

1 substitute its judgment for that of Metro and the counties. Citizens Against
2 Irresponsible Growth v. Metro, 179 Or App 12, 16 n. 6, 38 P3d 956 (2002);
3 Naumes Properties, LLC v. City of Central Point, 46 Or LUBA 304, 314 (2004).
4 In a recent decision on the City of Bend's proposed urban growth boundary, the
5 Commission decided that where local findings are inadequate, the Commission
6 nonetheless may affirm the local decision if the local government identifies
7 evidence in the record that 'clearly supports' its decision. This is analogous to the
8 express statutory authority for the Land Use Board of Appeals to affirm local land
9 use decisions in these circumstances (the Commission indicated that it was
10 adopting the same approach). LUBA has narrowly interpreted the term 'clearly
11 supports' in ORS 197.835(11)(b) to mean 'makes obvious' or 'makes inevitable.'
12 Marcott Holdings, Inc. v. City of Tigard, 30 Or LUBA 101, 122 (1995).
13 ORS 197.835(11)(b) authorizes LUBA to remedy minor oversights and
14 imperfections in local government land use decisions, but does not allow LUBA
15 to assume the responsibilities assigned to local governments, such as the weighing
16 of evidence. Salo v. City of Oregon City, 36 Or LUBA 415, 429 (1999)." LCDC
17 Compliance Acknowledgment Order 12-ACK-001819 at 20.

18 LCDC's determination relied on a prior decision involving the City of Bend urban
19 growth boundary where it incorporated the LUBA "clearly supports" standard. An urban growth
20 boundary decision involves the application of the Goal 14 Factors. The Court of Appeals
21 concluded that the Reserve Factors are applied in the same manner as the Goal 14 Factors.
22 Barkers Five, LLC v. LCDC, 261 Or App 259, 295-301, ___ P3d ___ (2014) ("Barkers Five").
23 That the Reserve Factors are factors rather criteria is a distinction without a difference.

24 Indeed, where the underlying standards are more subjective and thus require the
25 exercise of considerable judgment by the local government, LUBA has concluded that it is *less*
26 likely that the evidence will "clearly support" a decision. Wagh v. Coos County, 26 Or LUBA
300, 308 (1993); Bright v. City of Yachats, 16 Or LUBA 161, 171 (1987). This is because the
31 reviewing body risks intruding on a decision that should be made at the local government level.
32 Id. That should be of particular concern in this case: Metro and the Counties have to make the
33 determination under the Reserve Factors "concurrently and in coordination" with one another,
34 and if Metro and the Counties properly consider and apply the factors, the decision whether to
35 designate particular land as urban reserves or rural reserves or leave it undesignated is up to
36 them. OAR 660-027-040(10); Barkers Five, 261 Or App 308 to 311. In its opening brief,

1 Clackamas County concludes that the record does *not* clearly support designation of Stafford as
2 urban reserve and that remand is *required*. This is a direct conflict between the decision makers
3 that can—and should—only be resolved by those decision makers on remand.

4 For these reasons, Metro misconstrues and thus misapplies the "clearly supports"
5 analysis under HB 4078. The decision is discretionary and there is substantial conflicting
6 evidence in the record. The evidence does not "clearly support" Metro and the Counties'
7 decision.

8 **B. Metro's Analysis of the Stafford Designation Misconstrues the Applicable Law and**
9 **the Court of Appeals' Decision in Barkers Five.**

10 1. The Court of Appeals' Decision. In order to address Metro's characterization of
11 the Court of Appeals' decision with regard to Stafford, it is necessary to briefly describe the roles
12 and responsibilities of each of the parties in the decision-making process.

13 a. Metro and the Counties. As noted above, the Barkers Five court clarified
14 that Reserve Factors are to be applied in the same manner as Goal 14. The court stated:

15 ". . . 'consideration' of the factors requires that the local government (a) apply and
16 evaluate each factor, (b) weigh and balance the factors as a whole, and (c)
17 meaningfully explain why a designation as urban or rural reserves is appropriate.
18 As we succinctly explained in Ryland Homes, 'consideration' means that a local
19 government 'has an obligation to consider each of the [applicable] factors and to
20 articulate its thinking regarding the factor and the role that each factor played in
21 balancing all of the factors.'" Barkers Five, 261 Or App at 300 (citing 1000
Friends of Oregon v. Metro, 174 Or App 406, 416, 26 P3d 151 (2001) (Ryland
Homes)).

22 In Ryland Homes, the court further articulated the appropriate role of the
23 reviewing body:

24 "*** If the local government has not specifically articulated its findings
25 regarding a particular factor and explained how it balanced that factor in making a
26 decision regarding a change in a UGB, it is not properly within our scope of
review to make assumptions and draw inferences from other portions of the local
government's findings in order to surmise what the local government's decision
really was." 174 Or App at 411.

1 Pursuant to Goal 2, Metro and the Counties' determination of suitability under
2 each of the Reserve Factors must be supported by an "adequate factual base," which has been
3 interpreted to impose a "supported by substantial evidence" requirement similar to that of
4 ORS 197.835(9)(a)(C). 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 377,
5 aff'd 130 Or App 406 (1994). "Substantial" evidence is evidence a reasonable person would rely
6 on in reaching a decision considering the evidence in the whole. City of Portland v. Bureau of
7 Labor and Ind., 298 Or 104, 119, 690 P2d 475 (1984). In order to determine whether evidence is
8 "substantial" it must be considered in the context of conflicting evidence in the whole record.
9 Younger v. City of Portland, 305 Or 346, 360, 752 P2d 262 (1988). When conflicting evidence
10 is submitted into the record, the failure of the decision maker to address that conflicting evidence
11 and explain why it found the evidence relied upon more persuasive is a failure to demonstrate
12 that substantial evidence supports its decision. Younger, id.; Gould v. Deschutes County, 59 Or
13 LUBA 435, 457-58 (2009).

14 b. LCDC. On review, LCDC must determine whether Metro and the
15 Counties' decision complies with the applicable law and "whether there is substantial evidence in
16 the record as a whole to support the local government's decision." ORS 197.633(3)(a).

17 c. The Court of Appeals. On review of LCDC's decision, the Court of
18 Appeals determines whether LCDC understood and applied the substantial evidence test
19 correctly. Barkers Five, 261 Or App at 348. Where LCDC properly articulates the standard, the
20 court will affirm the decision "unless the evidence is so at odds with the LCDC's evaluation that
21 the court can infer that LCDC misunderstood or misapplied the proper standard." Id.

22 d. The Barkers Five Decision. The court noted that Metro essentially
23 adopted the Metro/Counties' finding with regard to transportation infrastructure without further
24 explanation. Barkers Five, 261 Or App at 361. The court further noted that Metro and the
25 Counties did not take issue with the correctness of the evidence to which the Cities pointed—that
26 the Regional Transportation Plan (RTP) indicates that by 2035, almost all of the transportation

1 infrastructure will be failing. Id. Rather, Metro and the Counties concluded that this evidence
2 was immaterial because the RTP planning period is 25 years and the urban reserve planning is 50
3 years, and that the transportation system will change and presumably improve. Barkers Five,
4 261 Or App at 362. The court concluded that this reasoning was "impermissibly speculative."
5 Id. The court concluded that Metro's adoption of this inadequate finding indicated that it
6 misapplied the substantial evidence test.

7 Because the court concluded that remand was required, it did not address the
8 Cities' other subassignments in their second assignment of error. Barkers Five, 261 Or App at
9 362-63. The Cities' other subassignments made similar arguments regarding LCDC's adoption
10 of Metro/Counties' findings: That they failed to address conflicting evidence submitted by the
11 Cities, were speculative and conclusory, failed to weigh and balance the factors as a whole, and
12 failed to meaningfully explain why a designation of Stafford as urban reserves is appropriate.²

13 2. The Issue Before the Commission. The Cities agree with Metro that the error
14 committed by LCDC was the failure to correctly apply the substantial evidence test. The Cities
15 disagree that the Court of Appeals did not conclude that *Metro's* decision was not supported by
16 substantial evidence. That is exactly what the court did. LCDC adopted Metro's finding without
17 further analysis and the court concluded that Metro's finding was so inadequate that it was proof
18 that LCDC misapplied the test.

19 As noted above, it is Metro's and the Counties' obligation in the first instance to
20 weigh the evidence, balance the factors, and adequately articulate their collective decision. They
21 failed to do so. Had LCDC correctly applied the substantial evidence test, it would have
22 remanded Metro's decision.

23 Metro also erroneously conflates the decision when it states that the issue before
24 LCDC is whether there is "sufficient evidence responsive to the Cities' argument about the 2035

25 _____

26 ² The Cities incorporated their arguments in their second assignment of error by reference in their opening brief. The Cities attached them here for LCDC's convenience. App 1-22.

1 RTP to support a finding by LCDC that Metro's decision to designate Stafford as urban reserve is
2 clearly supported by the evidence in the record." The defective finding involved the suitability
3 of Stafford for urbanization under Reserve Factors 1 and 3, as related to transportation
4 infrastructure. In order to make a finding that the record "clearly supports" designation of
5 Stafford as urban reserve, LCDC has to additionally address and resolve all of the Cities' other
6 assignments of error because those arguments were not decided by the Court of Appeals in
7 Barkers Five, and because the Reserves Rule requires the factors to be weighed and balanced as
8 a whole in order reach a conclusion about the designation.³

9 LCDC's scope of review of Metro's decision on remand is the same as it is on
10 initial review: Is Metro's decision supported by substantial evidence? For the reasons explained
11 by the Court of Appeals, Metro's decision is not. So, the question is whether the evidence in the
12 record nonetheless "clearly supports" the decision that Metro made. If it does not, then LCDC
13 must remand the decision to Metro. As noted by the court in Ryland Homes, LCDC has no
14 authority as the reviewing body to adopt a new decision on Metro's behalf. This is what Metro is
15 asking LCDC to do.

16 3. Response to Metro's Arguments.

17 a. The "Clearly Supports" Analysis Does not Permit a "Right for the Wrong
18 Reasons" Determination. Metro's first argument is that the 2035 RTP is irrelevant to the analysis
19 required under the reserve factors and that amendments to the Metro Code will ensure that
20 adequate transportation infrastructure will be available if Stafford is designated.

21 The problem with this argument is that Metro is not pointing to evidence that
22 "clearly supports" the decision that it made, it is asking LCDC to adopt a different decision on its
23 behalf. As noted by the Court of Appeals, Metro's decision essentially conceded the argument
24 that transportation facilities would not be adequate to serve urbanization of Stafford for the RTP

25 ³ LCDC could presumably rely on its prior decision with regard to these arguments, but the problem is that Metro's
26 and LCDC's other findings suffer from the same defects that doomed the transportation finding. A remand to
address these defects would be far more expeditious and illuminating than another trip to the Court of Appeals.

1 period, but found that Stafford was nonetheless suitable for urbanization under the applicable
2 Reserve Factors because traffic will improve over the 50-year reserves planning period. It is this
3 latter finding that the Court of Appeals determined to be too speculative. In order to meet the
4 "clearly supports" standard, Metro would have to point to uncontested, non-speculative evidence
5 in the record that the transportation will be sufficient over the 50-year planning period.

6 Metro's argument asks LCDC to determine that it was right for the wrong reasons.
7 This is not within LCDC's scope of review under the "clearly supports" standard. West Coast
8 Media LLC v. City of Gladstone, 192 Or App 102, 109-10, 84 P3rd 213 (2004)
9 (ORS 197.835(11)(b) only applies to defective findings; it doesn't permit a reviewing body to
10 determine that a local government was "right for the wrong reasons.").

11 The Cities note that under Statewide Planning Goal 2 the factual findings
12 underpinning a decision become part of the regional plan. If Metro wants to amend those
13 findings, it must do so on remand.

14 b. The 2014 RTP is not in the Record and does not "clearly support" Metro's
15 decision. Metro's second argument is that the 2014 RTP, adopted on July 17 of this year,
16 "refutes" the Cities' arguments regarding the 2035 RTP.

17 At the threshold, this is also a "right for the wrong reasons" argument and is
18 therefore not within LCDC's scope of review.

19 This argument also fails because the 2014 RTP is not "in the record," as required
20 by HB 4078 § 9. Metro argues that LCDC can take official notice of the 2014 RTP under
21 OAR 660-025-0085(h)(F). Metro ignores the context of the rule. OAR 660-025-0085 governs
22 LCDC hearings on local government submittal of a work plan or work tasks (attached at
23 App. 23-24). OAR 660-025-0085(h)(F) allows LCDC to take official notice of laws in effect at
24 the time of the hearing and original decision. The 2014 RTP was obviously not in effect at the
25 time of Metro's or LCDC's decision and could not have been considered at the time. If Metro
26 were to make a new finding based upon the 2014 RTP, LCDC must remand the decision to

1 Metro to reopen the record and consider the new RTP in the context of other evidence and law
2 that has developed over the past four years.⁴

3 Even if LCDC could consider the 2014 RTP, the Cities disagree that the 2014
4 RTP refutes the City's arguments or otherwise constitutes evidence that "clearly supports"
5 Metro's decision. If one compares the 2035 Mobility Maps with their 2014 analogs, they are
6 actually substantially similar. (2035 Mobility Maps attached at App. 25-27; 2014 Mobility Maps
7 attached at App. 28-31.) Most of the same stretches of Stafford and Borland Roads and Highway
8 43 are shown as not meeting the mobility policy under the "no build" and the "Federal Priorities"
9 alternatives on both the 2035 and 2014 maps. The only map that shows some improvement is
10 the 2040 "Investment Strategy," but that still shows that large stretches of Stafford and Rosemont
11 Roads and Highway 43 will not meet the mobility policy. (Compare App. 27 with App. 30.). As
12 Metro notes, the Investment Strategy is not based upon projected available funding, but is what
13 the region will do if it can find the money from other sources. So, it is least relevant to the
14 question of whether Stafford "can be developed as urban densities in a way that makes efficient
15 use of existing and future public infrastructure investments" (Reserve Factor 1) or "can be served
16 by . . . urban-level public facilities and services efficiently and cost effectively by appropriate
17 and financially capable service providers" (Reserve Factor 3). Further, even if the Investment
18 Strategy is fully implemented, it demonstrates that traffic congestion will still be significantly
19 worse as compared with the 2010 base-year map (App. 28). At the very least, the effect of the
20 changes made in the 2014 RTP are debatable and thus not evidence that "clearly supports"
21 Metro's decision under HB 4078 pursuant to the authorities cited above and in the Cities' opening
22 brief.⁵

23 _____
24 ⁴ As Clackamas County points out, there could be many other changes in circumstances one way or the other. For
25 example, the voters of Clackamas County, Tualatin, and Tigard have all voted to require that any expenditure of
26 funds on planning or constructing light rail must first be referred to the voters.

⁵ The Cities also note that their argument regarding the adequacy of transportation infrastructure was also based
upon the Tualatin/Ch2M Hill study and on several ODOT analyses, none of which Metro addressed in its findings.
See Cities' second assignment of error.

1 Metro alternatively argues that neither RTP is relevant to a determination of
2 whether Stafford is suitable for designation under Reserve Factors 1 and 3 because they consist
3 of a snapshot in time that will change every four years. This is akin to Metro's speculative
4 argument that "things will get better" in 50 years. This whole exercise is based upon projections
5 regarding population growth and land needs that are certain to change many times over the next
6 50 years. The Metro RTP serves as both the required federal transportation policy and as Metro's
7 Transportation System Plan under Goal 12. It is based upon projected transportation needs over
8 the planning period and its project list is based upon projected available funding. It is manifestly
9 relevant to the considerations under Reserve Factors 1 and 3.

10 c. Other Issues Regarding Stafford Addressed by Metro. In Section III(E) of
11 its Opening Brief, Metro makes several arguments regarding the City's Stafford arguments not
12 reached by the Court of Appeals. The Cities have previously addressed these issues, with one
13 exception. On page 16 of its brief, Metro cites to its finding regarding provision of water and
14 sewer service under Factors 1 and 3. Metro acknowledges that its finding failed to address
15 conflicting evidence submitted by the Cities,⁶ but argues that as long as Metro can point to
16 evidence upon which "a reasonable person" would rely, Barkers Five would not require remand.
17 The problem with this argument is that Metro's findings must address conflicting evidence and
18 meaningfully explain its choices or it fails to demonstrate that the decision is supported by
19 substantial evidence. The appropriate response by LCDC to a finding that is not supported by
20 substantial evidence is remand; if it simply adopts it without further explanation, it misapplies
21 the test.

22 ///

23 ///

24

25 ⁶ Most notably, the CH2M Hill study is at least as weighty as the RTP because it specifically addresses the
26 substantial constraints and costs of developing Stafford with regard to transportation, water, sewer, and surface
water.

1 **C. Application of the "Best Achieves" Standard.**

2 Metro argues that HB 4078 overrides the requirement that it reconsider the "Best
3 Achieves" standard in OAR 660-027-0005(2) in light of the changes made by that bill to the
4 reserves designated in Washington County. This argument is not supported by the text of
5 HB 4078, which did not address reserves other than in Washington County. As HB 4078
6 manifestly demonstrates, "the legislature knows how to include qualifying language in a statute
7 when it wants to do so." See PGE v. Bureau of Labor and Industries, 317 Or 606, 614, 859 P2d
8 1143 (1993). Metro is attempting to insert a preemption into HB 4078 that is not there. See
9 ORS 174.010. The Cities agree with and incorporate Clackamas County's analysis on this issue
10 in its opening brief.

11 **D. Scope of Review on Remand.**

12 Metro argues that LCDC should limit the scope of review on remand based upon
13 the doctrine of law of the case, citing Beck v. the City of Tillamook, 313 Or 148, 153 (1992).
14 Metro's and the Counties' designation of urban and rural reserves was a legislative decision. The
15 "law of the case" doctrine does not apply to legislative decisions. Hatley v. Umatilla County,
16 256 Or App 91, 106 to 112, 301 P2d 920 (2013). The parties (and any other interested person)
17 should be free to raise any relevant issues on remand.

18 **IV. CONCLUSION**

19 For these reasons, the Metro Decision should be remanded to Metro and the
20 Counties for further consideration.

21 DATED this 9th day of October, 2014.

22 MILLER NASH LLP

23
24 Jeffrey G. Condit, P.C.
25 OSB No. 822238
26

APPENDIX

context for subsequent related enactments. If the legislature had intended LCDC's scope of review to be the same as LUBA's, it could easily have included an analogue to ORS 197.835(11)(b) in ORS 197.633. LCDC's appropriation of this authority attempts to "insert what has been omitted" in ORS 197.633 in violation of the cardinal rule of statutory construction. See ORS 174.010.

Because LCDC misconstrued and misapplied its legal and evidentiary scope of review, the Order is fatally flawed and must be remanded for correct application of the law.

SECOND ASSIGNMENT OF ERROR

LCDC's misinterpretation and misapplication of its legal and evidentiary scope of review resulted in misapplication of the Factors and other applicable law to Stafford.

A. Preservation of Error

The Cities objected to LCDC's interpretation of its scope of review and application of the substantial-evidence test under the statute and rule in their October 7, 2010, Exceptions to the Department's September 28, 2010, Report and in their August 8, 2011, Exceptions to the Department's July 28, 2011, Report.¹³ The Cities detailed the evidence and arguments that they submitted during the Clackamas County and Metro proceedings leading up to the Metro Decision, and Metro's failure to adequately adequate or lawfully address these arguments in their July 14, 2010, Objections to Adoption of Urban and Rural Reserves.¹⁴

¹³ R-5(H)-85, R-18(I)-218.

¹⁴ R-21(RR)-913.

B. Standard of Review

This Court reviews an LCDC order made under ORS 195.137 to 195.145 to determine whether the order is "unlawful in substance or procedure," unconstitutional, or "not supported by substantial evidence as to facts found by the commission." ORS 197.651(10).

ARGUMENT

- 1. LCDC's Order approving Metro's designation of Stafford as urban reserves does not demonstrate compliance with Factors 1 and 3, Goal 2 or Goal 12, or the Goal 12 Transportation Planning Rule ("TPR") with regard to transportation and misapplies the substantial-evidence test.**

When considering lands for designation as urban reserves, OAR 660-027-0050 requires an analysis of whether such land "can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments" (Factor 1), and "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." (Factor 3.)

The Cities' Evidence and Testimony Before Metro and Clackamas County: On April 21, 2010, the City of West Linn submitted into the record an analysis of these factors with regard to transportation facilities in Stafford.¹⁵ This analysis was based on Metro's Final Draft 2035 Regional Transportation Plan ("RTP"), prepared by Metro under State Land Use Planning Goal 12 and the federal RTP process. The 2035 RTP was adopted by the Metro Council on June 10, 2010, approved by the U.S. Department of Transportation on September 20, 2010, and acknowledged by LCDC on November 24, 2010. It is

¹⁵ R-21(RR)-936 to 942.

now the applicable transportation system plan ("TSP") for the metropolitan region under OAR Chapter 660, Division 12 (the "Transportation Planning Rule"). Regional transportation decisions must now be made in coordination with that plan. OAR 660-012-0016.

The Cities' testimony noted that even under the rosiest of financial assumptions,¹⁶ the RTP indicates that almost all of the transportation system¹⁷ that would provide access to Stafford will be failing by 2035.¹⁸ In other words, the RTP demonstrates that urban development of Stafford will not be served at all, let alone adequately or efficiently, by existing or projected transportation investments, as required by Factor 1. It also demonstrates that urban development of Stafford cannot be efficiently and cost-effectively served by transportation infrastructure, as required by Factor 3—in fact, it demonstrates that there is no money now or in the foreseeable future to fix the problems.

The Cities submitted that designation of Stafford does not meet Factors 1 and 3.¹⁹

¹⁶ The funding assumptions include \$13.6 billion in likely available funding from all existing transportation funding sources, and an additional \$7 billion to be raised through enactment of/significant increase in state and regional registration fees, the Tri-Met payroll tax, increase in system development charges, and adoption of a street utility fee by all Metro jurisdictions. R-21(RR)-937.

¹⁷ Including Stafford Road, Borland Road, Highway 43, and parts of I-205. See discussion at R-21(RR)-936 to 937, RTP Maps at 939-941.

¹⁸ The RTP assumes that Stafford will be developed at urban densities. R-21(RR)-936 to 937.

¹⁹ R-21(RR)-938. The City of Tualatin submitted an engineering analysis during the county and Metro proceeding that demonstrated a similar lack of transportation infrastructure and high cost. R-22(RR)-958 to 982.

Metro's Findings:²⁰ Metro's sole transportation findings relating to Stafford Basin are as follows:

"The cities of Tualatin and West Linn argue that the area should not be designated as an Urban Reserve, citing the cost of providing transportation infrastructure. It is true that transportation infrastructure will be the most significant challenge. This is the case for most of the region. ODOT noted that most area state highway transportation corridors have either low or medium potential to accommodate growth. (Clackamas County Record 800 – 801). An April 6, 2009 letter from six state agencies to the Metro Reserves Steering Committee notes that most transportation corridors have severe transportation issues. (Clackamas County Record 843). Moreover, we make this decision after consideration of regional consideration of relative transportation costs. See, Regional Infrastructure Analysis 2008, Metro Record, starting on page 440; Memo and Maps regarding Preliminary Analysis of Providing Urban Level Transportation Service within Reserves Study Area, Metro Record, starting on page 1181; ODOT Urban Reserve Study Area Analysis, Metro Record, page 1262."

"This Urban Reserve has physical characteristics—steep terrain, the need to provide stream crossings—that will increase the relative cost of transportation infrastructure. I-205 and I-5 in this area will need substantial improvements with consequent 'huge' costs. Clack. Co. Rec. 850. However, considering those costs, and in light of reserves designations elsewhere in the region, urban reserves designation of Stafford is still appropriate. Most other comparable areas are either urban or rural reserves, and don't provide viable alternatives to Stafford.

"Cities 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

²⁰ Given the length of the JER, the Cities attach a copy of the Metro findings relating to Stafford at App-2 to -11. R-10, 11 to 20.

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 Record 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 a next phase regional priority. (See Clackamas County Record 734; 822-833)." App-6-7.

Metro's sole finding under these factors relating to the Norwood area is as follows:

"The steeper terrain and location of the Norwood area²¹ will make development of a network of streets more difficult, and ODOT has identified the I-5 and I-205 network as having little or no additional capacity, with improvement costs rated as 'huge.' The decision to include this area as Urban Reserve is based, like the Stafford area, on the need to avoid adding additional Foundation Agricultural Land. There are other areas in the region that would be less expensive to serve with public facilities, especially necessary transportation facilities, but these areas are comprised of Foundation Farm Land." App-19.

LCDC's Decision:²² The Cities argued that the designation of Stafford as urban reserves violated Goal 12 and the TPR. OAR 660-012-0060(1)(c)(B) requires compliance with the TPR if an amendment to a functional plan or acknowledged comprehensive plan would "[d]egrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan." This is

²¹ The findings differentiate the Norwood area from the three other Stafford urban reserves.

²² LCDC's findings with regard to Stafford are attached at App 12-21.

"based on projected conditions measured at the end of the planning period identified in the adopted TSP." The Metro RTP clearly demonstrates that urbanization of Stafford will cause or contribute to a noncompliant system at the end of the planning period in 2035.²³

The Order concludes that the TPR does not apply to urban/rural reserve designation because the designation "does not authorize any new use or increase intensity of use." App-13 to 14. The Order cites no authority for this interpretation. By its terms, the TPR applies to any comprehensive plan or functional plan amendment. OAR 660-012-0060. The designation of urban and rural reserves by Metro and the counties is both a comprehensive plan and a functional plan amendment. ORS 195.143, JER-307 (amendments to Metro regional framework plan), JER-310 (Amendment to Urban Growth Functional Plan), JER-935 (Amendments to County Comprehensive Plan and Zoning Ordinance). Urban and rural reserve designations do not fall into either of the exceptions to subsection 1 in OAR 660-012-0060(9) or (10). The Order misconstrues and therefore misapplies applicable law.

The Cities also argued that the Metro Decision violated Goal 2, because Metro's conclusion that Stafford Basin and the Norwood area can be served by transportation facilities is inconsistent with the adopted RTP, which clearly indicates that they cannot be so served.²⁴ Metro's adopted planning documents must be consistent and must be the basis for all decisions and actions relating to the use of land. D.S. Parklane Development, Inc. v. Metro, 165 Or

²³ See TSP Maps at R-21(RR)-939 to 942.

²⁴ R-21(RR)-919 to 920.

App 1, 21-23, 994 P2d 1205 (2000) (remanding Metro decision based on land need estimate inconsistent with its adopted planning documents). The Order acknowledges that the Cities raised a Goal 2 objection but fails to address it. App-13 to 14. LCDC's failure to explain its reasoning for rejecting the Cities' Goal 2 argument means that the Order must be remanded because it does not provide an adequate basis for judicial review. See 1000 Friends of Oregon v. LCDC and City of Woodburn, 237 Or App 213, 224-26, 239 P3d 272 (2010) ("Woodburn") (remanding LCDC decision for failure to explain analysis and reasoning).

Finally, the Cities argued that Metro's findings were not supported by substantial evidence in the light of the RTP, were conclusory, and failed to explain in light of the evidence why Metro nonetheless concluded that urbanization of Stafford can be efficiently and cost-effectively served by affordable transportation facilities in accordance with Factors 1 and 3. ORS 197.651 requires LCDC's findings to be supported by substantial evidence in the whole record. If conflicting evidence has been submitted, a local finding cannot just point to evidence that supports its decision; it must explain why it found such evidence more persuasive than the conflicting evidence. See, e.g., Younger v. City of Portland, 305 Or 346, 752 P2d 262 (1988).

The order finds that "the Clackamas County record indicates that transportation considerations were weighed when the county and Metro compared candidate urban reserve areas," in accordance with Factors 1 and 3. App-14. As noted in the First Assignment of Error, the Cities disagree that LCDC has the authority to review the record for evidence that supports Metro's findings. Even if LCDC has this authority, the evidence cited by LCDC does not "clearly support"

Metro's decision. The document at Clack-704 to 792 is a July 8, 2009, Clackamas County staff comparison of the candidate urban reserve areas in Clackamas County under the Factors. It doesn't remotely address the subsequent evidence and argument subsequently submitted by the Cities, nor do LCDC or Metro explain why they find this analysis more persuasive than the Cities' evidence and argument. The document at Clack-800 to 801 is a table prepared by the Oregon Department of Transportation (ODOT) comparing the costs of urbanization on regional transportation facilities. This table actually supports the Cities' argument; it concluded that the relative cost for improvements to I-205 is "huge," one of only 3 out of the listed 21 regional facilities to earn this dubious distinction. Finally, Exhibit B to Ordinance No. 11-1255 at 30 is a citation of Metro's findings quoted above.²⁵

The Order cites Metro's finding above discounting the RTP because it is based on a 25-year time frame, while the urban reserve designation is based on a 20- to 50-year time frame. This finding notes that the transportation picture could change over the next 25 years and cites documents showing that the I-205 corridor is the "next phase" regional priority for a light-rail line.

There are several flaws with this finding. The first is that it is totally speculative. Things may very well change, but that does not overcome the fact that

²⁵ JER-451.

Metro's current adopted TSP shows a failed system and no funding to fix it for the next 25 years.²⁶

Second, although the finding correctly notes that the urban reserve designation is based on a 50-year land need estimate, the effect of the urban reserve designation is that Stafford will become first priority for a UGB expansion,²⁷ which is considered every five years. See ORS 197.298(1); ORS 197.299. So an urban reserve is actually designed to provide urbanizable land for the next 5 to 50 years.²⁸ The Cities pointed out this issue and suggested that LCDC could address it by imposing a condition that Metro may not consider Stafford for addition to the UGB until 2035 or until the RTP is amended to show that compliant transportation facilities can be provided to serve urban development in Stafford within the planning period.²⁹ The Order fails to respond to this argument at all.

In conclusion, Metro's findings fail to explain how it concluded that urbanization of Stafford was consistent with Factors 1 and 3. The Order fails to explain why LCDC found Metro's speculative and unsupported findings sufficient to support its decision, based on either an interpretation of the Factors or the

²⁶ The Cities also note that the "next phase" regional priorities for light rail include six projects, one of which is ranked higher and two of which are ranked within one to two points of an I-205 light rail that could serve Stafford. Clack-829.

²⁷ Most of Stafford is zoned "Exclusive Farm Use" and would thus be last priority for consideration absent an urban reserve designation. See ORS 197.298(1).

²⁸ And since Metro last amended the UGB in 2011, Stafford could be up for consideration as early as 2016. See Metro Ordinance 11-1264.

²⁹ R-18(I)-224 to 225.

evidence in the record. The Cities assume that LCDC was applying the very deferential "political decision" standard of review discussed in the First Assignment of Error.

As this Court said in Woodburn, "agencies * * * are required to demonstrate in their opinions the *reasoning* that leads the agency from the *facts* that it has found to the *conclusions* that it draws from those facts." 237 Or App at 225 (quoting Drew v. PSRB, 322 Or 491, 500, 909 P2d 1211 (1996)). For the reason stated above, and in the Cities' First Assignment of Error, the Order misapplies the applicable law and the substantial-evidence test and fails to provide an adequate basis for judicial review.

2. LCDC's Order approving Metro's designation of Stafford as urban reserves does not demonstrate compliance with Factors 1 and 3 or Goal 2, and misapplies the substantial-evidence test with regard to efficient and cost-effective provision of other public services.

The Cities' Evidence and Testimony Before Metro and Clackamas County: As noted in Metro's finding, a February 9, 2009, analysis prepared by Core 4³⁰ technical team (the "Core 4 Analysis")³¹ indicated that sewer and water service could be suitably provided to Stafford. The City of Tualatin hired the engineering firm CH2M Hill to conduct a more detailed analysis of costs and feasibility of extending all urban services to Stafford Basin and Norwood. On October 13, 2009, the City submitted testimony to the Reserve Steering Committee, including the CH2M Hill studies, along with a point-by-point response to the Core 4 Analysis contesting and refuting most of the conclusions based on the

³⁰ Metro and the three counties were referred to as "Core 4" during the process.

³¹ Metro-1163 to -1188.

CH2M Hill studies.³² Based on this evidence and testimony, the Cities argued that the evidence in the record did not support a conclusion that Stafford can be developed as envisioned in Factors 1 and 3.

Metro's Findings: Metro made the following findings regarding sewer and water:

"This Urban Reserve 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 over a 50 year horizon. As with all of the region's urban reserves, additional infrastructure will need to be developed in order to provide for urbanization. It is clear that development of new public infrastructure to accommodate 50 years of growth will not be 'cheap' anywhere. Relative to other areas under consideration for designation, however, this Urban Reserve area is suitable. Technical assessments rated this area as highly suitable for sewer and water. Clack. Co. Record 795-796; Metro Record 1163, 1168-1180. The July 8, 2009, technical memo prepared by Clackamas County also demonstrates the suitability of this area for various public facilities. Clack. Co. Record 704. This area can be served by the cities of Tualatin, West Linn and Lake Oswego. These cities have objected to the designation of this area as Urban Reserve, but have not stated that they object because they would not be able to be an urban service provider for some part of the area." App-6.

"Similarly, Metro's panel of sewer experts rated the entire Stafford area as having a 'high' suitability for sewer service. See e.g. Metro Record 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 desires of neighboring

³² R-21(RR)-964 to 984; full testimony, including the CH2M Hill analyses at Clack- 4578 to -4638.

cities to the [sic] serve the area influences the question of whether the area can be served." App-7.

"The Norwood area (Area 4D) is rated as having medium suitability." App-10.

LCDC's Decision: The Cities argued that Metro's findings were conclusory and failed to consider the Cities' evidence and explain why it found other evidence more probative.³³ The Cities also argued that Metro should have accorded the Cities' testimony greater weight under Goal 2, which requires Metro to coordinate its decisions with affected jurisdictions.³⁴

The Order spends most of its time on the latter argument, which was also made by the City of Wilsonville. App-16 to 17. Citing a number of authorities, LCDC concludes that a local disinterest in serving the area is not relevant to the question whether services can be provided. Id.

LCDC completely missed the gravamen of the Cities' argument: The Cities did not argue that LCDC should not designate Stafford because they have no desire to serve Stafford; the Cities argued that Metro (and LCDC) should have accorded the Cities' evidence regarding serviceability greater weight:

"The Cities' testimony in the record is extensive, detailed, and clearly demonstrates that none of the cities can cost-effectively provide services to the Stafford Area. The Cities have no reason to 'lie' about or exaggerate the costs and negative impacts on their communities. Indeed, there are literally millions of good reasons not to do so. Municipal services are primarily funded by property taxes. Because Measures 5 and 50 limit taxes and cap property values on existing development, new development is the primary method available to municipalities to significantly increase ongoing property tax revenues.

³³ R-21(RR)-920 to 922.

³⁴ Id.

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 would be chomping at the bit to urbanize the Stafford Area, as are many other cities in the region with regard to their adjacent territories. Indeed, the City of Tualatin supported the designation of Urban Reserve Areas 4E and 5F.³⁵

LCDC's decision ignores the basis for the Cities' opposition to servicing Stafford, which goes directly to the question of coordination under Goal 2.

LCDC's decision otherwise merely repeats Metro's conclusory findings regarding serviceability above without any explanation of why it finds Metro Decision to be consistent with the Factors or supported by substantial evidence. The only additional evidence cited by LCDC and Metro are a July 8, 2009, analysis prepared by Clackamas County³⁶ and attached maps.³⁷ As with the Core 4 Analysis, these documents were prepared before submittal of the Cities' much more extensive October 13, 2009, analysis, and thus do not address it.

As noted above, the substantial-evidence test requires an analysis of conflicting evidence and an explanation of why that evidence is rejected. The Metro finding states that it finds the Core 4 Analysis "more probative for comparison across areas than the analysis submitted by cities." The problem with

³⁵ Id.

³⁶ Clack-704.

³⁷ Clack-795 to 796.

this conclusion is that the Cities' much more detailed analysis refuted the Core 4 findings and undermined their credibility.³⁸

As with the Findings with regard to transportation, the Order impermissibly accepts conclusory findings without analyzing compliance with Factors 1 and 3, and findings that do not demonstrate compliance with the substantial-evidence test. LCDC thereby misapplied the test.

3. LCDC's Order approving Metro's designation of Stafford as urban reserves does not comply with Factors 2, 4, and 6.

OAR 660-027-0050 requires Metro to base its decision on whether a proposed urban reserve area includes sufficient development capacity to support a healthy economy (Factor 2), 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 (Factor 4), and includes sufficient land suitable for a range of needed housing types (Factor 6).

The Cities' Evidence and Testimony Before Metro and Clackamas County: The Cities' submitted evidence and testimony before Metro and Clackamas County indicated that environment constraints and existing parcelization patterns would make it very difficult to achieve the kind of walkable, connected land for a variety of housing types envisioned by the Factors.³⁹ The City noted that 33 percent of Stafford consists of parcels of five acres or less and 22 percent consists of parcels from five to ten acres. Only 41 percent of land is in

³⁸ Indeed, the Core 4 team memos specifically state that their analyses were "preliminary" and were based on "a broad landscape-scale lens." Metro-1163, 1168, 1181.

³⁹ R-21(RR)-920 to 922, parcelization and environment constraints maps at 1012-13.

parcels greater than ten acres, and many of these larger parcels are in public, private, or quasi-public ownership. The figures on the "Parcels" map don't include Borland Road, but the map shows a similar parcelization pattern for the Borland Road area. Two of the largest parcels in Borland are occupied by the Athey Creek Middle School and the Rolling Hills Community Church, two uses that are unlikely to redevelop. Finally, the Cities noted that the CH2M Hill analysis concludes that of the 640 gross developable acres in Borland, there are only 180 net developable acres.⁴⁰ The Cities finally noted that Norwood was heavily parcelized and environmentally constrained in the same manner.

With regard to natural features, the Cities submitted evidence that almost 70 percent of The Stafford and Rosemont areas is constrained by rivers, streams, and steep and significant habitat areas.⁴¹

Metro's Findings: Metro made the following findings in response to these factors:

"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. Clack. Co. 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. Clack. Co 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 [area] have committed

⁴⁰ Id.

⁴¹ Id.

their property to development as a 'town center community.' Clack. Co. Rec. 3357-3361. Another property owner completed an 'Urban Feasibility Study' showing the urban development potential of his 55-acre property. Clack. Co. Rec. 3123-3148. Those plans provide examples of the ability to create urban-level development in the Stafford areas." App-4.

"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." App-7.

"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." App.-5 to -6.

LCDC's Decision: The Cities argued that Metro's findings were conclusory and not supported by substantial evidence in the record.⁴² The Order quotes the above-noted findings, and concludes, without explaining why, that "the record shows" that the county considered topography, natural features, and parcelization of various candidate areas in evaluating the factors. App-18. But as the Woodburn case indicates, Metro and LCDC must do more; they must explain the reasoning that leads them from the facts that they have found to the conclusions that they draw from those facts. LCDC's decision fails to require this of Metro, and fails to do so itself.⁴³

⁴² R-21(RR)-920 to 922.

⁴³ In the event that LCDC is relying on Metro's record citations, they don't support the conclusory statements in the Findings. Clack-3312 to -3316 is the Stafford Hamlet Values Statement that expresses the desire of Stafford residents for low-density development that preserves the existing Stafford character, not the kind of development called for in Factors 2, 4, and 6. The document at Clack-371 to 388 is a PowerPoint presentation by Cogan Owens Cogan regarding the factors that make great communities. Contrary to Metro's finding, it does not address development in Borland at all. The document at 3357 to 3361 is April 16, 2009, testimony submitted by Borland property owners indicating that they are interested in exploring urbanization. If the Cities' current desires are irrelevant to developability, why are the property owners' desires probative? Clack-3123 to -3148 is an analysis by the owner of a 55-acre parcel directly adjacent to the current Lake Oswego city limits detailing how it could be urbanized. Metro fails to explain how the developability of a single 55-acre parcel constitutes any evidence, let alone substantial evidence, that the entire 4,700-acre Stafford can be so developed.

4. LCDC's Order approving Metro's designation of Stafford as urban reserves does not demonstrate compliance with Factors 5, 7, and 8.

OAR 660-027-0050 requires Metro to base its decision on whether a proposed urban reserve area can be designed to preserve and enhance natural and ecological systems (Factor 5), can be developed in such a way to preserve important landscape features (Factor 7), and can be designed to avoid or minimize adverse impacts on farm and forest practices and important natural landscape features.

The Cities' Argument Before Metro and Clackamas County: The Cities argued that the large amount of environmentally constrained land would make it difficult to comply with Factors 5 and 7 while at the same time producing the pedestrian- and transit-friendly mixed-use, mixed-housing type of development envisioned in Factors 2, 4, and 6.⁴⁴

Metro's Finding: Metro found:

"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

⁴⁴ R-21(RR)-926 to 927.

over 25%, and these often overlap with stream corridors. *Stafford Natural Features Map*, indexed at Metro Record 2284." App-6.

LCDC's Decision: LCDC's decision notes that there are concept planning requirements to protect natural features, and cites Metro's finding above as demonstrating that it considered such constraints. App-20.

The Cities concede that their constrained-lands map was based on the prior Metro Code requirement that all streams have a 200-foot buffer from top of bank.⁴⁵ This does not mean that the City's evidence is not reliable or probative. Metro Code Section 3.07.340(B)(a)(a) requires 50- to 200-foot buffers along all primary protected water features, still a substantial development constraint given the large number of streams and rivers that lace Stafford.⁴⁶

As the City pointed out,⁴⁷ although sloping land in Lake Oswego and West Linn has been developed for residential use, the maps show that similarly sloped areas within the cities are predominantly zoned for low-density R-10 and R-15 residential development.⁴⁸ This is high-end, large-lot, car-dependent development, not the pedestrian- and transit-friendly mixed-use, mixed-housing type of development called for by Factors 2, 4, and 6. The adjacent development

⁴⁵ See Map at R-21(RR)-1013

⁴⁶ The Stafford Hamlet Values Statement cited by Metro in support of its decision supports the Cities' analysis regarding constraints. It concludes that of the 3,930 acres in the Stafford and Rosemont areas, only 1,327 acres are unrestricted. Clack-3316. It concludes that of the 556 acres in the Borland area, only 192 are unrestricted. Id.

⁴⁷ R-21(RR)-925.

⁴⁸ The zoning designations are shown on the Parcel Map at R-21(RR)-1012.

in Lake Oswego and West Linn (not to mention the West Hills!) supports the Cities' argument that Stafford won't produce the development envisioned in Factors 2, 4, and 6.

Metro's findings do not demonstrate compliance with, or adequate consideration of, urban reserve Factors 5 and 7 as they relate to providing the type of development encouraged under Factors 2, 4, and 6. LCDC misconstrued the applicable law and the substantial-evidence test in concluding otherwise.

5. LCDC's Order approving Metro's designation of Stafford as urban reserves misapplies the Factors as a whole.

Both Metro's and LCDC's decisions essentially acknowledge the high cost of service and significant development constraints with regard to urbanization of Stafford under the individual Factors, but conclude that the Factors "as a whole" or "on balance" support inclusion of Stafford. The problem with this determination is that neither Metro nor LCDC explains how the factors on balance support the designation of Stafford, either in and of itself or as compared to other candidate areas. In response to each of the Cities' objections, LCDC has considered it sufficient if the record demonstrates that Metro considered the Factors. LCDC fails to require Metro to explain why it made the choices it did, how Metro balanced the Factors, why Metro designated Stafford as opposed to other candidate areas, or why Stafford should be designated at all under the Factors.

The only analysis in the findings regarding the relative suitability of Stafford in comparison to other areas under consideration for inclusion is the following statement:

"Designation of this 4,700 acre area as an Urban Reserve avoids designation of other areas containing Foundation or Important

Agricultural Land. It would be difficult to justify designation of Foundation Farm Land in the region, if this area, which is comprised entirely of Conflicted Agricultural Land, were not designated as Urban Reserve (see OAR 660-027-0040(11))." App-4.

The findings similarly state that the Norwood area must be included to avoid adding more Foundation Farm Land. App-10.

There are two problems with these findings. First, there is no analysis or support in the findings for the statements that not designating Stafford necessarily requires designation of more Foundation Farm Land. Indeed, the record refutes the finding. As the Urban & Rural Reserve Map shows, there is a significant amount of undesignated land adjacent to the UGB in addition to the urban and rural reserves. App-1. Metro and LCDC could have left Stafford undesignated given the acknowledged development constraints.

Secondly, Metro could have selected the shorter 40-year planning horizon allowable under the statute and rule and reduced the target land need to the lower end of the urban reserve range (15,000 to 29,000 acres), thereby excluding Stafford and some of the Foundation Farm Land that the Metro Decision currently designates as urban reserves. This is not only a feasible alternative, but also the approach that was "strongly" recommended in the October 14, 2009, Joint State Agency Comments.⁴⁹ The Department of Land Conservation was a party to this letter.

Notwithstanding these defects in the Metro Decision, the Order concludes:

"As evaluated above regarding the cities' objections to compliance with each of the urban reserve factors, Metro adequately

⁴⁹ Metro-1370 to -1390; time frame recommendation at 1373.

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 [area] 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 [which] 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 [sic] how all factors were balanced in reaching the decision." App-21.

LCDC misapplies its scope of review as described in the Cities' first assignment of error. As noted, the reserve factors are a "special type of 'criteria'," to be applied like the Goal 14 locational factors.⁵⁰ In 1000 Friends of Oregon v. Metro, 174 Or App 406, 409-11, 26 P3d 151 (2001), this Court explained Metro's obligations when applying the Goal 14 locational factors. Evidence that a factor was considered is insufficient alone; the findings must also explain how the balance of the factors leads to the particular result:

"[T]he locational factors are not independent approval criteria. It is not necessary that a designated level of satisfaction of the objectives of each of the factors must always be met before a local government can justify a change in a UGB. Rather, the local government must show that the factors were 'considered' and balanced by the local government in determining if a change in the UGB for a particular area is justified.

⁵⁰ See, e.g., JER-27 to -28 n.16.

* * *

"* * * If the local government has not specifically articulated its findings regarding a particular factor and explained how it balanced that factor in making a decision regarding a change in a UGB, it is not properly within our scope of review to make assumptions and draw inferences from other portions of the local government's findings in order to surmise what the local government's decision really was."

This Court also clarified that individual factors cannot be weighted against one another. Rather, "local governments 'must apply each Goal 14 [locational] factor equally and include lands in urban reserves only where all of the factors justify that inclusion.'" D.S. Parklane Development, Inc. v. Metro, 165 Or App at 24 (quoting LUBA).

In adopting the reserves rule, LCDC described the comparative alternatives analysis and explanation required in evaluating individual areas:

"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."⁵¹

LCDC's analysis of Metro's findings fails its own test.

⁵¹ JER-27 n.16.

660-025-0085

APP-24

Commission Hearings Notice and Procedures

(1) Hearings before the commission on a referral of a local government submittal of a work program or hearings on referral or appeal of a work task must be noticed and conducted in accordance with this rule.

(2) The commission shall take final action on an appeal or referral of a completed work task within 90 days of the date the appeal was filed or the director issued notice of the referral unless:

(a) At the request of a local government and a person who files a valid objection or appeals the director's decision, the department may provide mediation services to resolve disputes related to the appeal. Where mediation is underway, the commission shall delay its hearing until the mediation process is concluded or the director, after consultation with the mediator, determines that mediation is of no further use in resolution of the work program or work task disagreements;

(b) If the appeal or referral raises new or complex issues of fact or law that make it unreasonable for the commission to give adequate consideration to the issues within the 90-day limit the commission is not required to take final action within that time limit; or

(c) If the parties to the appeal and the commission agree to an extension, the hearing may be continued for a period not to exceed an additional 90 days.

(3) The director must provide written notice of the hearing to the local government, the appellant, objectors, and individuals requesting notice in writing. The notice must contain the date and location of the hearing.

(4) The director may prepare a written report to the commission on an appeal or referral. If a report is prepared, the director must mail a copy to the local government, objectors, the appellant, and individuals requesting the report in writing.

(5) Commission hearings will be conducted using the following procedures:

(a) The chair will open the hearing and explain the proceedings;

(b) The director or designee will present an oral report regarding the nature of the matter before the commission, an explanation of the director's decision, if any, and other information to assist the commission in reaching a decision. If another state agency participated in the periodic review under ORS 197.637 or 197.638, the agency may participate in the director's oral report.

(c) Participation in the hearing is limited to:

(A) The local government or governments whose decision is under review;

(B) Persons who filed a valid objection to the local decision in the case of commission hearing on a referral;

(C) Persons who filed a valid appeal of the director's decision in the case of a commission hearing on an appeal; and

(D) Other affected local governments.

(d) Standing to file an appeal of a work task is governed by OAR 660-025-0150.

(e) Persons or their authorized representative may present oral argument.

(f) The local government that submitted the task may provide general information from the record on the task submittal and address those issues raised in the department review, objections, or the appeal. A person who submitted objections or an appeal may address only those issues raised in the objections or the appeal submitted by that person. Other affected local governments may address only those issues raised in objections or an appeal.

(g) As provided in ORS 197.633(3), the commission will confine its review of evidence to the local record.

(h) The director or commission may take official notice of law defined as:

(A) The decisional, constitutional and public statutory law of Oregon, the United States and any state, territory or other jurisdiction of the United States.

(B) Public and private official acts of the legislative, executive and judicial departments of this state, the United States, and any other state, territory or other jurisdiction of the United States.

(C) Regulations, ordinances and similar legislative enactments issued by or under the authority of the United States or any state, territory or possession of the United States.

(D) Rules of court of any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States. **APP-25**

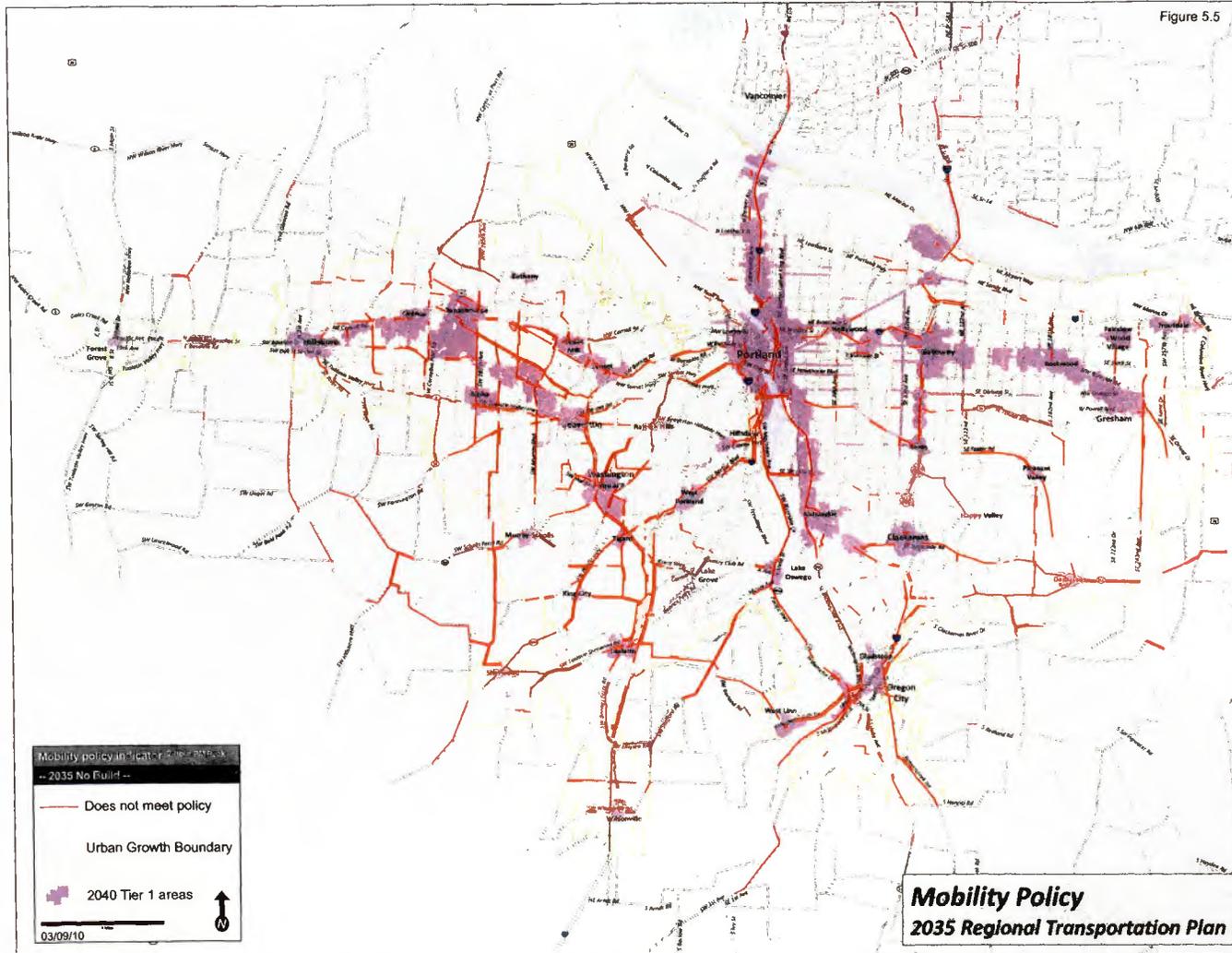
(E) The law of an organization of nations and of foreign nations and public entities in foreign nations.

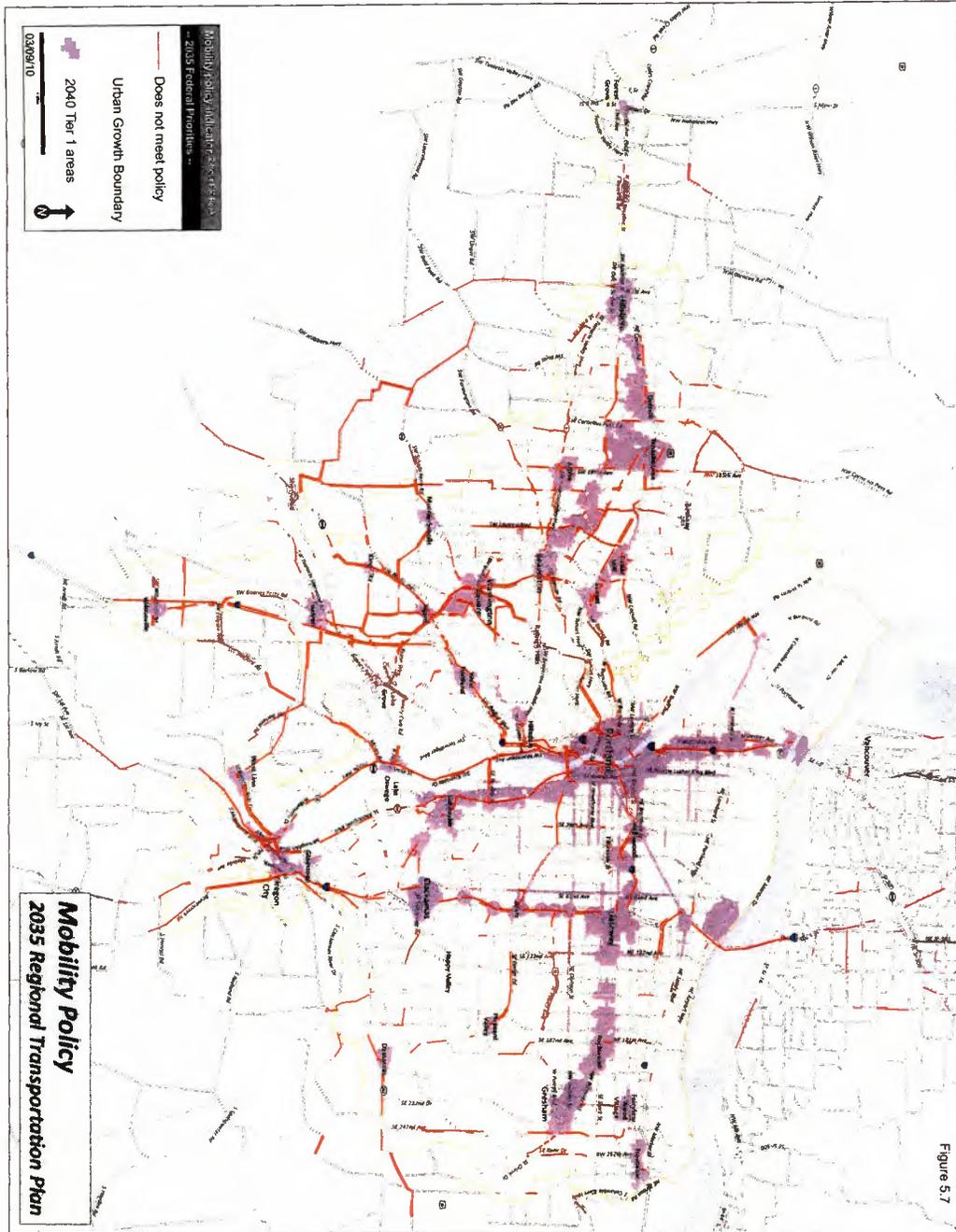
(F) An ordinance, comprehensive plan or enactment of any local government in this state, or a right derived therefrom.

Stat. Auth.: ORS 197.040 & 197.633

Stats. Implemented: ORS 197.628 - 197.646

Hist.: LCDD 4-2006, f. & cert. ef. 5-15-06; LCDD 8-2011, f. & cert. ef. 10-20-11; LCDD 4-2012, f. & cert. ef. 2-14-12





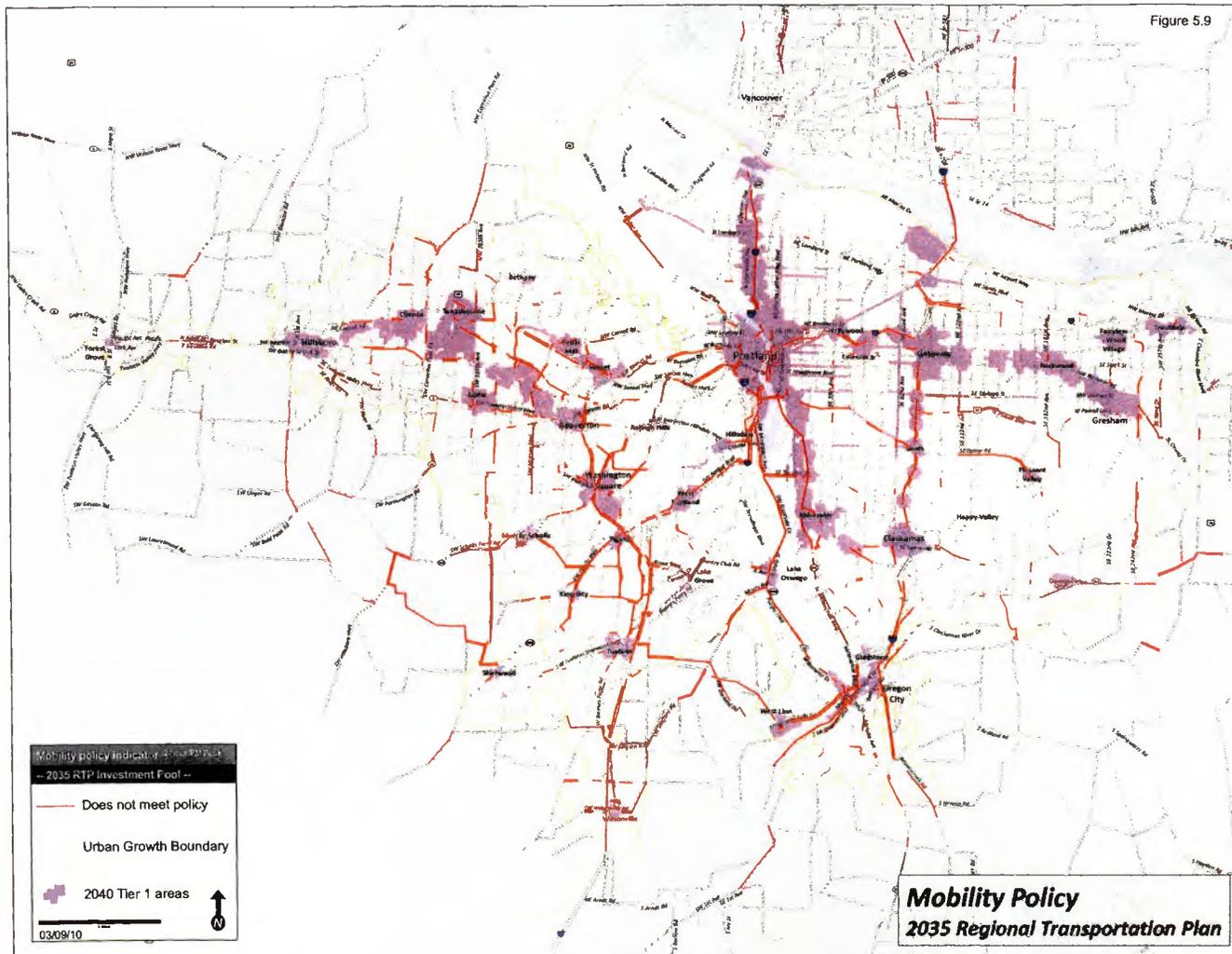
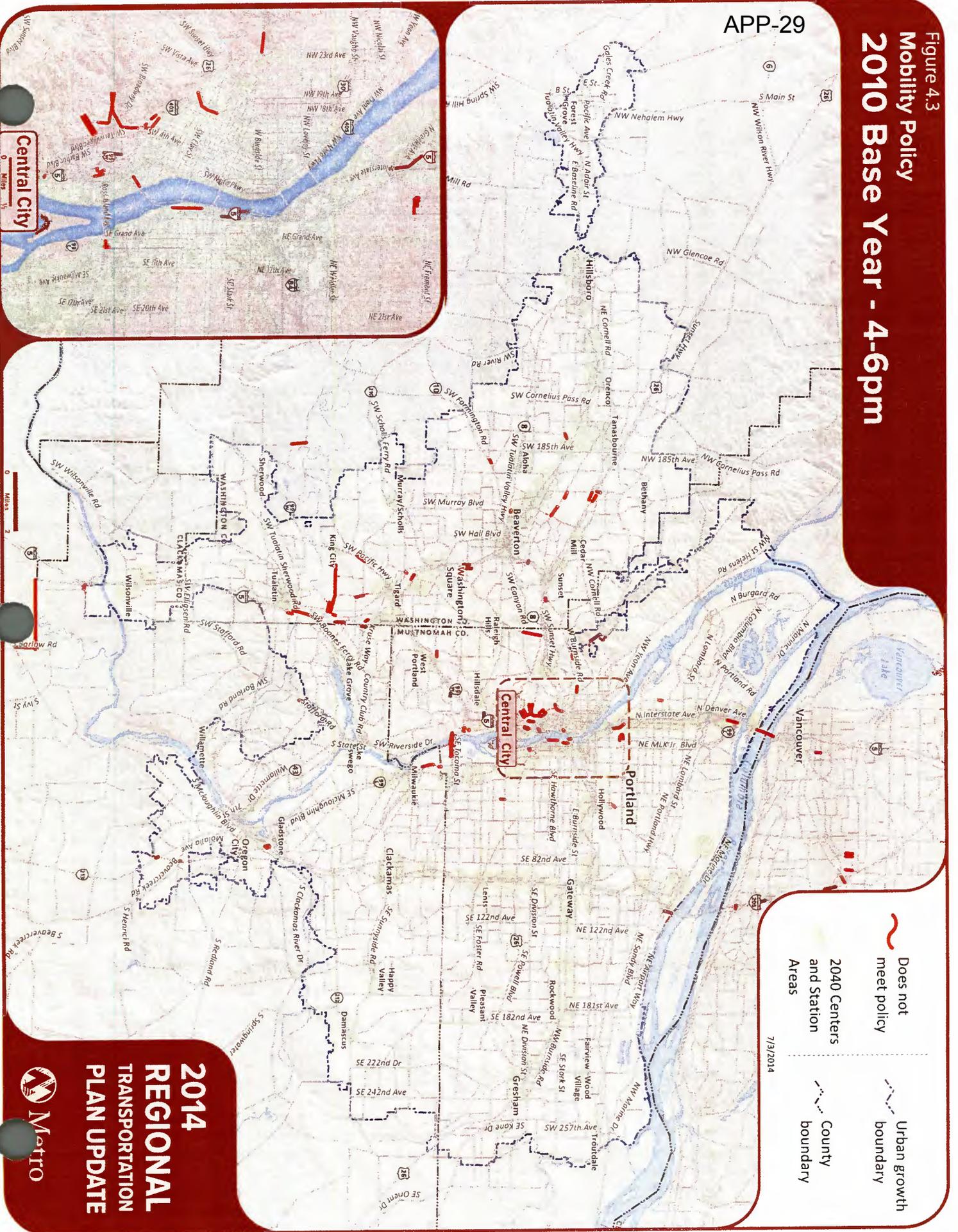


Figure 4.3
Mobility Policy
2010 Base Year - 4-6pm



- Does not meet policy
- 2040 Centers and Station Areas
- Urban growth boundary
- County boundary

7/3/2014

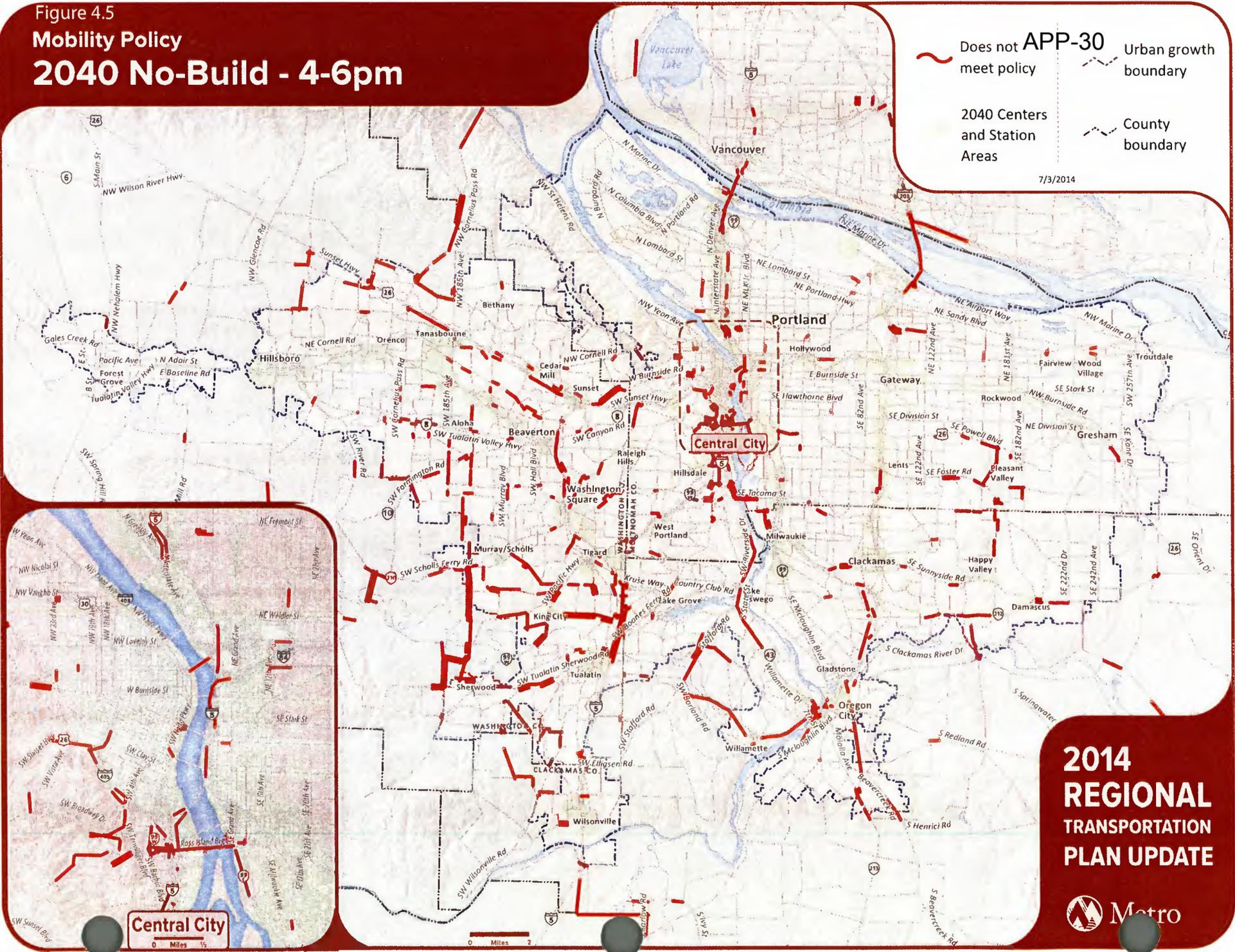
2014
REGIONAL
TRANSPORTATION
PLAN UPDATE



Figure 4.5

Mobility Policy

2040 No-Build - 4-6pm



Does not meet policy

APP-30

Urban growth boundary

2040 Centers and Station Areas

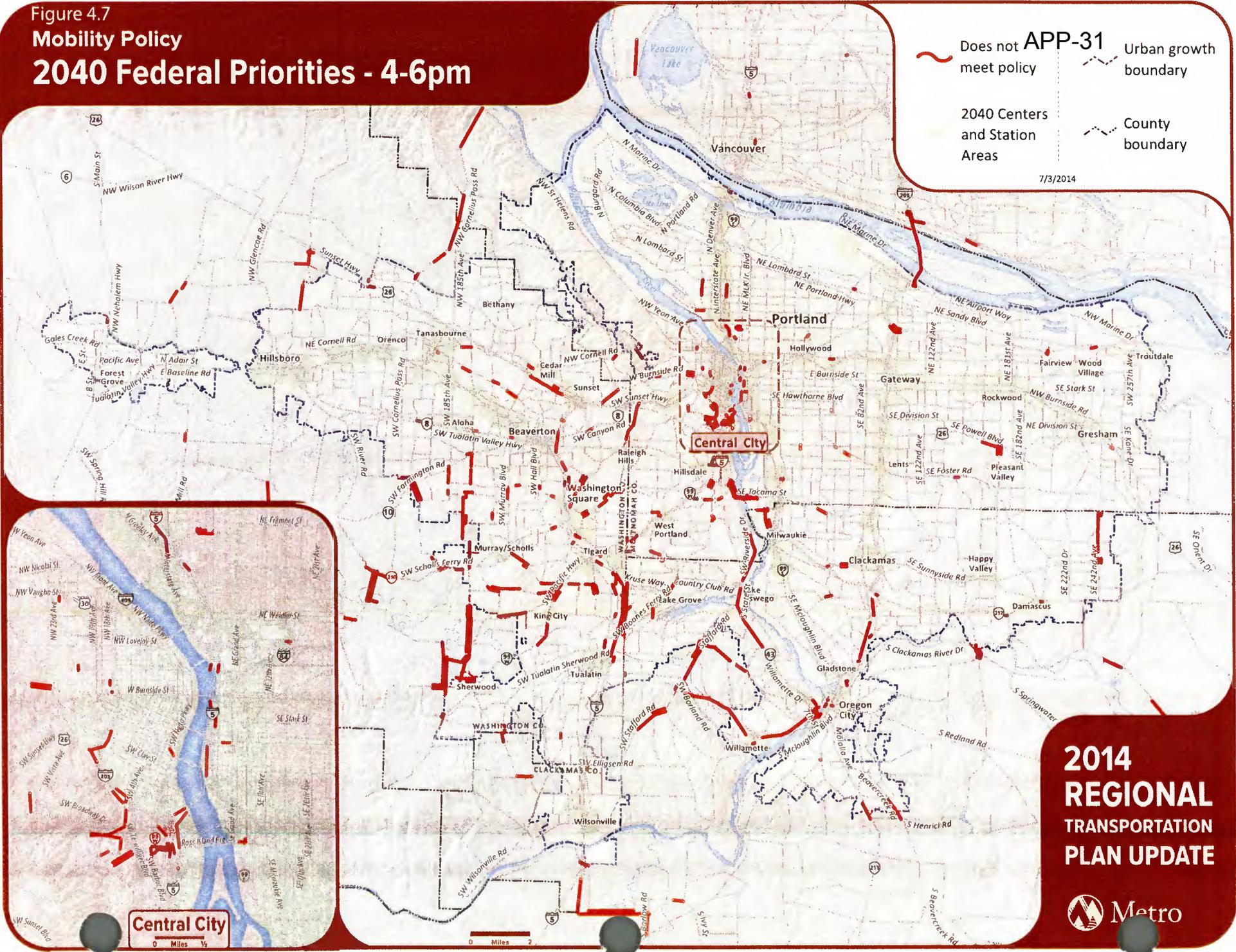
County boundary

7/3/2014

2014
REGIONAL
TRANSPORTATION
PLAN UPDATE



Figure 4.7
Mobility Policy
2040 Federal Priorities - 4-6pm



**2014
 REGIONAL
 TRANSPORTATION
 PLAN UPDATE**

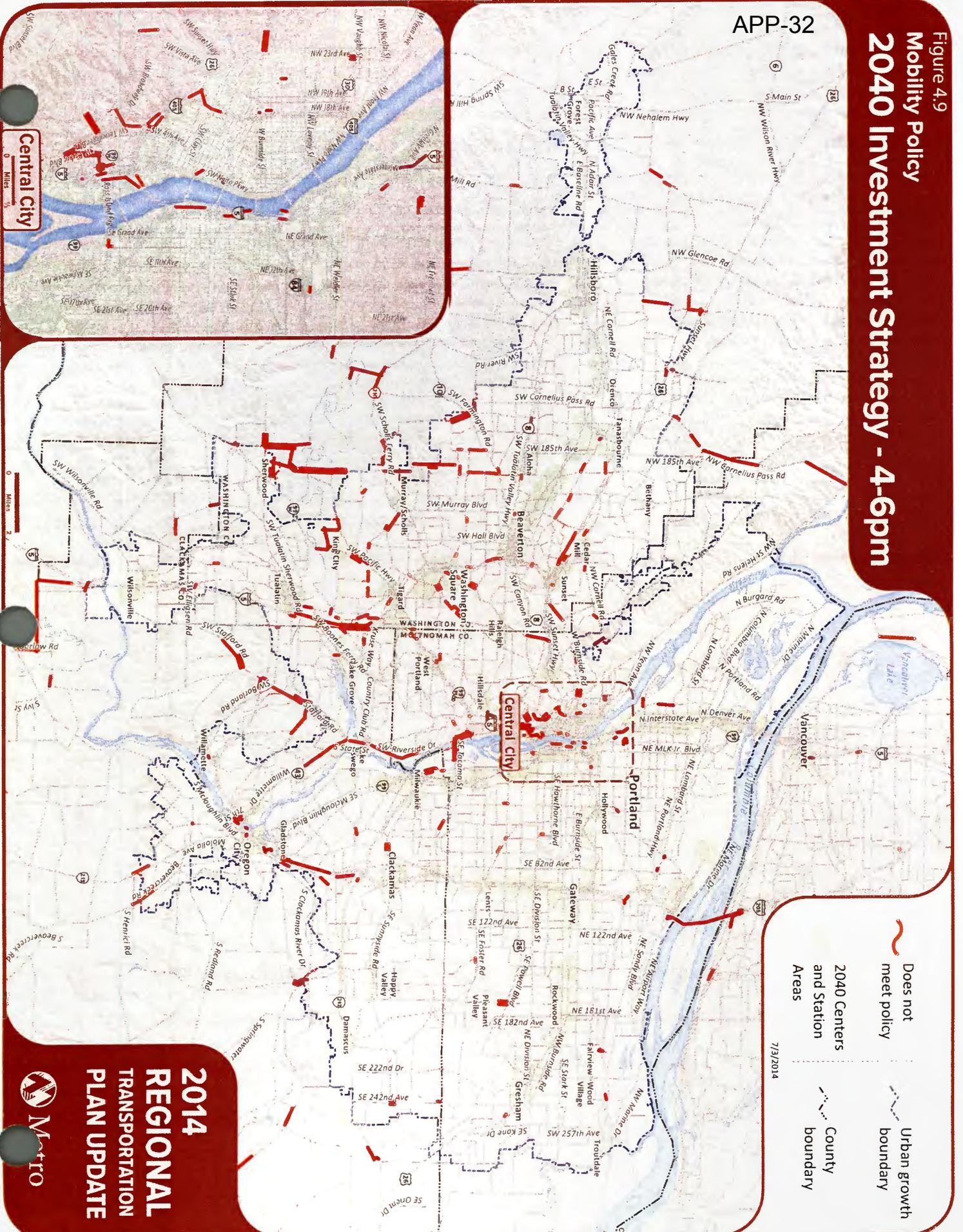


Figure 4.9

Mobility Policy

2040 Investment Strategy - 4-6pm

APP-32



- Does not meet policy and Station Areas
- Urban growth boundary
- County boundary

7/3/2014

2014
REGIONAL
TRANSPORTATION
PLAN UPDATE

