest/Agriculture or Wildland Forest located with this Urban Reserve.

Area 4D comprises approximately 2,600 acres, and is adjacent to a slightly smaller urban Reserve in Washington County. This area is parcelized, generally developed with a mix of single family homes and smaller farms, and has moderately rolling terrain. All of this area is identified as Conflicted Agricultural Land. *See* Metro Record at 32, 36.

Tualatin and West Linn note that they and the City of Lake Oswego have opposed the urbanization of the Stafford Area on the grounds the cities cannot cost-effectively provide public services such as transportation, water, and sewer. If the Stafford Area could be cost-effectively served or urbanized without risking significant negative impacts on existing services or the livability of their existing residents, the cities state that they would be in favor of urbanizing the Stafford Area. The cities argue that Metro and Clackamas County should have accorded great weight to the testimony of the cities. Finally, they argue that Metro's findings are not supported by substantial evidence in the record.

The City of Wilsonville also objects to the designation of a portion of the Stafford Area as urban reserves, objecting that Area 4D does not comply with OAR 660-027-0050(1) and (3).

According to the city, a large portion of the Stafford basin clearly cannot be provided with transportation improvements or other public infrastructure in an efficient manner.

### **1) Transportation**

The cities first assert that the designation does not comply with OAR 660-027-0050(1) or (3), Goal 2 or Goal 12 (Transportation), OAR chapter 660, division 12 (the “Transportation Planning Rule” or “TPR”) or the 2035 Regional Transportation Plan. Tualatin and West Linn, July 14, 2010 at 4–8. Wilsonville, July 14, 2010 at 8. All three cities point out that Metro’s findings show that urbanization of the Stafford Basin will require enormous transportation system improvements. Tualatin and West Linn contend that Metro’s findings that traffic will be bad everywhere does not excuse the fact that this area cannot be efficiently and cost-effectively served by current or future transportation systems. The cities also point out that no appropriate governmental entity can afford to build the required transportation improvements. The cities also argue that poor transportation capacity everywhere does not justify ignoring the factors, and instead it indicates that Metro and the counties should not designate any of those areas as urban reserves until there is sufficient evidence to indicate that the future transportation system will accommodate the development. Similarly, they argue that the county’s findings describing its effort to avoid Foundation Agricultural Land does not address whether transportation facilities are available in other, non-foundation areas.

Tualatin and West Linn also argue that Metro’s regional transportation plan indicates that there is neither the money nor the ability to construct transportation improvements necessary to provide an adequate transportation system to serve an urbanized Stafford Basin through 2035. They argue that amending the regional planning documents to provide for significant additional urban development in an area served by a transportation system that will not be able to support it, violates, or at the very least requires an analysis of, Goal 12 and the TPR. The cities note that Metro’s findings do not address compliance with Goal 12 or the TPR at all.

The Commission considered and rejected general objections regarding Goal 12 and the TPR above. As discussed above, with regard to Goal 12 and the TPR, the Metro findings state:

“The designation of urban and rural reserves does not change or affect comprehensive plan designations or land regulations and does not place any limitations on the provision of rural transportation facilities or improvements. The four governments assessed the feasibility of providing urban transportation facilities to lands under consideration for designation as urban reserve, with assistance from the Oregon Department of Transportation. This assessment guided the designations and increases the likelihood that urban reserves added to the UGB can be provided with urban transportation facilities efficiently and cost-effectively. The designation of reserves is consistent with Goal 12.” Metro Record at 114.

As discussed generally above, the Commission finds that the TPR does not apply to the urban and rural reserve designations. The TPR generally requires local governments to establish and maintain transportation system plans and the rule provides specificity on what those plans are to contain. OAR 660-012-0060 specifically applies to decisions to amend comprehensive

plans and functional plans, but only where uses authorized by the amendment would significantly affect an existing or planned transportation facility. Metro’s urban reserve submittal does not authorize any new use or increased intensity of use. In fact, under OAR 660-027-0070 potential future uses are more limited than they would otherwise be. As a result, the Commission finds that neither Goal 12 nor the TPR provide a basis to remand the submittal.

Additionally, and more specific to the cities’ objection regarding Areas 4A-D, the Clackamas County record indicates that transportation considerations were weighed when the county and Metro compared candidate urban reserve areas, in accordance with OAR 660-027-0050(1) and (3). Clackamas Co. Record at 704–792, 800–01; Exhibit B to Ordinance 11-1255 at 30. The supplemental findings further explain:

“Cities [of Tualatin and West Linn] argue that the 2035 Regional Transportation Plan (“RTP”) indicates that much of the transportation infrastructure in the area will be at Level of Service “F” by 2035, and that therefore the Stafford area cannot be served at all. The RTP is a prediction of and plan to address traffic flows for a 25-year period. Conversely, the Reserves Designations are intended to address a 50-year time frame, rather than a 25-year time frame. Metro Rec. 1918. The record reflects that the transportation system will necessarily change in 25 years. In that vein, the “Regional High Capacity Transit System” map identifies a new light rail line in the vicinity of I-205 as the “next phase” regional priority. *See* ClackCo Rec. 734; 822-822.” Exhibit B to Ordinance No. 11-1255 at 30.

The record demonstrates that transportation facilities costs were considered related to the designation of Areas 4A–D as an urban reserve under the factors 1 and 3, and the Commission finds that Metro had an adequate factual base for its decision under Goal 2. Clackamas Co. Record at 704–792, 800–01; Exhibit B to Ordinance No. 11-1255 at 30. The cities’ argument that this area will be expensive to serve appears to be true, based on the record, but that does not compel a conclusion that Metro was required to exclude the area on that basis. *See* Clackamas Co. Record at 1268, 1273 (ODOT Urban Reserve Study Area Analysis rating potential of I-205 to accommodate additional traffic as very low and costly). However, the cost of transportation is one factor that Metro was required to, and did, consider, in conjunction with its consideration of all of the urban reserve factors.

## **2) Provision of Public Services**

Tualatin and West Linn also object that the designation of the Stafford Area as an urban reserve does not demonstrate compliance with ORS 195.145(5)(a) and (c), Goal 2, or the provisions of OAR chapter 660, division 27 with regard to efficient and cost-effective provision of other public services (other than transportation facilities). Tualatin, July 14, 2010 at 8. The City of Wilsonville objects:

“Although one might argue that there are no longer any *‘financially capable service providers’* the fact remains that the four cities surrounding the Stafford basin (Lake Oswego, West Linn, Tualatin and Wilsonville) have today, and will continue to have, limited resources for providing urban infrastructure. While each of the cities may

provide services to parts of the Stafford area, even a combination of the cities will not be able to efficiently and cost-effectively provide services to the entire area. None of the cities has any intention of providing urban services to Area 4-D over the life of the reserves.” Wilsonville, July 14, 2010 at 9.

The cities also contend that the findings regarding the applicable statutory and regulatory provisions are not supported by an adequate factual base.

ORS 195.145(5) requires that a district and county designate urban reserves, in part:

“upon consideration of factors including, but not limited to, whether the land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

“(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments; [and]

“ \* \* \* \* \*

“(c) Can be served by public schools and other urban-level facilities and services efficiently and cost-effectively by appropriate and financially capable service providers[.]”

OAR 660-027-0050 implements that statutory scheme by requiring Metro in evaluating areas for urban reserve designation, to consider *inter alia*, whether land proposed for designation as urban reserves:

“(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

“\* \* \* \* \*

“(3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers[.]”

Metro and Clackamas County evaluated Areas 4A–D in accordance with these, as well as the other OAR 660-027-0050 factors, and found that this urban reserve area can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments, as contemplated by factors (1) and (3). According to the county, this area is similar in its physical characteristics to lands already within the cities of West Linn and Lake Oswego, which are developing at urban densities. Clackamas Co. Record at xviii. The county found that this urban reserve area can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers. As with all of the region’s urban reserves, additional infrastructure will need to be developed in order to provide for urbanization. Clackamas Co. Record at xix.

Technical assessments rated this area as highly suitable for sewer and water. Clackamas Co. Record at 795-796. The findings further explain:

“Metro’s panel of sewer experts rated the entire Stafford area as having a ‘high’ suitability for sewer service. See, e.g., Metro Rec. 1174. We find this analysis more probative for comparison across areas than the analysis submitted by cities. Moreover, since the analysis of urban reserves addresses a 50-year time frame, we do not find that the current desire of neighboring cities to serve the area influences the question of whether the area ‘can be served.’” Metro Exhibit B to Ordinance No. 11-1255 at 30.

The Commission concurs that the current desire of neighboring cities to serve the area is not determinative in considering whether the area “can be served.”

In *City of West Linn v. LCDC*, the court reviewed the City of West Linn’s challenge to the Commission’s rejection of an objection to the inclusion of an adjacent area within the UGB. 201 Or App at 435-437. The city had argued to the Commission that

“it has expressly informed Metro by letter that it has no desire to provide services to the area and argues on that basis that the area cannot be provided with public services in an ‘orderly’ fashion, as Goal 14 requires.” *Id.* at 435.

The court noted that the Commission had rejected the city’s objection to inclusion of the area on willingness to provide service:

“With respect to the city’s purported refusal to provide services, LCDC reasoned that merely because the City of West Linn expressed disinterest in providing services does not mean that service will be provided in an orderly manner.” *Id.* at 436.

The city essentially repeated the arguments it made to the Commission to the court. In turn, the court held:

“We agree with LCDC that the Goal 14 requirement of ‘orderly’ provision of services is not the exclusive determinant of a decision to include land within an expanded UGB. No single factor controls. We also agree that the city’s disinterest in providing services to Study Area 37 does not necessarily mean that services cannot be provided in an orderly fashion.” *Id.* at 436-437.

Recognizing that the case is distinguishable in that it involved a UGB expansion under Goal 14 and not a designation of urban reserves, the Commission concludes nonetheless that the reasoning is instructive to Metro’s consideration of the urban reserve factors under ORS 195.145(5)(a) and (c) and OAR 660-027-0050(1) and (3). A stated disinterest in serving an area becomes perhaps even less relevant over a 50-year planning period than the Commission and court held it to be over a 20-year planning period.

As with the locational factor under Goal 14 requiring consideration of “Orderly and economic provision of public facilities and services” involved in the *City of West Linn v. LCDC*

case, the urban reserve factors are factors to be considered. *See* Section III.4.a above (describing Commission interpretation of “consider and apply the factors” requirement). Similar to that court’s holding the “[n]o single factor controls” related to the Goal 14 locational factors, the Commission concludes that likewise no single urban reserve factor is determinative. To the extent the cities argue the designation of the Stafford Area as an urban reserve does not “demonstrate compliance” with applicable law, the Commission concludes the objection misconstrues the urban reserve factors. The Commission finds that Metro considered the urban reserve factors under ORS 195.145(5)(a) and (c) and OAR 660-027-0050(1) and (3); although the cities may have arrived at different conclusions, they do not establish that Metro erred and the Commission rejects these objections. Regarding the adequacy of the factual base under Goal 2, as described above, the Commission concludes that the findings demonstrate that the consideration was based on substantial evidence.

### **3) Parcelization and Topography**

The cities of Tualatin and West Linn next object that designating the Stafford Area as urban reserve does not comply with OAR 660-027-0050(2), (4), and (6) because existing parcelization and natural topographical constraints mean that the Stafford Area cannot support a healthy economy, a compact and well integrated urban form, or a mix of needed housing types. Tualatin, July 14, 2010 at 10. The cities’ objection cites a variety of statistics regarding parcel sizes and ownership, and contends the maps and analysis show the areas are substantially parcelized and constrained by slopes and environmental features. The objection further states that, given the natural resource and physical constraints in the Stafford Area, development costs will be very high, so housing will not be provided in the price ranges for “needed housing.” The cities disagree with the county’s and Metro’s findings that the area is physically similar to the cities of West Linn and Lake Oswego.

The cities contend that in order to properly consider the factors, Metro must determine what types of land and how much is needed to achieve the purposes cited in the factors (efficient urban densities, a healthy economy, walkable, *etc.*). According to the cities, Metro’s failure to conduct such an analysis requires that the Commission remand the decision for further analysis and explanation.

OAR 660-027-0050(2), (4), and (6) require Metro to consider, among the other factors whether land proposed for designation as urban reserves:

“(2) Includes sufficient development capacity to support a healthy economy;

“\* \* \* \* \*

“(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers; [and]

“\* \* \* \* \*

“(6) Includes sufficient land suitable for a range of needed housing types.”

The record shows that the county considered the topography, natural features and parcelization of the various candidate areas in evaluating these factors. *See* Clackamas Co. Record at 1263-1266 (maps depicting “constrained land” and “buildable land” in urban reserve discussion areas). The submittal finding state:

“While acknowledging that there are impediments to development in this area, much of the area also is suitable for urban-level development. There have been development concepts presented for various parts of this area. ClackCo Rec. 3312. An early study of this area assessed its potential for development of a ‘great community’ and specifically pointed to the Borland area as an area suitable for a major center. ClackCo Rec. 371. Buildable land maps for this area provided by Metro also demonstrate the suitability for urban development of parts of this Urban Reserve. *See*, ‘Metro Urban Study Area Analysis, Map C’. The County was provided with proposed development plans for portions of the Stafford area. For example, most of the property owners in the Borland have committed their property to development as a —town center community. ClackCoRec. 3357-3361. Another property owner completed an —Urban Feasibility Study showing the urban development potential of his 55-acre property. ClackCoRec. 3123-3148. Those plans provide examples of the ability to create urban-level development in the Stafford areas.” Exhibit B to Ordinance No. 1255 at 28.

The supplemental findings add:

“This Urban Reserve can be planned to be walkable, and served with a well-connected system of streets, bikeways, recreation trails and public transit, *particularly in conjunction with adjacent areas inside the urban growth boundary*, as contemplated by the administrative rule. The Borland Area is suitable for intense, mixed-use development. Other areas suitable for development also can be developed as neighborhoods with the above-described infrastructure. The neighborhoods themselves can be walkable, connected to each other, and just as important, connected to existing development in the adjacent cities. Stafford abuts existing urban level development on three sides, much of it subdivisions. *See West Linn Candidate Rural Reserve Map*, indexed at Metro Record 2284. \* \* \* There are few areas in the region which have the potential to create the same level and type of connections to existing development. There is adequate land to create street, bicycle and pedestrian connections within and across the area with appropriate concept planning. In making this finding, we are aware of the natural features found within the area. However, those features do not create impassable barriers to connectivity.” *Id.* at 30.

Finally, the re-designation submittal findings specifically address the objectors’ concerns regarding parcelization:

“Testimony submitted by the cities of Tualatin and West Linn (‘Cities’) asserts that the level of parcelization, combined with existing natural features, means that the area lacks the capacity to support a healthy economy, a compact and well-integrated urban form or a mix of needed housing types.

“However, much of the area consists of large parcels. For example, the *West Linn Candidate Rural Reserve Map* shows that, of a 2980-acre ‘focus area,’ 1870 acres are in parcels larger than five acres, and 1210 acres in parcels larger than 10 acres. The map is indexed at Metro Rec. 2284 and was submitted by the Cities of Tualatin and West Linn with their objections. With the potential for centers, neighborhoods and clusters of higher densities, for example in the Borland area, we find the area does have sufficient land and sufficient numbers of larger parcels to provide a variety of housing types and a healthy economy.” *Id.* at 29.

The Commission concludes that the re-designation submittal demonstrates that the urban reserve factors have been considered related to this area and that further the specific concerns of the objectors were considered and analyzed based on substantial evidence in the record.

#### **4) Natural and Environmental Features**

Next, the cities of Tualatin and West Linn object that the Stafford Area urban reserve designation does not comply with OAR 660-027-0050(5), (7), and (8) because in order to protect the existing environmental features, local government would have to constrain development in the Stafford Area to the degree that it cannot meet the identified land needs for urbanization. Tualatin, July 14, 2010 at 14. The cities note that evidence in the record indicates that as much as 70 percent of the Stafford Area is constrained by topographical (steep slopes) and environmental features (rivers, streams, and wildlife habitat), and that if this area is protected it cannot be urbanized efficiently. Conversely, according to the cities, if the area is developed at the stated intensity, many of these environmental features will be impaired or negatively impacted. The cities also maintain that Metro does not explain why it concludes the Stafford Area is reasonably developable, and local government can still preserve and protect important natural features, given the contrary evidence submitted by the cities.

OAR 660-027-0050(5), (7), and (8) require Metro to consider, among the other factors “whether the land proposed for designation as urban reserves \* \* \*:

“(5) Can be designed to preserve and enhance natural ecological systems;

“\* \* \* \* \*

“(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and

“(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.”

The entire Stafford Area is comprised of Conflicted Agricultural Land. Metro Record at 33. There are important natural landscape features in this area (Tualatin River and Wilson Creek). *Id.* Metro and county findings indicate protection of these areas is a significant issue, but can be accomplished by application of regulatory programs of the cities that will govern when

areas are added to the UGB. This and other urban reserve areas will be subject to concept planning prior to being brought into the UGB, and Metro’s concept planning criteria include consideration of “protection of natural ecological systems and important natural landscape features.”<sup>66</sup> Metro Record at 9; Exhibit B to Ordinance No. 1255 at 28-31.

In response to the concerns raised by the cities, the re-designation submittal findings state:

“Cities also argue that the amount of natural features render the area insufficient to provide for a variety of housing types. Cities contend that the amount of steep slopes and stream buffers renders much of the area unbuildable. We find that cities overstate the amount of constrained land in the area, and the effect those constraints have on housing capacity. For example, cities’ analysis applies a uniform 200-foot buffer to all streams. Actual buffers vary by stream type. See Metro Code § 3.07.360. Similarly, cities assert that the slopes in the area mean that the area lacks capacity. Slopes are not *per se* unbuildable, as demonstrated by the existing development in West Linn, Lake Oswego, Portland’s West Hills and other similar areas. Moreover, only 13% of the ‘focus area’ consists of slopes of over 25%, and these often overlap with stream corridors. *Stafford Area Natural Features Map*, indexed at Metro Record 2284.” *Id.* at 29-30.

The objection does not establish either that Metro did not consider the urban reserve factors or that the consideration was not supported by an adequate factual base. Although it is clear the cities would draw different conclusions based on the evidence in the record, the cities have not established that a reasonable person could not reach the decision that Metro and the counties made. The Commission rejects this objection.

### **5) Consideration of Factors as a Whole**

Finally, the cities of Tualatin and West Linn object that the decision to designate the Stafford Area as an urban reserve does not demonstrate that the factors as a whole support designation of the Stafford Area as an Urban Reserve. Tualatin, July 14, 2010 at 15. This objection essentially reasserts and consolidates the cities’ previous four objections. The cities contend that, for all the reasons explained in the previous objections, on balance and based on the evidence, Metro should have made a different decision regarding designation of the Stafford Area. The objection asserts (1) there is no support in the findings for the conclusion that not designating the Stafford Basin or Norwood necessarily requires designation of more Foundation Agricultural Land; (2) the conclusions do not address the fact that large portions of the Stafford

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<sup>66</sup> Exhibit B to Ordinance No. 11-1255 at 27 explains the concept planning to which this area will be subject:

“An important component of the decision to designate this area as an Urban Reserve are the “Principles for Concept Planning of Urban Reserves”, which are part of the Intergovernmental Agreement between Clackamas County and Metro that has been executed in satisfaction of OAR 660-027-0020 and 0030. Among other things, these “Principles” require participation of the three cities and citizen involvement entities – such as the Stafford Hamlet – in development of concept plans for this Urban Reserve. The Principles also require the concept plans to provide for governance of any area added to the Urban Growth Boundary to be provided by a city. The Principles recognize the need for concept plans to account for the environmental, topographic and habitat areas located within this Urban Reserve.”

Area are zoned for agricultural use and are home to many small-scale farming activities and (3) the rule is not solely about preservation of Foundation Agricultural Land.

As evaluated above regarding the cities' objections to compliance with each of the urban reserve factors, Metro adequately considered the urban reserve factors in OAR 660-027-0050, and documented that consideration with sufficient evidence and findings. Metro and Clackamas County have made findings relative to each of the factors, alone and in relation to the others, explaining the designation of the Stafford as urban reserves. Metro Record at 19–23; Exhibit B to Ordinance No. 1255 at 26-31. While the cities disagree with the findings and decision, in fact Metro and the county did evaluate each of the factors. As discussed above, contrary to the cities' implication, the factors are not criteria with Metro must show compliance. Thus, the rules did not require Metro and the county to conduct the type of analytical exercise urged by the cities to establish how to “achieve” the purposes of each of the individual factors. While the cities disagree with the findings and decision, the findings reflect that Metro weighed and evaluated the factors in making the reserves decision, and the findings and conclusions adopted by Clackamas County and Metro adequately explain the how all factors were balanced in reaching the decision.

For these reasons, and as set forth in more detail above, the Commission finds that Metro and Clackamas County appropriately weighed the factors, and that record includes substantial evidence to support the designation of urban reserve for the Stafford Area under the relevant statutory and rule factors, and there is an adequate factual base for Metro's decision. This objection is rejected.

**b. Portion of Area 4I; “Top of Pete’s Mountain”**

Donald and Dawn Bowerman, Leigh & Ceille Campbell, Gordon Root, Steven Prueitt and Colin and Mindy Giddings (collectively, the Bowermans) object to Clackamas County's decision designating the “Top of Pete's Mountain Area” near West Linn (part of Area 4I) as a rural reserve.

Area Description: The “Top of Pete's Mountain” area can be defined as property located in elevations greater than 150 feet and confined by Schaeffer Road to the north, Pete's Mountain Road to the east, Hoffman Road to the south and Mountain Road to the west. The larger rural reserve area is bounded by the Willamette River on the east and south. On the north, Area 4I is adjacent to areas that were not designated as urban or rural reserve. There are two primary geographic features in this area. The upper hillsides of Pete's Mountain comprise the eastern part of this area, while the western half and the Peach Cove area generally are characterized by flatter land. The Pete's Mountain area contains a mix of rural residences, small farms and wooded hillsides. The flat areas contain larger farms and scattered rural residences. All of Area 4I is located within three miles of the UGB. All of Area 4I is identified as Important Agricultural Land (the “east Wilsonville area”), except for a very small area located at the intersection of S. Shaffer Road and S. Mountain Rd. The Willamette Narrows, an important natural landscape feature identified in Metro's February 2007 “Natural Landscape Features Inventory,” is located along the eastern edge of Area 4I. Metro Record at 42.

The Bowermans argue that (1) there is evidence in the record that there is limited to no agricultural industry in the area; (2) the area is not capable of sustaining long-term agricultural operations; (3) the soil and water are not suitable to sustain long-term agricultural operations; and (4) the area is not suitable to sustain long-term agricultural operations. The Bowermans argue that the area simply does not meet the criteria for designation as a rural reserve.

Clackamas County relied primarily on the “safe harbor” provision in OAR 660-027-0060(4) in designating this area as rural reserve. OAR 660-027-0060(4) allows the county to designate Foundation or Important Agricultural Lands within three miles of the UGB as rural reserve without further evaluation or findings. Consequently, under OAR 660-027-0060(4), because the majority of this area is Foundation or Important Agricultural Lands, the county was not required to further explain or justify its decision to designate this area as rural reserves.

A small area of “conflicted agricultural land” was included in the rural reserves designation adjacent to Schaeffer Road to make SW Schaeffer Rd the clear “hard” northern boundary for the area’s rural reserves. Exhibit B to Ordinance No. 11-1255 at 39. As noted above, portions of this area have been inventoried by Metro as containing important landscape features. While the Bowermans disagree with the designation, they have not established that the county erred in applying the safe harbor provision of OAR 660-027-0060(4). The county made adequate findings, based on substantial evidence in the record to justify the rural reserve designation under OAR 660-027-0060(4). The Commission rejects this objection.

### **c. Portion of Area 4J**

Maletis objects that their property, located south of the Willamette River, east of I-5, and west of Airport Road in Clackamas County in Study Area 4J, should be designated as an urban reserve and not as rural reserve. Maletis, July 14, 2010 at 8–12. The City of Wilsonville filed a written exception urging the Commission to find that in the rural reserve designation of Area 4J, Metro and Clackamas County properly construed and applied the applicable law. Wilsonville, October 8, 2010 at 1-3.

Area Description. Area 4J is generally flat and comprised of large farms. The Molalla and Pudding Rivers are located in the eastern part of this area. The Willamette, Molalla and Pudding Rivers and their floodplains are identified as important natural landscape features in Metro’s February 2007 Natural Landscape Features Inventory.” Metro Record at 40. All of this rural reserve is classified as Foundation Agricultural Land (identified in the ODA Report as part of the Clackamas Prairies and French Prairie areas). *Id.*

Maletis argue several bases of objection – that substantial evidence in the record supports designating the property as an “urban reserve;” that Metro and the counties misconstrued applicable law and made a decision not supported by substantial evidence in designating the property as “rural reserve;” and that as applied, the enforcement of the “safe harbor” provision of OAR 660-027-0060(4) by Metro and the counties violates ORS 195.141(3) and (4).

The entirety of the 4J area is within three miles of the Metro UGB, and was identified by ODA as Foundation Agricultural Land. Consequently, Area 4J qualifies as a rural reserve area under the “safe harbor” provision of OAR 660-027-0060(4) and Clackamas County was not required to further evaluate or explain the rural reserve designation under OAR 660-027-0040(10). Clackamas Co. Record at 590-592. Maletis contends, however, that, as applied to their property, the use of OAR 660-027-0060(4) safe harbor provision violates ORS 195.141(3) and (4).

ORS 195.141(3) requires that Metro and each county base the designation of rural reserves on consideration of the factors in that section. ORS 195.141(4) authorizes the Commission to adopt rules establishing a process and criteria for designating reserves pursuant to ORS 195.141. This Commission initially adopted rules in 2010, which are codified at OAR chapter 660, division 27. These rules require consideration of factors, which largely mirror those set forth in ORS 195.141(3), prior to designating a rural reserve to provide protection of agricultural land. In addition, to implement the statute for those areas identified by the ODA as Foundation or Important Agricultural Lands, the Commission adopted OAR 660-027-0060(4), which provides:

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

This provision permits a county to assign a rural reserve designation to a property classified by ODA as a Foundation or Important Agricultural Land without making findings addressing the factors. The “safe harbor” provision in OAR 660-027-0060(4) does not replace the factors from the statute and rule, but rather identifies a circumstance where, in the Commission’s judgment, the factors are already adequately considered based on ODA’s prior analysis based on the same considerations. Counties are not required to utilize the safe harbor (and Washington County did not), but OAR 660-027-0060(4) authorizes them to do so. ORS 195.415 does not preclude the Commission from allowing a county to rely on this preexisting analysis that the Commission determines adequately considers the statutory factors for designating lands as a rural reserve under ORS 195.141(3).<sup>67</sup> Further, in adopting administrative rules to implement any statewide land use policy to carry out ORS chapter 195, the Commission has broad authority to adopt rules to provide special protection for Foundation Agricultural Lands or Important Agricultural Lands within the broader range of farmlands zoned EFU. *Lane County v. LCDC*, 325 Or 569, 580-583, 942 P2d 278 (1997).

As an example of the analyses ODA performed in designating Foundation or Important Agricultural Lands, ODA’s analysis of the French Prairie area, which includes the portion of Area 4J where the Maletis property is located, states:

“This subregion maintains excellent integrity for large-scale, intensive industrial agricultural operations. It is, in effect, a large block of agricultural land containing large

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<sup>67</sup> The City of Wilsonville offers an additional text and context analysis of ORS 195.141 to support the Commission’s rulemaking authority. See City of Wilsonville exception, October 8, 2010 at 2-3.

parcels and larger farms with several inclusions of urban development. It is not uncommon for farms to operate on several parcels located within and, in many cases, outside the subregion. While some localized conflicts with nonfarm uses exist, they are not, overall, beyond what is considered common.

“\* \* \* \* \*

#### “Conclusion

“Excellent soils, available water, well established infrastructure and large parcels that block up and dominate the land use pattern. This subregion has all the elements for maintaining and expanding viable, commercial agricultural. This subregion, combined with the Clackamas Prairies and East Canby subregions, is one of the most significant agricultural areas in the state.” ODA, Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007, at 32-34.

This report exemplifies why the safe harbor provisions of OAR 660-027-0060(4), as applied to Area 4J, validly ensure adequate evaluation of the factors in ORS 195.415 for those areas ODA has identified as Foundation or Important Agricultural Lands. Based on the ODA report as well as the county’s analysis of this area, the Commission rejects this objection and finds OAR 660-027-0060(4) is valid as applied to the Maletis property.

However, in the alternative, even without reliance on OAR 660-027-0060(4), the Commission denies the objection based on Clackamas County’s additional reasoning and analysis for its rural reserve designation of this area. After completing a comprehensive analysis of the property and its suitability for urban or rural purposes, Clackamas County found that area 4J rated “high” under all of the factors related to long-term protection for agriculture and forest industries. Clackamas Co. Record at 590-592. The county also rated the property as having “medium” or “high” suitability for an urban reserve designation on all factors, with the exception of three subfactors. Clackamas Co. Record at 590-592. Thus, the county found that, based on the factors, it could qualify for either an urban or rural reserve designation.

The Maletis’ primary contention is that substantial evidence in the record supports designating their property “urban reserve” and conversely does not support the current designation as “rural reserve.” However, while Maletis disagrees, as cited above, there is substantial evidence in the record upon the consideration of which Metro and the County could reasonably determine that area 4J should be designated as a rural reserve under the factors in OAR 660-027-0060 in addition to the safe harbor under section (4) of that rule. Moreover, in the situation where Metro and the county could determine that an area could be either a rural reserve or an urban reserve, based on their consideration of the statutory and rule factors, the decision concerning which designation to apply is highly discretionary. OAR 660-027-0005(2), provides that the purpose of the Metro reserves as a whole is to provide “a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” While it is possible that consideration of

substantial evidence could support either designation, the applicable statute and rule leave substantial discretion to Metro and the counties as to which designation to make.

Following the Commission's vote to remand a portion of the initial decision (unrelated to the Maletis property), Clackamas County adopted additional findings to support its original designations. Those additional findings did not modify any designations, and did not address area 4J specifically. However, in the re-designation submittal, Clackamas County made findings related to the "safe harbor" provision of OAR 660-027-0060(4) and made additional findings related to OAR 660-027-0060. (Revised Findings for Clackamas County Urban and Rural Reserves April 21, 2011 at 21-23.)

On review of the re-designation submittal, Maletis supplemented their objections. They contend that the county should have made additional findings specific to the Maletis property in isolation and not as to the entirety of rural reserve area 4J. However, neither the statute nor applicable rules require such a parcel-specific evaluation. The county considered the factors for designation of Area 4J as rural reserves under OAR 660-027-0060 and determined that the area was appropriately designated as a rural reserve under the factors. While Maletis identified conflicting evidence before the county regarding designation as an urban, as opposed to rural reserve, the fact of conflicting evidence does not provide a basis for the Commission to remand the decision. The Commission will not substitute its judgment for that of the county and Metro. Under the substantial evidence standard, where the evidence in the record is conflicting, if a reasonable person could reach the decision that the decision maker made in view of *all* the evidence in the record, the choice between the conflicting evidence belongs to the decision maker. *Mazeski v. Wasco County*, 28 Or LUBA 178, 184 (1994), *aff'd* 133 Or App 258, 890 P2d 455 (1995). The Commission finds that the county's rural reserve designation of the challenged portion of Study Area 4J has an adequate factual base and is supported by substantial evidence in the record. The Commission rejects this objection.

## **2. Multnomah County**

### **a. Areas 9A-D and 9F**

The Forest Park Neighborhood Association<sup>68</sup> (FPNA) objects that Multnomah County's (and thus Metro's) decision violates the administrative rule by not explaining fully why and how Areas 9A–D and 9F qualify for rural reserve designation. The objection is submitted in support of Multnomah County's and Metro's decision, as supplemental findings and citations to evidence and arguments in the record that support Metro's decision. FPNA, July 14, 2010 at 1.

Area Description: Area 9 lines south of Germantown Road and the power-line corridor where it rises from the toe of the west slope of the Tualatin Mountains up to the ridge at Skyline Blvd. Multnomah Co. Record at 3004-3015. The north edge of the area is the start of the Conflicted Agricultural Land section that extends south along the Multnomah/Washington county line to the area around Thompson Road and the Forest

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<sup>68</sup> The Forest Park Neighborhood Association objectors include Carol Chesarek, Jim Emerson, Milly Skach, Joseph C. Rayhawk, Greg Malinowski, Christopher H. Foster, Claudia Martin, Kevin O'Donnell, Mary Telford, and Jerry Grossnickle.

Heights subdivision in the City of Portland. The area is adjacent to unincorporated urban land in Washington County on the west, and abuts the city of Portland on the east. Most of the area is mapped as Important Landscape Features that begin adjacent to Forest Park and continue west down the slope to the county line. Multnomah Co. Record at 1767. The area is a mix of headwaters streams, upland forest and open field wildlife habitat. See Exhibit B to Ordinance No. 11-1255 at 7, 46.

FPNA's proposed remedy is for the Commission to supplement the findings to address the rural reserve factors, including citations to evidence in the record.

Although the Commission agrees with FPNA that the citations to additional evidence in the record would bolster the Metro Urban and Rural Reserves Submittal, the objection has not established that Metro and Multnomah County did not adequately present their findings. As such, the Commission must reject the objection. However, the Commission accepts that the FPNA have directed it to evidence that "clearly supports" the Metro Urban and Rural Reserves Submittal. *Marcott Holdings, Inc. v. City of Tigard*, 30 Or LUBA 101, 122 (1995). Thus, based on the evidence in the record, including that cited by FPNA, the Commission finds that Metro and Multnomah County based their decision on consideration of the factors for designation of lands in rural reserves as required by OAR 660-027-0060 and have provided sufficient findings to support their recommendation.

#### **b. Area 9B**

The Metropolitan Land Group (MLG) and Dorothy Partlow, Hank Skade, Jim Irvine, John Burnham, Kathy Blumenkron, Robert Burnham, Robert Zahler, and Thomas Vanderzanden individually, object to Multnomah County's designation of certain property within Area 9B as rural reserve. These parties generally object to Multnomah County's designation of an L-shaped portion of land in western rural reserve Area 9B as a rural reserve under OAR 660-027-0060 because they believe that the area better meets the urban reserve factors, and does not meet the rural reserve factors. MLG and Robert Burnham objected more broadly to the designation of Area 9B as rural reserve.

**Area Description.** Area 9B is defined on the west by the Washington County line, a line that is approximately mid-way between the county line and Skyline Blvd. on the east, and areas adjacent to Forest Heights subdivision on the south, and a power line right-of-way on the north. Multnomah Co. Record at 3011, 3015. The area is a mix of headwaters streams, upland forest and open fields. The specific L-shaped portion of Area 9B referred to in most of the objections is located in the southwestern portion of the study area on the Washington/Multnomah county line, and is bisected by Lower Springville Road. See Exhibit B to Ordinance No. 11-1255 at 46.

The common objection is that the area does not satisfy the factors in OAR 660-027-0060 for designation as rural reserve, but does satisfy the factors for designation as urban reserve under OAR 660-027-0050. The objectors also generally assert that while substantial evidence in the record supports an urban reserve designation, Multnomah County's findings designating the

area as rural reserve are not based upon substantial evidence in the record. MLG, July 14, 2010 at 1.

Several of the objections state that the land is not good farmland and cite the ODA designation of the area as “Conflicted.” Multnomah County, however, found the area eligible for rural reserve designation under the factors for significant landscape features in OAR 660-027-0060(3), not those for farm or forest lands under OAR 660-027-0060(2). *See* Multnomah Co. Record at 9680.

None of the factors for selecting rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. Thus, the objectors have not established that the county was required to evaluate the L-shaped southwest portion of Area 9B distinct from the remainder of that area. As discussed above, where evidence in the record could reasonably support a finding that an area qualify as either urban or rural reserve, the statute and rule provide Metro and the counties substantial discretion in their determination. Generally, the issue here is whether the county considered the rural reserve factors in deciding to include Area 9B, explained why the areas should be rural reserve using the factors listed in the statute and rules, and relied on evidence in the record that a reasonable person would rely upon to decide as the county did. The Commission finds that Multnomah County considered the required factors, based on substantial evidence in the record, to support the designation of Area 9B as rural reserve. Multnomah Co. Record at 9679; Exhibit B to Ordinance No. 11-1255 at 46-47. Additionally, the findings explain why the area is not apt for an urban reserve designation due primarily to efficient use of infrastructure and efficient and cost-effective provision of services. *Id.* Therefore, the Commission rejects the objections.

### **3. Washington County**

#### **a. Area 5F (Tonquin)**

The City of Wilsonville and the Audubon Society of Portland object that evidence in the record does not support the urban reserve designation of Area 5F (Tonquin). According to the city, Tonquin was inappropriately designated as an urban reserve, and should be designated rural reserve. Wilsonville, July 14, 2010 at 5. The Audubon Society argues that because of its important natural landscape features, this area qualifies as rural reserves. Audubon, July 14, 2010, at 3-4 (unnumbered pages.)

Area Description. “Urban Reserve Area 5F is approximately 565 acres and is part of the larger Tonquin Scablands area. Portions of this area are included on Metro’s 2007 Natural Landscape Features Inventory map. The area is comprised of the unincorporated land east of the city of Sherwood and includes portions of the Tualatin River National Wildlife Refuge, quarry operations, a gun club practice facility, and a training area for Tualatin Valley Fire and Rescue. Much of the area is included in the county’s Goal 5 inventory as a mineral and aggregate resource area. Rock Creek and Coffee Lake Creek are the principal drainages in the reserve area. Approximately 143 acres in this area are considered buildable lands. WC Rec. 9276-9295.” Exhibit B to Ordinance No. 11-1255 at 74.

The city contends that the designation of the Tonquin Geologic Corridor (Area 5F) as an urban reserve is not supported by substantial evidence in the record. The city clarifies in its exception that it supports the inclusion of the portion of Area 5F within the Southwest Tualatin Concept Planning Area as an urban reserve, but maintains its objection to the urban reserve designation for the remainder of 5F. *Wilsonville Exception*, October 8, 2010 at 3. According to the city, the Metro Urban and Rural Reserve Submittal has inappropriately included land within the Tonquin Geologic Corridor within the urban reserves, in spite of being mapped for its significance in Metro's Natural Landscape Feature Inventory and therefore subject to OAR 660-027-0060(3). The city argues that Metro did not adequately address the required factors of OAR 660-027-0050 in designating Area 5F as an urban reserve, and that there is no reasonable expectation that this area can be developed to urban standards.

The city's objection includes arguments specific to several of the urban reserve factors in OAR 660-027-0050:

(1) There is no efficient way to provide a full range of urban infrastructure across a broad riparian zone and there is no evidence that the area can be "developed at urban densities."

(3) Metro's conclusion that the area "can be efficiently and cost-effectively served by appropriate and financially capable service providers" is not supported by evidence in the record.

(5) There is no basis upon which Metro could appropriately conclude that this area "can be designed to preserve and enhance natural ecological systems" while including it within the urban reserves.

(7) Metro cannot realistically conclude that this area can be designated an urban reserve and that it "can be developed in a way that preserves important natural landscape features included in urban reserves."

(8) The Tonquin Geologic Corridor cannot be urbanized and still "be designed to avoid or minimize adverse effects on important natural landscape features."

The Audubon Society objection evaluates how the area satisfies the rural reserve factors. Both objectors propose that the Commission to remand this designation to the county and to Metro to delete the Tonquin Geologic Corridor (Area 5-F) from the urban reserves and designate it a rural reserve.

The Metro Urban and Rural Reserve submittal describes Area 5F and the urban reserve factors at Exhibit B to Ordinance No. 11-1255 at 74-75. In part, the submittal designated urban reserves that are not Foundation Agricultural Lands in order to meet the farm and forest land objectives of reserves, knowing these lands will be more difficult and expensive to urbanize. *Id.* at 6. A portion of urban reserve Area 5F is included in the Pre-Qualifying Concept Plans (PQCP) submitted by the City of Tualatin to meet its long-term industrial needs. The remainder

of the area was shown as residential on the City of Sherwood's PQCP for the area. Washington Co. Record at 3495-3518. Tualatin included a 117-acre portion of this reserve in its PQCP and the area is of interest to that city primarily for transportation connectivity to extend SW 124th Avenue and to expand the city's industrial land base. The area was rated high for suitability for sewer service, medium suitability for water service, and medium suitability for transportation.

Metro's findings state the natural features in this area can be protected and enhanced under the existing regulatory framework in Washington County, Sherwood and Tualatin. Exhibit B to Ordinance No. 11-1255 at 75. The 565-acre Area 5F area is located between the cities of Sherwood and Tualatin and is bordered on three sides by the existing UGB. The City of Tualatin has developed general service costs estimates, and has agreed to provide governance and public facilities and services to the eastern portion of this area.

While the City of Wilsonville and the Audubon Society disagree with the analysis of the Metro Urban and Rural Reserve Submittal, neither objector has established that there is not substantial evidence in the record to support Metro's urban reserve designation, or that Metro's findings, considering each of the urban reserve factors under OAR 660-027-0050, do not have an adequate factual base. Therefore, the Commission rejects these objections.

#### **b. Portion of Area 6E; 28577 SW Herd Lane and abutting land**

David Hunnicutt objects to Washington County's rural reserve designation of his property at 28577 SW Herd Lane and other land abutting Herd Lane and Neugebauer Road in Area 6E. He argues the rural reserve of that property is unlawful under OAR 660-027-0060 because the property does not satisfy the rural reserve factors.

*Area Description:* The 25,381-acre rural reserve Area 6E is split by the Tualatin River, a key natural feature in the reserve. The Chehalem Mountains are also a prominent natural feature. The north half of the reserve area is typified by farm parcels adjacent to and north of the river. South of the river and Highway 219, lots are smaller and uses are more varied, including residential use, nursery use, and farm and forest uses on small parcels. *See Exhibit B to Ordinance No. 11-1255 at 96.*

Mr. Hunnicutt argues that the portion of the study area containing his residence at 28577 SW Herd Lane and other land abutting Herd Lane and Neugebauer Road does not satisfy the rural reserve factors in OAR 660-027-0060(2)(a)–(d) and does not have important natural landscape features that would qualify it as a rural reserve designation under OAR 660-027-0060(3). Mr. Hunnicutt maintains that the land in question is not threatened by urbanization during the planning period because it is located more than three miles from the nearest city within Metro and the closest boundaries of the current Metro UGB.

As discussed above, the statute and rule do not contemplate that county perform a parcel-specific evaluation in the reserves selection process when evaluating areas for rural and urban reserve. The Metro Urban and Rural Reserves Submittal evaluated Area 6E and made findings under the rural reserve factors in OAR 660-027-0060. Exhibit B to Ordinance No. 1255 at 96-97. The Commission recognizes that in several instances, the large study areas employed by

Washington County, in this case more than 25,000 acres, have led to imprecise fits when considered over a smaller area as objector suggests is appropriate. However, the Commission is tasked with reviewing what in fact has been submitted. As such, the Commission finds that with regard to 6E, there is substantial evidence in the record and an adequate factual base in designation. Although the subject property and the surrounding area adjacent to Herd Lane and Neugebauer Road in Rural Reserve Area 6E are located well over five miles from the Metro UGB, the area is recognized by Washington County as part of an important natural landscape feature (the Chehalem Mountains) and are designated as Important Agricultural Land in the Oregon Department of Agriculture study. Washington Co. Record at 2998 and 3000. The county has adequately addressed the findings to support the rural reserve designation for Area 6E. This objection is rejected.

### **c. Areas 7I and 7B (Initial Designation)**

The ODA, Melissa Jacobsen, and 1000 Friends all objected to Washington County's initial designation submittal of area 7I in North Cornelius as an urban reserve under OAR 660-027-0050 and 660-027-0060(2). ODA, July 14, 2010 at 6; 1000 Friends, July 12, 2010 at 13-16; Jacobsen, July 2, 2010 at 1. 1000 Friends also objected to the urban reserve designation of Area 7B.

Area Description: Area 7I consists of approximately 624 acres of land, 470 acres (75%) of which is considered buildable. This area, consisting of class I, II and III (High Value) agricultural soils, lies north of and adjacent to Council Creek and the Cornelius urban growth boundary and southwest of Dairy Creek. The area is a well-established agricultural community with significant investment in agricultural infrastructure that lies within the Tualatin Valley Irrigation District. The area has been identified as Foundation Agricultural Land by ODA. Both Council Creek and Dairy Creek include floodplains, wetlands and riparian corridors that have been designated on Metro's Natural Landscape Features Inventory. Washington Co. Record at 88-89.

Area 7I is a portion of a larger Pre-Qualifying Concept Plan area analyzed by the City of Cornelius to satisfy long-term growth needs. The area was originally selected as an urban reserve in part because of its suitability for large-parcel industrial use. Part of it was originally recommended by the City of Cornelius for a 2010 UGB expansion.

Area 7B is located along the northern edge of Forest Grove and generally extends from the existing UGB north to Purdin Road between Highway 47 on the east and Thatcher Road on the west. This area is approximately 508 acres. Approximately 40 percent of Area 7B is north of Council Creek. Washington Co. Record at 9288; Metro Record at 85

1000 Friends objected to the original designation of both 7I and 7B, arguing that there was insufficient justification showing this land is needed as an urban reserve. 1000 Friends noted that the City of Cornelius currently has 125 to 150 acres of vacant, buildable land inside the UGB as well as other urban reserves designated to the east and south of the city. 1000 Friends further argued that the proposed expansion of development across Council Creek and its

floodplain is contrary to the urban reserve factors, as it would not facilitate compact growth and would frustrate planned transit facilities within Cornelius. Ms. Jacobsen argued that Northwest Susbauer Road and other area roads close nearly every year due to flooding in the Council Creek floodplain. 1000 Friends asserted that neither Washington County nor Metro addressed two urban reserve factors: OAR 660-027-0050(7) (whether the area can be developed in a way that preserves important natural landscape features) and (8) (whether the area can be designed to avoid or minimize adverse effects on farm and forest practices and important natural landscape features on nearby land) with regard to these lands.

Regarding the rural reserve factors, all three objectors asserted that Area 7I qualifies as a rural reserve because it satisfies all rural reserve factors (OAR 660-027-0060(2)(a)–(d)). ODA argued that the area is under “constant threat” of urbanization as evidenced by a long history of advocacy for inclusion within the Cornelius UGB. ODA further asserted that the area would constitute a protrusion of urban land into the farm landscape, creating two additional urban edges for agricultural operations to deal with and creating long-term implications for surrounding agricultural lands. 1000 Friends argued that this large intact block of farmland supports and sustains long-term agricultural operations and that this area is the heart of the Tualatin Valley agricultural industry, containing some of the most productive farmland in the state. 1000 Friends further argued that the area is critical to the economic health of farm infrastructure and industry in the area and that several food processors and other farm infrastructure are present in Area 7I. Finally, 1000 Friends asserted that the county did not address rural reserve factor OAR 660-027-0060(2)(d)(B) (the existence of buffers between agricultural or forest operations and non-farm or non-forest uses) as the reserves rules require. 1000 Friends and Jacobsen further assert that Area 7I qualifies as rural reserve because it is a mapped significant natural landscape feature under factor 3 that forms a natural boundary separating urban and rural uses.

In the initial reserves designations, Metro and Washington County addressed OAR 660-027-0050(1)–(8) (the urban reserve factors) in a general fashion, concluding that all factors have been met for these areas. Metro Record at 85-86 (7B), and 88-89 (7I); Washington Co. Record at 9668. These findings stated that the areas could “reasonably be developed at urban densities which would efficiently utilize existing and future infrastructure investments” (factor 1) and that buildable lands “provide sufficient development capacity to support a healthy economy” (factor 2). The cities of Forest Grove and Cornelius prepared pre-qualifying concept plans for these two areas, indicating that the lands “can be designed to be walkable and appropriately served with a well-connected system of streets, bikeways, recreation trails and public transit” (factor 4) and “can be efficiently and cost-effectively served with schools and other urban facilities and services” (factor 3). The findings further stated that the “existing regulatory framework in Washington County and Cornelius will preserve and support enhancement of natural ecological systems” potentially impacted by future urbanization (factor 5), the area “can support a range of needed housing types” (factor 6) and can be designed to avoid or minimize potential adverse effects” on surrounding farms and natural landscape features (factor 8). Factor 7 – can be developed in a way that preserves important natural landscape features – was not directly addressed. Metro Record at 89.

However, as discussed above, because these two areas are located on lands identified by ODA as Foundation Agricultural Lands, OAR 660-027-0040(11) requires a more rigorous evaluation of these areas prior to their designation as urban reserves:

“Because the January 2007 Oregon Department of Agriculture report entitled ‘Identification and Assessment of the Long-Term Commercial viability of Metro Region Agricultural Lands’ indicates that Foundation Agricultural Land is the most important land for the viability and vitality of the agricultural industry, if Metro designates such land as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division.” OAR 660-027-0040(11).

The initial submittal findings provided a general explanation of why Metro chose Foundation Agricultural Land rather than other lands as urban reserves. *See* Metro Record at 119-120. These findings note that most of the lands surrounding existing urban areas in Washington County are identified as Foundation Agricultural Land, with the result that any significant urban reserve designations in Washington County would necessarily require using some Foundation Agricultural Lands, particularly if urban reserves were to be designated around the City of Cornelius (and, to a lesser extent, Forest Grove and Hillsboro). *See* Washington Co. Record at 2998 (map of ODA classifications in Washington County). The findings state that:

“Throughout the technical analysis and review process leading to preliminary recommendations on urban and rural reserves, the consistent message from the Washington County Farm Bureau was that lands within the existing UGB should be used more efficiently and, with the exception of lands classified as ‘Conflicted’ on the map developed by the Oregon Department of Agriculture, all lands in the study area within approximately one mile of a UGB should be designated as rural reserve. Farm Bureau members submitted a map and cover letter depicting their recommendations. WC Rec. 2098-2099; 3026; 3814-3816.

“The needs determination by county and city staff concluded that the one-mile recommendation noted above would not address the county’s urban growth needs over the 50-year reserves timeframe. The WCRCC [Washington County Reserves Coordinating Committee] on September 8, 2009 voted 11 to 2 in support of urban reserve areas of approximately 34,200 acres and rural reserve areas of approximately 109,750 acres in Washington County. In consideration of the concerns raised by the Farm Bureau as well as like-minded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 percent (34,200 acres to 13,561 acres) to the WCRCC urban reserve recommendation. These adjustments represented the Core 4’s judgment in balancing the need for future urban lands with the values placed on ‘Foundation’ agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment.” Metro Record at 62.

The September 23, 2009 WCRCC recommendations report appears in the record at Washington Co. Record at 2942-3034. The technical analysis contained in those

recommendations addresses the rural reserve factors at OAR 660-027-0060(2)(a)–(d) for 41 subareas in the county. Washington Co. Record at 2976. The county also produced a chart that details how each factor was addressed in its review process. Washington Co. Record at 2943. As part of its consideration of the rural reserve factors, the county assigned “tiers” to lands in terms of their suitability for agriculture, with Tier 1 being the most important and Tier 4 being the least. The county assigned Tier 4 status to Area 7I and Tier 1 status to Area 7B. Washington Co. Record 3024. Finally, the analysis also relied on a series of “Issue Papers,” which are included with the WCRCC recommendations as Appendix 5. Washington Co. Record at 3780-3819.

For Area 7I, the county noted that it has high urbanization potential, a higher productivity rating and physical features that help define the area, but that it also has a “high dwelling density,” a high level of parcelization (Washington Co. Record at 3021), and relatively high land values. Washington Co. Record at 3014, 3022. For Area 7B, the county’s technical analysis shows less parcelization, fewer homes, and lower land values.

During the October 2010 Commission hearing, the City of Cornelius and others testified in support of the Metro and Washington County urban reserve designation of Area 7I, based on its satisfaction of all of the urban reserve factors. The PQCP and maps of the proposed urban reserve Area 7I were presented to the Commission, and Washington County specifically identified the evidence in the record supporting the suitability of the area as an urban reserve. Other parties objecting to the urban reserve designation identified evidence that key, high-value agricultural operations were located within Area 7I, and that urbanization of this area would likely lead to conflicts with other agricultural operations to the north.

After consideration of the written materials and the DLCDC September 28, 2010 Report, and following substantial oral argument regarding these designations from both proponents and opponents of the designations, the Commission concluded that the findings were not adequate with regard to both Areas 7I and 7B. The Commission concluded that as a matter of law OAR 660-027-0040(11) required more than generalized findings to explain Metro’s choice to designate these Foundation Agricultural Land as urban reserves. Rather, the rule requires that “the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division.” The Commission concluded that Metro’s general findings did not provide an adequate explanation for the designation of Areas 7I and 7B as urban reserve. The Commission also found that with regard to 7I, there was not substantial evidence in the record to support the urban reserve designation. In the Commission’s view, the evidence of suitability for urbanization was at best weak, and the PQCP was far less developed than similar planning for other areas proposed as urban reserves. On the other hand, the evidence of suitability as a rural reserve to protect agricultural values was strong, including evidence of the productive capability of the area and existing farming operations.

Consequently, the Commission voted to reject the urban reserve designation for Area 7I, and to remand the decision regarding Area 7B for further findings that address each of the urban

and rural reserve factors. Specifically, as summarized by the Commission chair, the motion was to:

“[R]emand to Washington County and Metro to reject 7I; we remand to them to develop findings with regard to 7B; we remand Washington County’s rural reserves for Washington County and Metro to consider whether to designate some of that rural reserve to urban reserve, capped at [an acreage equal to that contained in Area] 7I \* \* \* so that it is 7I plus the other amount, plus any amount of undesignated land that they want to designate...” Exhibit B to Ordinance No. 11-1255 at 107.

Following the Commission’s remand vote, but without a written final order pursuant to OAR 660-002-0010(6), Metro and Washington County revised their intergovernmental agreement and adopted ordinances amending their respective plan and plan maps, and adopted revisions to their initial reserves decision. The re-designation submittal eliminated the urban reserve designation from Area 7I, re-designated the northern 263 acres of Area 7I rural reserve, and left the southern 360 acres undesignated. The re-designation submittal also removed the urban reserve designation from 28 acres of Area 7B, leaving those 28 acres undesignated.

On review of the Metro Urban and Rural Reserve Submittal, several parties objected to the re-designations of these two areas.

#### **d. Area 7I (Re-designation)**

The City of Cornelius objects to the Commission vote to reverse the urban reserve designation of Area 7I, and to Washington County and Metro’s subsequent re-designations that resulted in Area 7I being partially designated rural reserve and partially left undesignated. The objection contends that the record that addresses the statutorily required factors for designation of urban and rural reserves does not support these amended reserve designations. The proposed remedy is for the Commission to remand the re-designation decision to Washington County and Metro with direction for them to approve an urban reserve designation for the southern portion of the area that was left undesignated. The undesignated area is 360 acres, and the proposed remedy is for an urban reserve of “about 352 acres” to replace the newly designated urban reserve in Area 8B (adjacent to Helvetia Road).

The Van De Moortele Family also objects to the re-designation of Area 7I, requesting that the Commission re-designate certain land in the vicinity of the City of Cornelius from rural reserves to urban reserves. The Van De Moortele Family includes reasons why the subject land should be designated urban reserve.

The record includes considerable analysis regarding the factors for designation of the urban and rural reserves for Area 7I. As discussed above, in October 2010 the Commission determined that the submittal did not establish that the urban reserve designation of Area 7I was supported by the record and the considerations required by division 27. Subsequently, Washington County and Metro divided the area into two designations – the 360-acre southern area was left undesignated and the northern 263-acre portion was designated rural reserve. Metro and Washington County made findings analyzing the evidence in the record for the re-

designation submittal as it pertains to the undesignated area. Exhibit B to Ordinance No. 11-1255 at 122-127. Washington County's analysis of the evidence in the record for the rural reserves portion of the area start on page 124 of the findings, and in the Washington County Record at 11005-11061. The Metro Urban and Rural Reserves Submittal demonstrates that Metro and Washington County considered the evidence in the record, and applied that evidence to the applicable factors under OARs 660-027-0060.

The City of Cornelius argues that Area 7I is suitable for urbanization, based on the city's pre-qualified concept plan (PQCP), existing and planned infrastructure improvements, the city's desire for more industrial development to address an imbalance of jobs to housing in the city, the existence of areas of exception lands north of Council Creek, and the city's argument that Council Creek is not an appropriate dividing line for urbanization because it has already been broached. The City of Cornelius does not identify evidence in the record that warrants a conclusion contrary to that made by the Commission at the October 2010 hearing. The re-designation findings describe why a portion of the area has been designated as a rural reserve and a portion left undesignated. Exhibit B to Ordinance No. 11-1255 at 124-130. The findings also reflect that Metro and the county considered overall balance, as set forth in the purpose statement of the Commission's rules, in deciding on what portion of Area 7I would be designated as a rural reserve. Metro and the county have considered each of the applicable factors, and substantial evidence in the record as a whole exists to support the county and Metro's decision. The Commission rejects this objection.

In contrast to the City of Cornelius objections regarding Area 7I, ODA, 1000 Friends, and Joseph Rayhawk all object that the failure to designate all of Area 7I as a rural reserve is inconsistent with the reserves statute and rules. ODA and 1000 Friends argue that Metro and Washington County's decision to leave a portion of Area 7I undesignated is inconsistent with the reserves rules and statutes because the area qualifies as rural reserve and should be so designated due to its agricultural productivity, threat of urbanization, and relationship to other farmland in the area.

1000 Friends states the lack of rural reserve designation for the area does not meet the reserves statute and rules and the area does not "qualify as undesignated." The objection lists five points to support claim, four of which focus on why the land is good farmland and deserves the additional protection that a rural reserve designation would provide. The final point maintains Metro did not adequately explain its decision.

ODA alleges that leaving 360 acres of Area 7I undesignated will create a "new edge" to the urban area with farmland on three sides and no protection for the adjacent farmland, unlike the existing buffer created by Council Creek. ODA also contends that "as 'undesignated' lands, these lands in effect become next in line for urbanization and in fact, could move up in line should they be designated by future actions as urban reserves..." and "because these lands could be urbanized sooner, the speculative value of the land becomes much higher than if protected for agricultural use making it difficult at best for farmers to rent, lease or acquire the subject lands." ODA, June 2, 2011, at 4. ODA further objects that "Metro has provided no findings to explain why this area should not be re-designated as rural reserve or any findings that explain why the area was left undesignated." *Id* at 5. ODA fails to explain how this relates to the factors in OAR

660-027-0060 that Washington County was required to consider on making its rural reserve decisions.

ODA makes essentially the same argument it made to the Commission regarding the initial decision to designate Area 7I as an urban reserve, that an urban reserve designation would lead to urban development that has detrimental impact on farm operations well beyond the boundaries of the subject property. ODA, July 14, 2010 at 6; ODA June 2, 2011 at 5. The re-designation submittal is significantly different, however, as it removes the urban reserve designation. While ODA may be correct that the area is under some threat of urbanization, that fact alone does not *require* Washington County to designate the area as a rural reserve. Metro, and Washington County, considered that threat and decided not to designate this area as either rural or urban reserve. While a rural reserve designation may have forestalled immediate speculative increases in the value of the land, the land in question retains rural plan designation and will be a lower priority for urbanization under ORS 197.298 than an urban reserve.

The explanation for removing the designation from Area 7I are in Washington County's supplemental reserve findings at 12726 and 12729-12731 and Exhibit B to Ordinance No. 11-1255 at 163 and 166-167. However, while the county made findings explaining its decision to remove the designation, neither ODA nor 1000 Friends has identified any legal requirements that applies to the Commission's review of a decision by Metro or Washington County *not* to designate an area as a reserve (urban or rural). In fact, neither Metro nor Washington County is required by the reserves statute or rules to justify its decision to leave any particular area undesignated, even if application of the factors indicated it was eligible for one or both reserve designations. The Commission rejects this objection.

**e. Area 7B (Re-designation)**

1000 Friends objects that the continued designation of Foundation Agricultural Land in the northern portion of Area 7B as an urban reserve violates the reserve statute and rule. 1000 Friends argues that the northern portion of Area 7B should not be designated urban reserve because: (1) the area meets all the rural reserve factors and there is no evidence that it meets the urban reserve factors, (2) the justification for urban reserve improperly focuses on a specific use of the land, (3) adopted findings lack substantial evidence and fail to address the urban reserve factors and balancing, and (4) roads do not effectively separate urban and agricultural lands. The proposed remedy is for the Commission to remand the re-designation decision with instructions for Washington County to designate the northern portion of Area 7B rural reserve. 1000 Friends, June 1, 2011 at 7-12.

Joseph Rayhawk also argues that removing 28 acres of area 7B from urban reserve, and leaving it undesignated is to allow a road, and that this change violates Goal 2. He argues that that the entire Area 7B should be re-designated rural reserves. Rayhawk, June 2, 2011 at 1-2.

As discussed above, following the October 2010 hearing, the Commission found that the consolidated findings did not adequately address each of the urban and rural reserve factors for Area 7B, as required by OAR 660-027-0060(4) (requiring evaluation of both urban and rural reserve factors prior to designating Foundation Agriculture Land as urban reserves.)

Consequently, it remanded the decision to Metro and Washington for additional findings on the designation. The Commission did not necessarily require any re-designation of that area. Metro adopted new findings responsive to the urban and rural reserve factors. The findings explain the reasoning for adding land to the north of Forest Grove and the city's proposed plan designation for the land.<sup>69</sup>

There is no disagreement that Area 7B could have been designated rural reserve. However, while 1000 Friends emphasizes the evidence to support a rural reserve designation, they do not adequately explain their allegation that there is no evidence the area satisfies the urban reserve factors. In fact, based on the evidence and testimony provided to the Commission, there is evidence in the record that could have supported either designation. As discussed at length above, the statutory and rule provisions provide Metro and the county substantial discretion when the facts could support either designation. Metro adopted findings based on consideration of both the urban and rural reserve factors, and the objection does not demonstrate these findings are not supported by substantial evidence. Because Metro's findings are adequate, and based on substantial evidence, to support Metro's decision to continue to designate a portion of Area 7B as urban reserve, the Commission rejects this portion of the objection.

1000 Friends challenged the initial submittal alleging Metro impermissibly designated urban reserve land in general, and area 7B in particular, for industrial use. Following the re-designation, 1000 Friends does not allege Metro impermissibly *designated* the land based on the need or desire for additional large-lot industrial land, but maintains that the justification's strong reliance on the suitability of Area 7B for industrial use is too specific for the time frame considered (30 to 50 years), and that Metro used other impermissible considerations (*e.g.*, presence of an existing large lot) to justify the urban reserve designation.

It may well be that the City of Forest Grove would propose to designate a significant portion of Area 7B industrial if and when it is brought into the UGB. The findings that explain how the area fares when compared to the urban reserve factors are largely, but not exclusively, based on an assumption that the area will be developed with employment uses. 1000 Friends faults this analysis but has not explained how this violates the applicable statute and rules. 1000 Friends suggests that urban reserves cannot identify or contemplate any specific urban use to which urban reserve lands may be put at such time as those lands may be brought into the UGB. However, the urban reserve factors specifically provide for an evaluation of whether an area has sufficient development capacity to support a healthy economy and sufficient land suitable for a range of housing types. OAR 660-027-0050(2), (6). The discussion of Forest Grove's potential economic development based on specific examples as part of this evaluation is not inappropriate. The Commission rejects this portion of the objection.

1000 Friends further objects that Metro's findings fail to establish that Area 7B satisfies the urban reserve factors, and instead that those findings actually establish that Area 7B does not meet the urban reserve factors. Specifically 1000 Friends objects that Metro did not adequately

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<sup>69</sup> The supplemental reserve findings for Area 7B are in Exhibit B to Ordinance No. 11-1255 at 127-148 and Washington County supplemental findings at 12694-12711. Washington County's findings for the undesignated section of 7B are in Washington County supplemental findings at 12728-12729.

respond to Washington County Farm Bureau testimony regarding agricultural infrastructure in and around the proposed Area 7B urban reserve. 1000 Friends believes this evidence demonstrates that the area satisfies rural reserve factor OAR 660-027-0060(2)(d)(D).

As stated above, it is undisputed that Area 7B could have been designated either urban or rural reserves (or left undesignated.) However, 1000 Friends' contention that the area better satisfies the rural reserve factors does not establish that Metro could not equally find that the property satisfies the urban reserve factors. That 1000 Friends would have preferred Metro to evaluate the evidence and testimony differently does not negate the evidence upon which Metro relied. Metro explained in the record why it designated the farmland in Area 7B as urban reserves. The findings adequately explain Metro's decision and are based on substantial evidence in the record.

1000 Friends also specifically challenge Metro's conclusion that Purdin Road makes a better buffer between urban and farm uses than does the drainage way that bisects the urban reserve area. They cite testimony made to state and local hearings bodies that roads do not form effective buffers to reduce the impact of urban activities on farm use. 1000 Friends raises this matter as further evidence that the northern part of the area should be rural, not urban, reserve. However, while 1000 Friends may believe a rural reserve designation would be the better choice as a buffer, others disagreed with that evaluation. As the City of Forest Grove testified,

"The boundary issue appears in two ways in 1000 Friends objection. 1000 Friends first argues that the tributary to Council Creek makes a better buffer than a road and, second, that improving Purdin Road would have growth-inducing impacts by attracting more traffic and increasing conflicts with farm operations.

"\* \* \* Farming occurs right up to the edge of the tributary channel. Based on on-the-ground measurements (see page 145 of Metro's Findings,) the plowed areas are about seven feet from the edge of the channel. This causes environmental degradation such as erosion, habitat destruction and poor water quality due to farm chemicals reaching the water. As noted in the findings, if the area is designated as urban reserve, 50-foot wide buffers on each side of the tributary will be required, thereby significantly improving the environmental value of the resource. In earlier hearings, the Farm Bureau cited a creek buffer, which is over 200-feet wide with heavy amount of trees on both sides of the creek, as an example of an appropriate buffer. This would not occur at this location.

"While the road widening argument may have some merit in the abstract, in this instance it does not. As shown in the photo of Purdin Road \* \* \* the road is narrow with a pavement width of 22 feet. \* \* \* It carries almost 2250 vehicles per day \* \* \*. This relative high traffic count is substantially from development on the west side of Forest Grove *within the current UGB*. This traffic level is because it is the most direct route for residents to Highway 26, regardless of the condition of Purdin Road. \* \* \* Moreover, traffic on Purdin Road is expected to increase as development on the west-side of the community continues \* \* \* *regardless of any development in Area 7B. \* \* \* The conflict between agricultural and urban traffic is unavoidable whether Area 7B develops or not.*" City of Forest Grove, August 18, 2011 written testimony at 1-2 (emphasis in original).

The county's findings also include additional analysis regarding the role roads can play in buffering (Washington Co. Record at 12700) and Metro notes the submittal adopted RFP and UGMFP provisions to address adequate buffering between urban and resource uses.<sup>70</sup> Thus, while 1000 Friends interprets the evidence to support the creek providing the boundary, others interpret the same evidence to reach a different conclusion.

The objection also claims the findings lack substantial evidence. The disagreement seems to be not based on evidence in the record, but rather on interpretation of that evidence, and specifically whether a road or drainage way make a better buffer between urban and farm uses. This disagreement does not establish a basis for remand. While 1000 Friends may disagree that the road makes a better buffer in this instance than the drainage way, there is substantial in the record that Metro could reasonably conclude that either roads are a better buffer or there are adequate safeguards in place to protect nearby resource lands. Moreover, Metro is not charged with selecting the "best" buffer location when designating urban reserves, but rather it must consider the impact of the designation on the viability and vitality of the agricultural industry. While Metro and the objectors disagree, there is substantial evidence in the record to support the submittal, and Metro made adequate findings upon which it based decision. The Commission rejects this objection.

#### **f. Area 8A**

ODA, 1000 Friends of Oregon and Thomas Black all object to the designation of Area 8A in North Hillsboro as an urban reserve under OARs 660-027-0040(11), 660-027-0050, and 660-027-0060. ODA, July 14, 2010 at 6; 1000 Friends, July 12, 2010 at 16. 1000 Friends objects to the designation of Area 8A as a whole, while ODA objects only to the inclusion of the land north of Waibel Creek. Mr. Black objects that the designation violates Goals 1, 3 and 5.

Area Description. Urban reserve area 8A consists of approximately 2,712 acres of land, of which approximately 2,265 acres are buildable. Metro Record at 90. The area is bounded by Hillsboro to the south, McKay Creek to the west and Highway 26 to the north, with Waibel Creek running east-west through the middle of the area. ODA identified the area as Foundation Agricultural Land, and the area is largely irrigated with groundwater. Urban Reserves 8A is not within or served by an irrigation district. Exhibit B to Ordinance No. 11-1255 at 10. Both McKay Creek and Waibel Creek include floodplain, wetlands and riparian habitat that have been designated on Metro's Natural Landscape Features Inventory. Washington Co. Record at 3000.

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<sup>70</sup> Metro amended the Regional Framework Plan Policy to implement urban and rural reserves. Exhibit B to Ordinance No. 10-1238A. RFP 1.9.8 provides:

"Use natural or built features, whenever practical, to ensure a clear transition from rural to urban land use."

RFP 1.9.8 is implemented by 3.07.1110B(1)(g) and (2)(e) in Title 11 of the Urban Growth Management Functional Plan, which require concept plans to avoid or minimize adverse effects on farm and forest practices and important natural landscape features on nearby rural lands. Exhibit D to Ordinance No. 10-1238A.

Area 8A is a portion of a larger Pre-Qualifying Concept Plan area analyzed by the City of Hillsboro to meet long-term, primarily industrial, growth needs. The area was selected for its “key location along the Sunset Highway and north of existing employment land in Hillsboro and also because of the identified need for large-lot industrial sites” that are “proximate to existing and future labor pools” and will provide opportunities to attract new industries to help diversify and balance the local and regional economy. Metro Record at 90; Exhibit B to Ordinance No. 11-1255 at 86.

ODA asserts that Waibel Creek and Meek Road would provide “excellent edges” and argues that no evidence has been presented that development north of Waibel Creek could be designed to avoid or minimize adverse impacts to surrounding farms as required by OAR 660-027-0050(8). 1000 Friends asserts that the county’s decision does not address OAR 660-027-0050(7) (“can be developed in a way that preserves important natural landscape features”) or (8) (“can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features,”) and that there is no evidence in the record that these urban reserve factors can be “met.”

Conversely, both ODA and 1000 Friends state that the area qualifies as a rural reserve because it meets all rural reserve factors (2)(a) through (d)). 1000 Friends asserts that the area is “highly subject to urbanization,” while ODA asserts that the area north of Waibel Creek is “under serious threat of urbanization” as indicated by its designation by Metro as an urban reserve and the history and progression of UGB expansions in the vicinity of Highway 26. 1000 Friends states that this large intact block of farmland supports and sustains long-term agricultural operations and that the farm use and ownership patterns demonstrate long-term stability.

Both ODA and 1000 Friends contends the decision does not address OAR 660-027-0050(8) (can be designed to minimize or avoid adverse effects on farm practices) and 1000 Friends also argues it also does not address OAR 660-027-0050(7). However, the initial findings did address those factors generally, and the record contains more specific findings related to these factors. Washington Co. Record at 1013-1017; 3111-3141; Exhibit B to Ordinance No. 11-1255 at 85-86. The City of Hillsboro prepared a Draft Preliminary Concept Plan for the purpose of determining the suitability of North Hillsboro for future urban development. Washington Co. Record at 3114. The city applied the criteria for Urban Reserves set forth in OAR 660-027-0050 to each candidate area; for North Hillsboro, the city specifically addressed OAR 660-027-0050(7) and (8). Washington Co. Record at 3136-3138. The Commission finds that, while the findings in the Metro Urban and Rural Reserves Submittal themselves could have been more thorough, there is substantial evidence in the record to support the conclusion that Metro and Washington County considered and weighed the factors in OAR 660-027-0050(7) and (8); and, in fact, when weighed in conjunction with the other urban reserve factors, there is substantial evidence in the record to support Metro’s selection of Area 8A as an urban reserve.

With regard to the rural reserve factors at OARs 660-027-0040(11) and 660-027-0060(2), the findings contain a general explanation of why Foundation Agricultural Lands were designated rather than other lands, as described above in connection with Area 7I. Area 8A falls within subareas 13 and 14 in Washington County's analysis, and is identified as Tier 2 and Tier 3 Farm Land. Washington Co. Record at 3924. According to the county, subarea 14 is

characterized by a high level of urbanization, lower productivity, smaller parcels, and a higher dwelling density. Subarea 13 has a high level of urbanization, a lower productivity rating, but has bigger parcels. Washington Co. Record at 2978-2929. Washington County's analysis for this area shows a relatively large number of existing homes, and small parcels (particularly in the eastern portion of the area). While the findings could have been more specific, the Commission concludes Metro's findings for Area 8A are based on substantial evidence in the record and supported by an adequate factual base.

**g. Area 8B (and Area 8SBR) (Initial Designation)**

Save Helvetia initially objected to Washington County's and Metro's original designation of Area 8B north of US Highway 26 (Shute Road Interchange) as an urban reserve and the lack of designation of Area "8-SBR." Tom Black also objected to the urban reserve designation of Area 8B.

Area Description. "Urban Reserve Area 8B is located at the northwest quadrant of the intersection of Sunset Highway and NW Shute Road. This site totals approximately 88 acres and includes land within the 100 year floodplain of Waibel Creek. The existing UGB and the corporate limits of Hillsboro run along the eastern border of the site, while the southern boundary runs along Sunset Highway and is contiguous to Urban Reserve Area 8A. Lands to the north and west of the area are agricultural lands." Exhibit B to Ordinance No. 11-1255 at 86.

Save Helvetia describes Area 8-SBR as a part of study area 8 that is comprised entirely of Foundation Agricultural Land that totals 556.5 acres, north of Highway 26. It is bordered by NW West Union Road on the north, NW Helvetia Road on the east, NW Groveland Drive and Highway 26 on the south, and a line of trees on the west. Save Helvetia, July 12, 2010 at 11.

Save Helvetia objects that the decision contains factual misstatements regarding the location of Area 8B (Save Helvetia, July 12, 2010 at 2); designating Area 8B as urban reserves misapplies the urban reserve factors of OAR 660-027-0050(Save Helvetia, July 12, 2010 at 4); and the findings applying the urban reserve factors are inconsistent with OAR 660-027-0040(2) and OAR 660-027-0040(11) (Save Helvetia, July 12, 2010 at 6.) With regard to Area 8-SBR, Save Helvetia objects that the decision fails to satisfy OAR 660-027-0050 "to provide long-term protection of agriculture" and OAR 660-027-0040 (Save Helvetia, July 12, 2010 at 11); and with regard to both Areas 8B and 8-SBR, Save Helvetia objects that the decision fails to apply the rural reserve factors of OAR 660-027-0060(2)(a) (Save Helvetia, July 12, 2010 at 13). All of these objections also state that the initial decision violated Goal 2, in that the decision is not supported by adequate factual base, based on substantial evidence in the whole record. In its exceptions to the DLCD September 28, 2010 Report, Save Helvetia continues its objections. Save Helvetia Exception, October 8, 2010 at 2-10.

Save Helvetia identifies four ways in which it contends the county misstated the description of Area 8B. Save Helvetia, July 12, 2010 at 3. These relate to the name of a bordering road, the size of Area 8B, whether Area 8B is adjacent to the existing UGB, and whether the area was identified as Foundational Agricultural Land by ODA.

Ordinance No. 10-1238A provided that “[t]he areas shown as ‘Urban Reserves’ on Map Exhibit A, attached and incorporated into this ordinance, are hereby designated Urban Reserves under ORS 195.141 and OAR [chapter] 660, [d]ivision 27.” Metro Record at 2. Exhibit A to Ordinance No. 10-1238A shows Area 8B designated as an urban reserve. Three maps of the area in the county’s record provide confirmation and a more detailed description of the area’s boundaries. Washington Co. Record at 8860, 9294, 9298 (Exhibit A to the county’s resolution and order). *See also* Exhibit A to Ordinance No. 11-1255 (depicting the Urban Growth Boundary and Urban and Rural Reserves Map in UGMFP Title 14). Based on the information in the record, the location and size of Area 8B and its proximity to the existing urban area are described and mapped with sufficient clarity to provide a reasoned evaluation of the area.

Save Helvetia also objects that the sole reason for designating Area 8B as a rural reserve was to accommodate a potential future interchange improvement. Save Helvetia argues that the area does not have to be designated as an urban reserve in order to accommodate infrastructure improvements and that none of the urban reserve factors contemplate potential demands for a freeway interchange expansion. Save Helvetia also argues that not all of Area 8B is required for potential future road and other public facilities.

The record indicates that Metro considered the urban reserve factors with regard to Area 8B. Metro Record at 91-92; Exhibit B to Ordinance No. 11-1255 at 86-87. According to Metro, Area 8B is a small portion of a Pre-Qualifying Concept Plan area analyzed by the City of Hillsboro to meet long-term growth needs and includes findings demonstrating conformance with the “Factors for Designation of Lands as Urban Reserves.” Washington Co. Record at 3110–3137. The findings indicate that the area is suitable for a variety of urban uses, beyond the potential for an interchange improvement. Because the area also was identified as Foundation Agricultural Land, OAR 660-027-0040(11) required Metro and the county to evaluate the rural reserve factors for this area in reaching the decision. Metro’s findings, together with the analysis performed by Washington County, demonstrate that Metro considered the required factors and made a decision that is supported by an adequate factual base.

Save Helvetia next argues that the decision fails to “satisfy” any of the urban reserve factors of OAR 660-027-0050, and fails to address OAR 660-027-0040(11). Save Helvetia, July 12, 2010 at 7. Again, the rural reserve factors are factors to be considered, not standards that must be satisfied. *See* Section III.4.a above (describing Commission interpretation of “consider and apply the factors” requirement). The record indicates that Metro has based its decision on consideration of the factors for designation of lands as urban reserves. The county’s analysis shows this area as “Tier 3” farmland, with a moderate level of parcelization. Washington Co. Record at 3025, 3021. The findings and statements of reasons address the factors in OAR 660-027-0050, and explain why Area 8B was designated an urban reserve. Exhibit B to Ordinance No. 11-1255 at 86-87; Metro Record at 78; Washington Co. Record at 3113–3137. The findings also address Metro’s consideration of the factors in OAR 660-027-0060(2) related to rural reserves, as required by OAR 660-027-0040(11). While the Metro Urban and Rural Reserve Submittal findings could have been more detailed, they adequately explained the policy choices under the rules, and the county’s record provides an adequate factual base for the decision.

The objection also states, “There are no findings which suggest that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area” as required under OAR 660-027-0040(2). Save Helvetia, July 12, 2010 at 6. However, despite this objection, the record reflects that the Urban Growth Report 2009-2030 (Metro Record at 611–773) and the 20 and 50 Year Regional Population and Employment Range Forecasts (Metro Record at 1918) were approved by the Metro Council. As noted in the reports, the Metro Council’s intent with the reports was to guide its determinations of need and capacity for the 20-year UGB period and the 40- to 50-year urban reserve period. Metro Record at 1937. In addition, the counties devote a portion of the findings to explaining the determination of the amount of land designated urban reserve (Exhibit B to Ordinance No. 11-1255 at 13-15; Metro Record at 22–24). Neither the statute nor the Commission’s rule require findings that Area 8B, or any specific area, is needed to accommodate some particular component of the regional estimated long-term urban population and employment growth. Rather, Metro is required to make a determination regarding estimated population and employment, and tie the overall amount of land planned as urban reserves to that determination. Metro’s findings satisfy that requirement.

Save Helvetia further objects that both Area 8B and the undesignated adjacent Area 8-SBR are under significant pressure to urbanize and are capable of sustaining long-term agricultural operations. The objection provides a detailed explanation of the agricultural and other resource values of the land in Areas 8B and 8-SBR, and Save Helvetia argues that the decision fails to address the sub-factor in OAR 660 660-027-0060(2)(a). The Commission finds that the county did address this sub-factor. Washington Co. Record at 2970–2979. While Save Helvetia may disagree with the analysis and conclusions, in fact the record shows that the county did address the factor and evaluated it in reaching its decision.

In sum, following the initial hearing, the Commission agreed that Metro made its decision to designate Area 8B as an urban reserve based on its consideration of the factors in OARs 660-027-0040(11), 660-027-0050 and 660-027- 0060(2), and that Metro’s decision had an adequate factual base, based on substantial evidence in the record. The Commission did not require in its remand vote that Metro or Washington County reconsider its designation of Area 8B or Area 8-SBR. However, after further proceedings, the re-designation decision in fact added 352 previously undesignated areas in Area 8-SBR to the Area 8B urban reserves, resulting in Area 8B totaling 440 acres designated for urban reserves.

#### **h. Area 8B (and Area 8-SBR) (Re-designation)**

In the review of the re-designation decision, Save Helvetia, 1000 Friends, Joseph Rayhawk and Tom Black all object to the urban reserve designation of Area 8B, and continue to object to the lack of rural reserve designation to the remainder of Area 8-SBR. ODA objects to the 440 acres designated urban reserve in Area 8B.

ODA objects that the land added to urban reserve Area 8B should be designated rural reserve or left undesignated. The objection states the area is Foundation Agricultural Land, the larger area has maintained “excellent agricultural integrity,” and that designation as an urban reserve “that protrudes out into the larger rural reserve area would have implications on the area

agricultural lands already deemed qualified for rural reserve designation.” ODA, June 2, 2011 at 7.

1000 Friends and Save Helvetia also object that Metro violated the reserves statutes, administrative rules and the Goal 2 adequate factual base requirement in adopting findings designating Area 8B urban reserve that are not supported by substantial evidence in the whole record. 1000 Friends asserts both that Metro failed to make findings that the applicable statutes or rules require and to object that the findings Metro did make are not supported by the record. Joseph Rayhawk also argues essentially that Metro did not appropriately consider the urban reserve factors, and that other areas are more suitable for urban reserve designation.

Metro and Washington County have considered Area 8B under the urban reserve factors, OAR 660-027-0050(1)–(8), concluding that the area is suitable for urbanization to meet future industrial employment land needs. Exhibit B to Ordinance No. 11-1255 at 154-164. These findings state that the area “is uniquely suitable for industrial development, as it is in the heart of “Silicon Forest”, and has the necessary infrastructure readily available” (factor 1), that the region and Washington County need the type of development the area would accommodate and that the pre-qualifying concept plan illustrates the potential of the area (factor 2). The findings address efficient and timely provision of public services (factor 3) and the accessibility of the area (factor 4).

The findings further state that Hillsboro has adopted overlay zones to protect natural resource sites and, therefore, “[a]ny development in these areas will be required to address preservation of wildlife habitat, natural vegetation, wetlands, water quality, open space and other natural resources important to the ecosystem” (factor 5). Similar findings are made for factor 7. Regarding factor 6, Metro finds that the area is planned for industrial use, but that Hillsboro “will be able to provide an adequate mix of housing to support future industrial uses in Area 8B and the rest of the North Hillsboro Urban Reserves area...” Finally, the findings indicate the area can be adequately buffered from adjacent rural uses (factor 8).

As set out above, for areas identified by ODA as Foundation Agriculture Land, Metro must explain why it chose Foundation Agriculture Land over other lands when designating urban reserves, and this explanation must be by reference to both the urban *and* the rural reserve factors. OAR 660-027-0040(11). Metro’s findings regarding Area 8B provide this explanation, and reference more detailed technical analyses that address the rural reserve factors in some detail with respect to particular areas. Exhibit B to Ordinance No. 11-1255 at 154-169.

Metro’s findings include a general explanation of why it chose Foundation Agricultural Land rather than other lands as urban reserves. *Id.* at 4-10. These findings note that most of the lands surrounding existing urban areas in Washington County were identified as Foundation Agricultural Land, with the result that *any* significant urban reserve designations in Washington County would necessarily require using some Foundation lands. The findings also state:

“Throughout the technical analysis and review process leading to preliminary recommendations on urban and rural reserves, the consistent message from the Washington County Farm Bureau was that lands within the existing UGB should be used

more efficiently and, with the exception of lands classified as ‘Conflicted’ on the map developed by the Oregon Department of Agriculture, all lands in the study area within approximately one mile of a UGB should be designated as rural reserve. Farm Bureau members submitted a map and cover letter depicting their recommendations. WashCo Rec. 2098-2099; 3026; 3814-3816. The needs determination by county and city staff determined that the one-mile recommendation noted above would not address the county’s urban growth needs over the 50-year reserves timeframe. The [Washington County Reserves Coordinating Committee ] WCRCC on September 8, 2009 voted 11 to 2 in support of urban reserve areas of approximately 34,200 acres and rural reserve areas of approximately 109,750 acres in Washington County. In consideration of the concerns raised by the Farm Bureau as well as like-minded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 percent (34,200 acres to 13,561 acres) to the WCRCC’s urban reserve recommendation. These adjustments represented the Core 4’s judgment in balancing the need for future urban lands with the values placed on ‘Foundation’ agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment.” *Id.* at 58.

The September 23, 2009 recommendations report from the Washington County Reserves Coordinating Committee appears in the record at Washington Co. Record at 2942-3034. The technical analysis contained in those recommendations addresses the rural reserve factors at OAR 660-027-0060(2)(a)–(d) for 41 subareas in the county. Washington Co. Record at 2976. The county also produced a chart that details how each factor was addressed in its review process. Washington Co. Record at 2943. As part of its consideration of the rural reserve factors, the county assigned “tiers” to lands in terms of their suitability for agriculture, with Tier 1 being the most important and Tier 4 being the least. The county assigned Tier 3 status to Area 8B. Exhibit B to Ordinance No. 11-1255 at 159. Finally, the analysis also relies on a series of “Issue Papers,” which are included with the Washington County Reserves Coordinating Committee recommendations as Appendix 5. Washington Co. Record at 3780-3819.

Fundamentally, the issues raised by these objections come down to a choice by Metro and Washington County about whether to allow communities that are largely surrounded by some of the best farmland in the state an opportunity for future expansion as part the region’s long-term growth. As noted in the findings quoted above, Metro and Washington County substantially curtailed the amount of urban reserve lands in this area of Washington County in order to conserve Foundation Agricultural Lands. As further explained below, the Commission concludes that Metro has established an adequate factual base, based on substantial evidence in the record, to support its urban reserve designation for Area 8B. These objections are denied.

**i. Failure to make findings regarding Foundation Agricultural Land.**

Identifying Area 8B as “Foundation Agricultural Land” as defined in OAR 660-027-0010(1), 1000 Friends challenges the Metro Urban and Rural Reserves Submittal consideration of the urban reserve factors of OAR 660-027-0050. 1000 Friends argues that OAR 660-027-0040(11) requires that to designate Foundation Agricultural Lands as urban reserve, Metro must make “findings and statement of reasons” that explain, in reference to OAR 660-027-0050, “why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other

land considered.” 1000 Friends argues this provision imposes an extra obligation of identifying what it is about this land that satisfies the urban reserves factors and why that obligation cannot be satisfied by other non-Foundation Lands. 1000 Friends argues that Metro’s decision lacks this necessary alternative lands analysis. 1000 Friends, June 2, 2011 at 14-15.

1000 Friends’ interpretation of OAR 660-027-0040(11) either overstates or constrains the explanation required by the text of the rule to an analysis of “why that obligation cannot be satisfied by other non-Foundation Lands.” Although Metro certainly could, and in fact did, include such an analysis in providing the explanation required by OAR 660-027-0040(11), 1000 Friends does not establish that Metro was required to include such an explanation in its findings and statement of reasons. The Commission interprets OAR 660-027-0040(11) to require Metro to explain why it chose Foundation Agriculture Lands, including those in Area 8B, “rather than other lands considered under this division.” Metro has done so in its findings. For the modified Area 8B, Metro and Washington County applied the OAR 660-027-0050 urban reserve factors, followed by an application of OAR 660-027-0060 rural reserve factors. Exhibit B to Ordinance 11-1255 at 154 to 169. Metro and Washington County also made express “Findings and Statement of Reasons for Foundation Agricultural Lands as Urban Reserves.” *Id.* at 175-178. Metro made general findings as to why the region designated any Foundation Agricultural Land as urban reserve as well. *Id.* at 4-10. The Commission rejects this objection because Metro and Washington County explained in the findings and statement of reasons why it chose the Foundation Agriculture Lands in Area 8b rather than other lands considered under division 27 as required by OAR 660-027-0040(11).

## **ii. Unsupported findings**

1000 Friends also objects that the findings for Area 8B are not supported by substantial evidence. 1000 Friends indicates that the alternative lands analysis should have considered (a) the St. Mary’s property instead of Area 8B, (b) other ODA identified Conflicted and Important lands, and (c) undesignated lands in Washington County. 1000 Friends further argues that Metro’s findings lack substantial evidence because “the approximately 2,500 acres of ‘undesignated’ land reserved by Washington County were not considered as an alternative to Area 8B’s Foundation Agricultural Land.” 1000 Friends, June 1, 2011 at 15.

In discussing conflicted lands, the findings state “The entirety of the St. Mary’s property \* \* \* was included in Urban Reserve Area 6A (Hillsboro South).” Exhibit B to Ordinance 11-1255 at 176; *see also* 75-76 (applying OAR 660-027-0050 urban reserve factors to Area 6A). Because both Areas 8B and 6A are designated urban reserve, OAR 660-027-0040(11) does not, by its text, require any comparative analysis between them. That rule requires Metro to explain why it chose Foundation Agricultural Land rather than *other* lands. Here, Metro did not choose Area 8B rather than Area 6A; it designated them both as urban reserves. Regarding lands ODA identified as Conflicted and Important, Metro provided that analysis for such lands in Washington County. Exhibit B to Ordinance 11-1255 at 175-178. Because Metro discussed all “other land considered” in its discussion of land identified as Conflicted and Important, it appears that 1000 Friends’ argument is actually that Metro failed to also consider other Foundation Agricultural Land. Metro Ordinance 11-1255 Exhibit B, at 175. OAR 660-027-

0040(11) does not require an explanation regarding the choice between areas of Foundation Agricultural Land.

1000 Friends also argues that the findings lack substantial evidence because, based on 1000 Friends' analysis, Area 8B is more suitable for rural reserves than for urban reserves. Metro and Washington County analyzed Area 8B under the OAR 660-027-0060 rural reserves factors. Metro Ordinance 11-1255, Exhibit B at 164-169. The analysis shows that Area 8B could be established as a rural reserve under the agricultural factors, but not the forestry or natural landscape features factors. However, as Metro acknowledges, the 15 areas designated urban reserves that are comprised predominantly of Foundation Agricultural Land, including Area 8B, rate highly for both urban reserves and rural reserves. *Id.* at 10. Nothing in ORS 195.137 to 197.145, OAR chapter 660, division 27, or the Goals requires Metro or a county to designate land as either urban or rural reserves, respectively. The Commission reviews what is submitted, not whether a different decision may be more suitable in its opinion. Objections that an area is more suitable as either an urban or rural designation provide the Commission no basis to remand the decision under OAR 660-027-0080(4).

Citing OAR 660-027-0040(2), 1000 Friends also argues that there are no general or particular findings suggesting that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area. As discussed above, OAR 660-027-0040(2) provides:

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

Nothing in that rule requires either general or particular findings specific to *any particular area*. Instead, the rule requires estimates for urban population and employment growth for the Metro area. Metro developed a 50-year range forecast for population and employment. Exhibit B to Ordinance 11-1255 at 13. Metro describes the assumptions that lead it to conclude that the region needs 28,256 acres of urban reserves to accommodate 371,860 people and employment land targets over the 50-year reserves planning period. *Id.* at 15.

Finally, noting that the City of Hillsboro's Pre-Qualifying Concept Plan (PQCP) was based on the larger North Hillsboro study area, 1000 Friends also asserts the PQCP is not substantial evidence for designating Area 8B as urban reserve. However, Metro looked to the PQCP as providing the city's infrastructure service availability, deducing that infrastructure planning capable of serving the larger area, could also provide infrastructure for Area 8B under

OAR 660-027-0050(1). Exhibit B to Ordinance 11-1255 at 155. Further, in conducting the OAR 660-027-0050 analysis, the findings refine the preliminary plans of the PQCP. *Id.* at 160. 1000 Friends has not established that Metro could not rely on this evidence. The Commission rejects this portion of the objection.

**iii. Inadequate legal or factual basis.**

1000 Friends next contends that Area 8B meets none of the eight factors relevant to determining that whether an area qualifies as an urban reserve under OAR 660-027-0050. The objection goes through each urban reserve factor and contends that the findings Metro made are not reasonable, and therefore do not constitute substantial evidence. 1000 Friends does not appear to contend that Metro failed to consider any of the eight factors, but that in its consideration it relied on evidence that a reasonable person would not have.

As discussed above, the OAR 660-027-0050 urban reserves factors are *not criteria* in the sense that Metro has to show each area complies with each factor. Rather, these are each *considerations*, which Metro must take into account when deciding whether to designate an area as an urban reserve. As also discussed above, under OAR 660-027-0080(4)(a) and ORS 197.633(3)(a), the Commission is required to consider whether a decision is supported by substantial evidence. Substantial evidence exists to support a finding of fact when the record, viewed as a whole, would permit a reasonable person to make that finding. ORS 183.482(8)(c). As relevant to this objection, the inquiry is whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did.

OAR 660-027-0050(1) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB “Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments.” 1000 Friends argues that because the PQCP is based on a larger area than Area 8B, Metro could not have reasonably considered it under this factor. However, the findings reflect that Metro accounted for that difference in looking to the PQCP for consideration of Area 8B. *Cf.* Exhibit B Ordinance 11-1255 at 86-87; 154-164. 1000 Friends provides the example of findings regarding plans for a new water reservoir and states that the planned reservoir is to serve existing areas. However, the Metro findings regarding water note that designating Area 8B urban reserve will impact only the size of new reservoir construction necessary to serve adjacent areas to Area 8B, not the need for a new reservoir. *Id.* at 155. 1000 Friends then takes issue with the accuracy of the original Area 8B findings, arguing that interchange improvements are to address existing capacity issues; however, Metro supplemental reserve findings acknowledge as much. *Cf.* Exhibit B Ordinance 11-1255 at 87 to 156. What Metro does find is that Area 8B is suitable for providing a transportation system capable of accommodating new urban development. *Id.* at 156.

OAR 660-027-0050(2) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB “Includes sufficient development capacity to support a healthy economy.” 1000 Friends contends that the record shows that including Area 8B will harm the economy by perpetuating a pattern of inefficient use of land in this area. At its core, the objection challenges the Metro employment land need

determination. That objection is discussed and rejected above. *See* Section IV.N.3 above. While 1000 Friends may not agree with studies and analyses in the record that it takes issue with, it has not established that a reasonable decision maker could not have based a decision on those studies instead of the conflicting evidence 1000 Friends prefers. The Commission concludes that the objection does not establish that there is not substantial evidence in the record as a whole to support the Metro Urban and Rural Reserve Submittal.

OAR 660-027-0050(3) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, “Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers.” 1000 Friends argues that the fact that the West Union Elementary School is currently located on an 11-acre site on the northeast corner of Area 8B renders the Metro’s finding inadequate to support designation of Area 8B as an urban reserve. If the factors were criteria in the sense that Metro must show each area complies with each factor, and if the school property was necessarily designated for industrial use at some future date through a UGB amendment, the current existence of the school could be an issue regarding compliance with OAR 660-027-0050(3). However, the urban reserve designation does not restrict the property to future industrial use and, in any event, the test is whether Metro considered the factor. Should Area 8B be designated for industrial development at the time of UGB expansion, Metro notes that the Metro Code and city industrial zoning will prohibit schools and parks. Exhibit B to Ordinance 11-1255 at 160. The findings demonstrate that Metro has considered this factor. Specifically, Metro determined that Washington County addressed the ability of the city to serve the area with public services, citing Washington County Record at 3129-3130. *Id.*

OAR 660-027-0050(4) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB “Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers.” Metro findings include a general illustration, entitled North Hillsboro Potential Transportation Facilities, of how north Hillsboro urban reserves, including Area 8B could be served with multi-modal transportation. *Id.* Characterizing that figure as showing limited multi-modal transportation options, 1000 Friends concludes that urbanizing Area 8B will be entirely auto-focused with no realistic alternative transportation opportunities. Again, while 1000 Friends may disagree with the conclusions Metro reached, the relevant inquiry under OAR 660-027-0050(4) is whether Metro considered the factor. Figure 1 notes “[c]oncept planning will study opportunities to bring transit to Area 8B and further refine transportation.” Metro also relies generally for inclusion of relatively flat, undeveloped Foundation Agricultural Land on its cost of service study *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation*. Metro Record at 1163-1187. Viewing the evidence in the record as a whole, Metro could reasonably conclude that Area 8B and adjacent urban reserves designations in conjunction with land inside the UGB can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers.

OAR 660-027-0050(5) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB “Can be designed to

preserve and enhance natural ecological systems.” 1000 Friends argues OAR 660-027-0050(5) “requires a finding that land can be designed to preserve and enhance natural ecological systems and landscape features” and concludes this factor is not met. As discussed above, 1000 Friends’ characterization does not accurately describe the applicable standard and provides the Commission no basis to remand the re-designation submittal. Metro found that development in Area 8B would be subject to the City of Hillsboro’s Significant Natural Resources overlay zone which will require that development be designed to preserve natural resources.

OAR 660-027-0050(6) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, “Includes sufficient land suitable for a range of needed housing types.” 1000 Friends focuses on Metro’s finding that “this area would be targeted for large-lot industrial and employment uses if urbanized and annexed to the City” and argues assuming that certain urban reserve lands will be used for certain purposes during the reserves process is legally flawed. Metro’s findings included the required consideration, because it found that the city will provide an adequate mix of housing to support future urbanization of Area 8B with land inside the UGB. Exhibit B to Ordinance 11-1255 at 161.

OAR 660-027-0050(7) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB “Can be developed in a way that preserves important natural landscape features included in urban reserves.” 1000 Friends identifies a variety of natural landscape features of Area 8B and argues that because Metro’s findings do not mention those resources, there is no indication that these resources can or will be protected. Although Metro certainly could have done so, OAR 660-027-0050(7) does not expressly require that Metro specifically discuss each resource 1000 Friends identifies. Reviewing what Metro actually submitted, Metro found that the city inventories natural resources in annexed areas and adds those determined to be significant and their Impact Areas to the Significant Natural Resource Overlay District as part of the rezoning process. The Commission finds that Metro did consider whether Area 8B can develop in a way that preserves important natural landscape features.

OAR 660-027-0050(8) requires consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, “Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.” 1000 Friends argues that although Metro’s findings discuss the concept of achieving buffering through planning decisions and the use of planning controls, and how buffering standards have potential suitable application to future urban use of Area 8B if it is designated urban reserve, none of it is certain to happen because no rules, ordinances, or legislation to assure the farming community that any of the protections will be in place to adequately buffer the surrounding rural reserves if Area 8B becomes urban reserves. The Commission finds that OAR 660-027-0050(8) requires Metro to consider whether land proposed for urban reserves can be designed in a manner to avoid or minimize adverse effects. It does not require a finding that the avoidance or minimization is “certain to happen.” Metro’s identification of potential methods of buffering Area 8B is adequate to demonstrate consideration of this factor. The Commission rejects this portion of the objection.

**iv. Compliance with rural reserve factors.**

1000 Friends goes into greater detail than the re-designation submittal findings in describing how Area 8B meets the rural reserve factors. As discussed above, Metro and Washington County analyzed Area 8B under the OAR 660-027-0060 rural reserves factors and also concluded that Area 8B could be designated a rural reserve. Washington County supplemental record at 12712-12726; Metro supplemental record at 148-157; Exhibit B to Ordinance 11-1255 at 164-169. Again, objections that an area is more suitable as either an urban or rural designation provide the Commission no basis to remand the decision under OAR 660-027-0080(4). The Commission rejects this objection.

**v. Failure to Designate Area 8-SBR**

1000 Friends and Save Helvetia argue that leaving Area “8-SBR” undesignated fails to satisfy the requirements of OAR 660-027-0005(2), OAR 660-027-0050, and ORS 195.137-195.145. 1000 Friends and Save Helvetia, June 1, 2011 at 35.

As discussed above, neither the statute nor the rules require any evaluation or findings as to why Metro or the counties did not designate any given property. *See* Section III.A.4.c above. Nonetheless, in its re-designation findings, Metro did make findings regarding that choice. Metro was not required to do more; and was not required to provide any particularized findings as to why it left Area 8-SBR undesignated. The Commission rejects this objection.

**vi. Failure to make findings “concurrently and in coordination with on another”**

1000 Friends and Save Helvetia argue Washington County and Metro failed to apply the rural and urban reserves factors to Area 8B and 8-SBR (undesignated) as contemplated by OAR 660-027-0040(10).<sup>71</sup> The objection states:

“\*\*[T]he concurrency obligation requires deciding whether the land more closely satisfies rural objectives over urban and if so, the land must be protected for agricultural purposes consistent with the rural reserve factors. Areas 8B and 8-SBR clearly are far more qualified as rural reserves than as urban reserves.” June 1, 2011 at 37; *see also* Save Helvetia, April 1, 2011 at 14.

The objections present an issue of law regarding the construction of OAR 660-027-0040(10).

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<sup>71</sup> OAR 660-027-0040(10) provides:

“Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660 -027-0005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule.”

The Commission holds that nothing in OAR 660-027-0040(10) would preclude Metro and a county with which Metro enters into an agreement under division 27 from engaging in the analysis objectors suggest in considering the factors in OAR 660-027-0050 and 660-027-0060. However, the Commission cannot conclude that as a matter of law that OAR 660-027-0040(10) requires the analysis methodology that objectors proffer. Reading OAR 660-027-0040(10) in the context of the balance objective provided in OAR 660-027-0005(2), the Commission holds that division 27 affords Metro and the counties the discretion, even in circumstances as described by objectors where “land more closely satisfies rural objectives over urban” to nonetheless determine that the balance in designation of urban and rural reserves best achieves the objectives of division 27 with an urban designation. “Concurrency” does not imply any particular outcome, and does not require a parcel-by-parcel evaluation. Rather, it requires that Metro and a county with which Metro enters into an agreement to consider urban and rural reserve designations for the county and arrive at a joint set of findings of fact, statement of reasons and conclusions to explain the designations. The Commission finds that Metro and Washington County have considered the designation of both urban and rural reserves in compliance with that rule.

Turning to the objection that asserts that Area 8-SBR is clearly far more qualified as rural reserves than as urban reserves, assuming for purpose of review that that is accurate, the Commission finds that circumstance presents no basis for remand. Because under the Metro Urban and Rural Reserves Submittal, Area 8-SBR is undesignated lands, neither Metro nor Washington County are legally required to apply either an urban or rural designation to it. As established above, the rural and urban reserves factors do not apply to undesignated lands and therefore neither Metro nor the county was required to apply the reserves factors to area 8-SBR. *See* Section III.A.4.c above. The Commission rejects this objection.

**i. Portion of Area 8C (Peterkort Property)**

Carol Chesarek and Cherry Amabisca (collectively, Chesarek), as individuals, Joseph Rayhawk, and The Audubon Society of Portland object to the designation of Tax Lot 1 N1 18, Lot 100 (“the Peterkort property”), a part of urban reserve Area 8C, as an urban reserve. Chesarek, July 14, 2010 at 2; Rayhawk, July 13, 2010 at 1; Audubon, July 14, 2010 at 2 (unnumbered pages.) Mr. Rayhawk also argues that the decision does not meet the urban reserve factors, and explains factor-by-factor why he believes this to be so.

Area Description. The Peterkort property is approximately 129 acres and is part of Area 8C. This land is located near the intersection of NW Springville Rd. and NW 185th Avenue at the northern end of the PCC Rock Creek Campus. This area abuts the current UGB along its eastern and southern boundaries. Exhibit B to Ordinance 11-1255 at 87.

The objections generally object that in designating the Peterkort property for urban reserves, the decision misapplies urban reserve factors of OAR 660-027-0050 (Chesarek, July 14, 2010 at 2); fails to satisfy OAR 660-027-0040(10) that both the urban and rural reserve factors must be applied “concurrently and in coordination with one another” (Chesarek, July 14,

2010 at 9);<sup>72</sup> fails to satisfy Goal 2, evaluation of alternative courses of action related to wetland and public facility issues (Chesarek, July 14, 2010 at 20); fails to satisfy Goal 3, Agricultural Lands (Chesarek, July 14, 2010 at 21); violates Goal 5, to protect natural resources and conserve scenic and historic areas and open spaces (Chesarek, July 14, 2010 at 22); and fails to satisfy OAR 660-027-0005(2), long term protection of large blocks of agricultural land and important natural landscape features (Chesarek, July 14, 2010 at 23). Each objection also alleges the decision has an inadequate factual base, in violation of Goal 2.

One of the Metro conditions in the ordinance that brought North Bethany into the UGB called for the county to “recommend appropriate long-range boundaries for consideration by the Council in future expansions of the UGB or designation of urban reserves.” Exhibit B to Ordinance 11-1255 at 87. Metro found that additional urban land to the immediate west of the North Bethany Community Planning Area is necessary for the provision of sanitary sewer and storm drainage and to assist in the funding for a primary road link to SW 185th Avenue. In order to address a number of concerns raised in relation to the wetlands and floodplains on the Peterkort property, as well as within the “West Union” portion of Area 8C, a Special Concept Plan Area overlay was added to Washington County Ordinance No. 733 (Special Concept Plan Area C). This special plan overlay requires application of the “Integrating Habitats” approach to planning and development of these lands. Washington Co. Record at 8533.

This urban reserve area is included as an element of the North Bethany Community Planning area. Area 8C is a small portion of a Pre-Qualifying Concept Plan (PQCP) area analyzed by the City of Beaverton to meet long-term growth needs. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the “Factors for Designation of Lands as Urban Reserves” under OAR 660-027-0050. Washington Co. Record at 3062. The county and Metro made additional findings specific to this property addressing each of the objectors’ concerns and all the urban reserve factors in OAR 660-027-0050. Exhibit B to Ordinance 11-1255 at 64-66, 89.

When identifying and selecting lands for designation as urban reserves under OAR 660-027-0050, Metro must base its decision on consideration of whether land proposed for designation as urban reserve, alone or in conjunction with land inside the UGB, addresses eight different factors. The record indicates that Metro has considered these factors. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the “Factors for Designation of Lands as Urban Reserves”. Washington Co. at 3062.

Regarding the first objection, OAR 660-027-0050 does not require that Metro compare the cost of installing facilities for both urban and rural reserves designations, or that Metro demonstrate how local governments will finance future road and infrastructure improvements. Nor do the rules require that Metro determine which designation is more compatible for wetland mitigation and which designation provides better protection of wildlife. While the objectors may

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<sup>72</sup> Although the objection cited OAR 660-027-0040(1), the Commission understands the objection to challenge compliance with OAR 660-027-0040(10) and not OAR 660-027-0040(1). The Commission rejects this objection for the same reasons discussed in the immediately preceding analysis of similar objections raised by Save Helvetia and 1000 Friends.

disagree with the analysis and conclusions, they have not established that the analysis of the factors and conclusions Metro reached violate the rule.

The factors for designation for rural reserves in OAR 660-027-0060 provide that, when identifying and selecting lands for a given designation, a county shall “indicate which land was considered[.]” There is no indication in the text or context of the rule that the Commission intended to require that both urban and rural reserve factors must be considered simultaneously for each individual property. Metro and Washington County have provided findings addressing the eight factors under OAR 660-027-0050. Exhibit B to Ordinance 11-1255 at 64-66, 89, Washington Co. Record at 3062. The objectors disagree with the findings and conclusions, but Metro and the county complied with the rule with respect to the Peterkort property.

The objectors also argue that the decision fails to evaluate alternative courses of action related to wetland and public facility issues. As noted above, OAR 660-027-0050 requires that Metro base its identification and selection of lands for designation as urban reserves, alone or in conjunction with land inside the UGB, by considering eight factors. The record indicates that Metro has considered these factors. OAR 660-027-0050 does not require that Metro perform a comparative analysis of wetland mitigation sites, the location of roads, or sewer lines or determine that the site does not meet the rural reserve factors, in order to be designated an urban reserve.

The objections also allege the urban reserve designation violates Goal 3, “Agricultural Lands,” and Goal 5, “Natural Resources, Scenic and Historic Areas, and Open Spaces.” The provisions of the goals referenced by the objectors are Guideline A.1 in Goal 3 and Guidelines B.1 and B.2 in Goal 5. The Guidelines are advisory, and not requirements. *See* Section IV.M.1 above. The objectors did not identify any requirements in Goal 3 or Goal 5 that the reserves decisions violate. The fifth objection also asserts there are inadequacies in Washington County’s existing Goal 5 implementation program. However, the county’s existing Goal 5 implementation program is not a part the submittal on review and the objectors have not explained how or why that existing program could be subject to this review in this proceeding.

Finally, the objectors argue that the decision violates the purpose of reserves and long term protection of large blocks of agricultural land and important natural landscape features. However, the purpose statement at OAR 660-027-0005(2) is not a criterion that the local governments must satisfy, but rather a region-wide consideration to be evaluated. The findings adopted by the four local governments explain why they believe their collective decisions satisfy the overall objective of urban and rural reserves. The Commission finds the findings are adequate to comply with the rule. The county and Metro performed considerable analysis and made specific findings regarding each of the urban reserve factors as applied to the Peterkort property. The findings show that they considered the relevant factors and made adequate findings based on substantial evidence in the record.

Mr. Rayhawk also argues that the urban reserve designation appears to be contrary to state land use goals for water quality and habitat protection and possibly the federal Clean Water Act and the federal Endangered Species Act. However, the decision to designate this property as an urban reserve does not authorize any activity or use of the land (in fact, it places some

additional limitations on future uses). As a result, the objection does not establish that the decision has an effect in terms of compliance with these federal laws. Decisions concerning uses of the property will not be made unless the property is added to the Metro UGB and the plan and zoning designations are amended to allow urban uses. The Commission rejects this objection.

Finally, all the objections state the urban reserve decision violates Goal 2 due to an inadequate factual base. As noted above, Washington County and Metro adopted specific findings related to all the issues raised in this objection and in consideration of the urban reserve factors in OAR 660-027-0050. Disagreement with the findings and conclusions does not make them inadequate. The Commission rejects these objections.

**j. Portion of Area 8F (Bobosky Property and Bendemeer Community)**

Steve and Kelli Bobosky object to Washington County's designation of their property and the Bendemeer community in Area 8F as a rural reserve under OAR 660-027-0060. The Boboskys argue that Washington County and Metro erroneously designated the subject exception area as a rural reserve in violation of OAR 660-027-0060 and ORS 195.139(1)(a), ORS 195.141(2) and (3), and that the property and the surrounding Bendemeer rural residential subdivision meet the urban reserve criteria. Bobosky, July 7, 2010; June 2, 2011.

Area Description. Rural reserve area 8F is bordered on the south by Highway 26 (Sunset Highway). The area is approximately 21,446 acres. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. The community of Helvetia is located in this reserve. Exhibit B to Ordinance 11-1255 at 103.

The Boboskys contend that both the initial submittal and re-designation submittal fail to establish that the Bobosky property or the residential subdivision within which it is located meets the standards for designation as rural reserve. However, as discussed above, none of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions. The statutory and rule requirements regarding the inquiry and evaluation of what lands to designate as rural reserves does not contemplate a property-specific analysis. Rather, by their terms, the designation of rural reserves is intended to be based on an area-wide evaluation. OAR 660-027-0060 does not require the county to address every parcel or even every group of parcels. The rural reserves factors are not approval criteria and are not determinative in that regard.

Washington County and Metro determined that this area could be designated as either a rural or urban reserve. Exhibit B to Ordinance 11-1255 at 60-61. As discussed herein, the statute and rules do not require that Metro and the county evaluate and provide a factual base for every individual parcel or small group of parcels in their joint submittal. The designation of urban and rural reserves is not intended to be a site-specific, parcel-by-parcel determination. Further, under OAR chapter 660, division 27, an argument that an area is better suited for one

designation than another is not a basis for remand so long as the decision-maker considered the required factors and the overall region-wide decision meets the objective set forth at OAR 660-027-0005(2).

The Boboskys also argue that the reserve area in which their property is located is arbitrary and overly large. Presumably, they argue that, if evaluated as part of a smaller area, their property would not have satisfied the rural reserve factors but would have satisfied the urban reserve factors. The Commission agrees that as a matter of fact, Rural Reserve Area 8F, at a size of 21,446 acres, is indeed a large study area. Might either a smaller or differently configured study area have altered the county's consideration of the factors under OAR 660-027-0060? Perhaps. However, under OAR 660-027-0080(4), the Commission is tasked with reviewing what Metro and the counties submit. The Boboskys have not established that as a matter of law, either the goals or division 27, prohibit the county from employing such a large study area when identifying and selecting lands for designation as rural reserves. As such, the Commission concludes the objection does not provide a basis for the Commission to sustain it, and must be rejected.

The objection maintains that the re-designation submittal is in error by using the Foundation Agricultural Land map as an evaluation mechanism for rural reserves. The objection states several reasons the county cannot rely on the ODA map. The objection states:

“The Original Decision expressly stated it did not rely on the ODA's map of so-called 'Foundation Agricultural Lands' for designation of Washington County rural reserves and the challenged decision continues that determination. Supp Metro Rec 91. However, it seems that the idea of 'Foundation Agricultural Land' when convenient to do so, was used to justify rural reserves anyway. Thus, to the extent the ODA map that shows the Bobosky property or its Bendemeer subdivision as 'Foundation Agricultural Land' plays any role in the rural reserve designation of the Bobosky property, as could be inferred from the above quoted Area 8F findings, then it is error to rely on such map to that end as a matter of law.” Bobosky, June 1, 2011 at 22.

The record shows that Washington County did not rely on ODA's classification scheme of agricultural land in its designation of the Bobosky's property. While it may seem otherwise to the Boboskys, they cite no examples to support the inference they draw, and the evidence in the record does not support a conclusion that the county relied the study area, including their property, being Foundation Agricultural Land. Further, the Commission does not understand that assertion that reliance on identification as Foundation Agricultural Lands would be error as a matter of law. OAR 660-027-0060(4) expressly allows a county to deem Foundation Agricultural Lands that are within three miles of a UGB to qualify as rural reserves.

The Boboskys also object that “[t]he challenged decision inconsistently applies the urban and rural reserves statute and administrative rule factors in an irrational and improper manner leading to an unlawful result.” Bobosky, June 1, 2011 at 46. To establish internal inconsistency, the objection catalogues many portions of the Metro Urban and Rural Reserve Submittal in which areas with either shared or distinct characteristics as the Bobosky property were considered differently or similarly when Metro and Washington County applied the urban and

rural reserve factors respectively. The Commission does not disagree that the Bobosky property, considered in isolation, could have been either left undesignated or designated an urban reserve and either action could have been consistent with the applicable law. That, however, is not the inquiry before the Commission. First, none of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require or contemplate a parcel-specific analysis. Moreover, under OAR 660-027-0080(4), the Commission must review the decision that was submitted, not what could have been submitted; and it is not the Commission's role to substitute its judgment for that of Metro and the county. In large part, the inconsistencies identified by the Boboskys are inherent in the nature of the urban and rural reserves process. Metro and the counties are tasked with considering specified factors when designating areas as reserves. The factors are considerations; they are not criteria that must individually be met. Ultimately the reserves are on balance to achieve a prescribed purpose. Thus, in considering factors and achieving the prescribed balance, it is not outside the law for two areas with many similar characteristics to not come out with the same designation as urban reserve, rural reserve, or undesignated areas.

The Boboskys have not established either that Washington County could not have determined that their property, as a part of Area 8F and as a matter of law, upon consideration of the factors for designation as a rural reserve could be designated rural reserve; or that, as a matter of law, Area 8F upon consideration of the urban reserve factors could only be designated urban reserve. This objection provides no basis for remand under OAR 660-027-0080(4).

Finally, the Boboskys object that the reserves decision of their property is a collateral attack on the exception they were granted to compliance with Goal 3. The Boboskys argue that since Washington County justified an exception to Goal 3 for their property, the county already determined that the property does not contain farmland that is either suitable for or available for agriculture. According to the Boboskys, for the county to now designate it for rural reserves is essentially a collateral attack on Goal 3. However, as discussed above, the reserves decision does not affect the previously granted Goal 2 exception to compliance with Goal 3. Nor is the designation of rural reserves limited to protection of parcels of agricultural land. Under OAR 660-027-0060, a rural reserve may be designated for one or any combination of three protective purposes; to "provide protection to the agricultural industry or forest industry, or both" and "to protect important natural landscape features." OAR 660-027-0060(2) and (3). The findings address all three. Exhibit B to Ordinance 11-1255 at 103-105. The Commission rejects this objection.

**k. Portion of Area 8F (6955 and 7235 NW 185<sup>th</sup> Avenue)**

Tim O'Callaghan objects to Washington County's designation of property located at 6955 and 7235 NW 185th Avenue (part of Area 8F) as rural reserves under OAR 660-027-0060, on the basis the properties better meet the urban reserve factors and do not meet the rural reserve factors. O'Callaghan, July 14, 2010 at 1.

Area Description. The O'Callaghan properties are located along Rock Creek and adjacent to urban reserve Area 8C (Bethany West) and within rural reserve Area 8F. The two

parcels total approximately 58.34 acres and are bordered on the east by the existing urban growth boundary and NW 185th Ave. Exhibit B to Ordinance 11-1255 at 59.

Rural reserve area 8F is bordered on the south by Highway 26 (Sunset Highway). The area is approximately 21,446 acres. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. The community of Helvetia is located in this reserve. Exhibit B to Ordinance 11-1255 at 103.

Mr. O’Callaghan objects both that the evidence in the record supports designating the property as an “urban reserve” and conversely does not support the current designation as “rural reserve;” and that Metro and the counties misconstrued the applicable law and made a decision not supported by substantial evidence in designating the property as a “rural reserve.” O’Callaghan, July 14, 2010 at 8, 12.

Mr. O’Callaghan’s objection includes reasons, based on each of the urban reserve factors in OAR 660-027-0050, that the subject property “satisfies” the factors for urban reserve designation. The objection draws a comparison with a nearby property that Metro designated urban reserve, and asserts there is no reasonable basis to treat them differently. He also asserts there is no substantial evidence supporting the decision to designate the property as a rural reserve, that the decision was made too early in the reserves process for meaningful input, and that preliminary decisions became *de facto* final decisions before the county’s final action.

As discussed herein, the factors in OAR 660-027-0060 are not criteria with which the counties must show compliance, but are rather “factors” to be considered and weighed in making the decision. In explaining their decisions, the jurisdictions must demonstrate that they took the factors into account. The findings show that Washington County and Metro considered the factors related to both the rural reserve factors for both agriculture and natural landscape features and relied on substantial evidence to support the rural reserve designation of Area 8F, including the O’Callaghan properties. Exhibit B to Ordinance 11-1255 at 59 and 103-105; Washington Co. Record at 8592, 9639.

Washington County followed the applicable law in making this decision. Mr. O’Callaghan contends Washington County was under pressure to maintain the reserves designations as they existed at the time they signed the intergovernmental agreement with Metro under OAR 660-027-0020. However, the record shows that the county made adjustments after the agreement with Metro. Washington Co. Record at 9643.

The Commission finds that the rural reserves designation was based on substantial evidence in the record and that the decision complies with applicable law, and for those reasons denies the objections.

## **I. Portion of Area 6E (Rosedale Road)**

1000 Friends, Save Helvetia and ODA object to the removal of the rural reserve designation from the Rosedale Road Area, a 383-acre area located northwest of the intersection of SW 209<sup>th</sup> and SW Farmington Road. The re-designation submittal leaves that area undesignated. Specifically, both ODA and 1000 Friends argue that the Rosedale Road area is Foundation Agricultural Land and satisfies all the requirements for designation as a rural reserve. ODA specifically states:

“The ‘new’ undesignated area would in effect extend the potential for urbanization along the entire length of the urban growth boundary from southern Hillsboro to Kings City. It would also extend the potential for urbanization much farther south than ODA found to be conducive to long-term viable agricultural operation in the area.

“\* \* \* \* \*

“The shape of the proposed undesignated block of land is also of concern. It does not simply parallel the existing urban growth boundary. Instead, it protrudes out into the larger block of agricultural land creating multiple edges with no buffers to the adjacent agricultural lands.” ODA, June 2, 2011 at 7.

Although neither the statute nor the rules require an evaluation and findings for properties not designated urban or rural reserves, Exhibit B to Ordinance No. 11-1255 at 173-174 and the Washington County supplemental record at 12726 explain why Washington County removed the rural reserve designation from the area. That ODA, 1000 Friends and Save Helvetia believe that this property *should* have been designated does not establish that either Metro or the county erred by leaving it undesignated. The Commission rejects this objection.

## **m. Other Site-Specific Objections**

The department received objections to a variety of urban and rural reserve designations across the region. The list below depicts the objector, the subject reserve area number and the proposed remedy.

<u>Name</u>	<u>Reserve Area</u>	<u>Proposed Remedy</u>
Culter	4A–G	Change from urban reserve to undesignated
Audubon Society	6A	Change from urban to rural reserve
Tualatin Riverkeepers	6B	Change from urban to rural reserve
D. Smith	4J	Change from rural to urban reserve
Calcagno	2B	Change from rural reserve to undesignated
Irvine	7C	Remand urban reserve designation
Cherry	9A	Change from rural to urban reserve
Baker	9D	Change from rural to urban reserve
McKenna	3E or 3H	Change from undesignated to rural reserve
Szambelan	4I	Change from rural reserve to undesignated

In each case, the objector asserts the county or Metro, or both, made the wrong decision regarding designation (or non-designation) of a parcel or area. The allegations were that application of the factors in OAR chapter 660, division 27 supported a different conclusion, or that the final decision was not supported by the objector's understanding of the factors.

As discussed above, the designation of urban and rural reserves is not intended to be a site-specific, parcel-by-parcel determination. Moreover, as was the case in many instances, in evaluating the factors, Metro and the counties could find that individual areas could be designated as either urban or rural reserve. The statutory process provides the jurisdictions the discretion as to whether or how to designate areas, provided they have fully evaluated the factors. Each of the counties and Metro has made findings with an adequate factual base, based upon substantial evidence in the record explaining how they considered the urban or rural factors with regard to the areas including these properties. Exhibit B to Ordinance No. 11-1255. The issue is whether Metro and the counties considered the urban and rural reserve factors in deciding to designate particular areas, explained why the areas should be urban or rural reserves using the factors listed in the statute and rules, and whether there is evidence in the record as a whole that a reasonable person could rely upon to decide as Metro and the counties did. With regard to each of these remaining individual parcels or areas, the Commission finds that Metro and the counties appropriately considered the factors and made adequate findings based on substantial evidence for each of the areas subject to the objections listed above.

## V. ORDER

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

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

THEREFORE, IT IS ORDERED THAT:

1. The designation of Rural Reserves by Multnomah County Ordinance No. 2010-1161 is approved.
2. The designation of Rural Reserves by Clackamas County Ordinance No. ZDO-233 is approved.
3. The designation of Rural Reserves by Washington County Ordinance No. 740 is approved.
4. The designation of Urban Reserves by Metro Ordinance No. 11-1255 is approved.
5. The Regional Framework Plan amendments (Exhibit B) and Urban Growth Management Framework Plan Title 5 repeal (Exhibit C) and Title 11 amendment (Exhibit D) by Metro Ordinance No. 10-1238A are approved.

DATED THIS 14<sup>th</sup> DAY OF August, 2012.

FOR THE COMMISSION:

  
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Jim Rue, Acting Director  
Oregon Department of Land  
Conservation and Development

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

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