

SB 1011 Rulemaking: Issue list reflecting agreements of stakeholder work group as of 8/1/07

This document reflects the results of three meetings hosted by Metro and held on July 11, July 25, and August 1, 2007, attended by a broad *ad hoc* group of participants from governments, businesses, and advocacy groups in the Portland metropolitan region. The group began with draft versions of conceptual urban and rural reserve rules (see related attachments) intended as the basis for the *ad hoc* group discussion. This document and the *ad hoc* group's conceptual draft rules have been submitted to DLCD to inform the official DLCD Rulemaking Workgroup. However, these documents do not necessarily reflect the opinions of Metro or the DLCD Rulemaking Workgroup.

#	Issue	Comments
	General issues / Issues applicable to both rules	
1.	<p>Level of detail:</p> <ul style="list-style-type: none"> Should the rule be more prescriptive/include more detail or remain more flexible/include less detail? Related issue: Are there some specific provisions that might be better adopted as part of Metro's code in order to provide more flexibility over time? 	<p>AGREEMENT: no need to really decide here, though there seems to be general agreement to be less prescriptive and to put more into Metro code rather than in the rule. The watchword seems to be "if in doubt, leave it out."</p>
2.	Should the rules refer at all to the relationship between individual IGAs and a larger regional context or regional analysis?	<p>AGREEMENT: After a good discussion, we agreed not to include any language on this, though there is an understanding that we will work as a region to develop the urban and rural reserves in Clackamas, Multnomah, and Washington counties.</p>
3.	Is it necessary to provide any additional guidelines for designations of urban or rural reserves subsequent to the first such designation?	<p>AGREEMENT: We agreed to set this matter aside for now.</p>
4.	Should the rules provide guidelines for how to treat land that might be appropriate as either a rural or an urban reserve?	<p>AGREEMENT: The group agreed that the rules should NOT attempt to provide guidelines for this situation, but that these decisions should instead be based on the facts of specific cases.</p>
5.	Should the rules include provisions that might help the parties to a potential agreement avoid a deadlock that would prevent the conclusion of an agreement?	<p>AGREEMENT: No, the parties will simply have to negotiate until they reach agreement or fail to do so.</p>
6.	0050 of each rule, "backsliding" provisions: do these provisions potentially create conflicts with new non-farm	<p>AGREEMENT: We discussed language to address this concern but agreed that, because statute overrides rules in any event, any language we would write</p>

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	uses that might be authorized by the Legislature?	would have no effect. For that reason, we agreed not to include any language addressing this issue.
7.	0010 of each rule, definition of "resource land": by including only land zoned for farming and forestry, this definition leaves out exception land critical to the nursery industry and may leave out land important to small local food producers. Does this need to be addressed?	<p>PARTIALLY RESOLVED ISSUE (TO BE REVISITED): This discussion went a couple of directions. We agreed to</p> <ul style="list-style-type: none"> • drop the definition of "resource land" from the RR rule (because the term is not used in the rule), and • retain the definition in the UR rule, but to amend the factor where the term is used to also include rural reserve land that does not fall within the definition. The factor would then read something like: "Can be designed to mitigate adverse effects on farm and forest practices on nearby resource land <i>or on land designated as rural reserve under OAR 660-XXX-XXX.</i>" <p>Later in the discussion, questions were raised about whether to include this factor at all. This discussion also included the suggestion from Pat Ribellia's draft that the word "industry" be added before "practices" and the suggestion that a parallel bullet be added having to do with mitigating impacts on natural features and watershed health. These issues were placed in the "bike rack" for future discussion.</p>
8.	0010 of each rule, definitions of "urban reserve" and "rural reserve": should both definitions be included in each rule?	AGREEMENT: Yes.
9.	0040 of each rule, coordination: is it necessary to provide more detail on what this entails?	AGREEMENT: No. This is unnecessary because the meaning of "coordination" under state planning law is fairly well-defined.
10.	0040 of each rule: rather than requiring that reserves be "consistent with the regional framework plan," should the rule identify specific substantive requirements?	AGREEMENT: We first agreed not to do this because putting the substantive requirements into the rules would hinder the region's ability to revise its policies later. We then agreed to entirely delete this factor from both rules.
21.	NEW ISSUE: What are the implications of the language in the bill requiring LCDC to adopt "a process and criteria for designating" urban and rural reserves?	Dick Benner will check with DLCD's attorney.
22.	NEW ISSUE (from Bev Bookin): Is there a reason the two rules don't use identical language when describing agreements?	AGREEMENT: Dick Benner explained that this difference was an artifact of the earlier draft of the UR rule that included reference to urban service agreements. Because that language has been deleted, the different language is no longer operable and he will harmonize the drafts.

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	Urban reserve rule	
11.	0040 (5)(e), ecological systems: <ul style="list-style-type: none"> • add "restore"? • RR rule uses "protect" while this rule uses "preserve" – should this be made consistent? • specific mention of watershed health? 	AGREEMENT: After discussion, we agreed not to do any of these things. Specifically, we agreed to end this factor after "natural ecological systems."
12.	0040 (5)(g), effects of urban reserves on farm and forest practices nearby: add consideration of effects on natural features?	UNRESOLVED ISSUE: The proposal in Jim Labbe's draft is to add a bullet (h) rather than adding natural features into (g). This issue was left unresolved and placed in the "bike rack" for future discussion. (See also issue 7.)
13.	0040 (6): change "section (2)" to "section (5)"	AGREEMENT: This is a typo that the group agreed to fix.
14.	0050 (1), conceptual plans, several issues: <ul style="list-style-type: none"> • What are these plans? Are they different from concept plans required under Title 11? • How do they relate to the demonstration of need required to justify UGB expansions? • See issue 1, second bullet. 	AGREEMENT: We agreed that we would drop this section from the draft rule but would raise the issue with LCDC
15.	0050 (2), urban services: should ten-year deadline be changed to "prior to inclusion in the UGB"?	AGREEMENT: While there is agreement that this change is a good idea, this discussion paralleled the discussion of conceptual plans (see issue 14). The group agreed that we would drop this section from the draft and raise this issue with LCDC as well.
16.	0050 (3), "backsliding" provision: is it necessary or correct to include "or to the boundaries of an unincorporated community under OAR Division 022" in this section?	TENTATIVE AGREEMENT: We agreed to delete the reference to unincorporated communities. We had hoped to revisit this discussion at the August 1 meeting but didn't have time. Instead, we can flag this for the rulemaking work group.
20.	Should the rule address the possibility of including in urban reserves areas that should come into the UGB for a variety of reasons (urban form, governance, etc.), but that will not score well under Section (5) because, for example, they	UNRESOLVED ISSUE: We did not have time to complete this discussion and should flag the issue for the rulemaking work group.

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	are hilly, heavily parcelized, etc.?	
23.	0040 (5)(c), public facilities and services – NEW ISSUE: Jim Labbe’s draft proposed the addition of parks to the bullet on public facilities and services.	UNRESOLVED ISSUE: The sense of the group seemed to be that while parks are clearly public facilities that should be part of urban reserve planning, we didn’t need to add the word to the rule. However, there was discussion about whether it might be wise to define “public facilities and services” for the purpose of this rule.
24.	0040 (3)(d), transportation planning – NEW ISSUE: Jim Labbe’s draft proposed adding trails to the bullet.	TENTATIVE DIRECTION: In response to the discussion, Jim proposed adding language on bicycle and pedestrian facilities that is consistent with the state’s Transportation Planning Rule.
Rural reserve rule		
17.	0040 (2), forestry: Need to consult with interested parties about appropriate factors	TENTATIVE DIRECTION: For now, we will stick with the language Dick Benner drafted that is analogous to the agricultural factors in 0040 (1). We agreed not to include the “Forest Legacy” factor suggested by ODF until we have the opportunity for further discussion and explanation. If the rules do include this concept, it might be best to extract the substantive factors rather than directly referencing the Forest Legacy program.
18.	0040 (3), natural landscape features: Need to consult with interested parties about appropriate factors <ul style="list-style-type: none"> sub-issue: is it necessary to include language about buffers analogous to the language of 0040 (1)(e)(B) and (2)(e)(B) in this section? 	AGREEMENT: We adopted the language Dick Benner drafted based on the natural features elements of the ag-urban study. That language does include a bullet on buffers. We agreed to add a bullet on whether the potential rural reserve area is otherwise likely to be urbanized during the planning period. We also agreed to add a bullet on separation of communities to this subsection and also to the subsections on agriculture and forestry.
19.	NEW ISSUE: 0040(3), definition of natural landscape features: should we repeat the statutory language rather than paraphrase it?	AGREEMENT: We will stick to the statutory language, as follows: <p>“(3) A county shall base the designation of rural reserves intended to protect natural landscape features that [serve as] <i>limit urban development or help define appropriate natural</i> boundaries of urbanization under this division upon consideration of whether the rural reserves:....”</p>