

LAND USE  
BOARD OF APPEALS

BEFORE THE LAND USE BOARD OF APPEALS  
OF THE STATE OF OREGON

MAR 20 2 24 PM '87

3	BENJFRAN DEVELOPMENT, INC.,	)	
		)	
4	Petitioner,	)	LUBA Nos. 86-072/080
		)	
5	vs.	)	FINAL OPINION
		)	AND ORDER
6	METROPOLITAN SERVICE DISTRICT,	)	
		)	
7	Respondent.	)	

8  
9 Appeal from Metropolitan Service District.

10 Gregory S. Hathaway, Portland, filed the petition for  
11 review and argued on behalf of petitioner. With him on the  
12 brief were Niehaus, Hanna, Murphy, Green, Osaka & Dunn.

13 Eleanore S. Baxendale, Portland, filed a response brief and  
14 argued on behalf of Metropolitan Service District.

15 Richard P. Benner, Portland, filed a response brief and  
16 argued on behalf of Respondent-Participant 1000 Friends of  
17 Oregon.

18 BAGG, Referee, DuBAY, Chief Referee, participated in the  
19 decision.

20	LUBA No. 86-072 - AFFIRMED	03/20/87
21	LUBA No. 86-080 - AFFIRMED	03/20/87

22 You are entitled to judicial review of this Order.  
23 Judicial review is governed by the provisions of ORS 197.850.  
24  
25  
26

1 Opinion by Bagg.

2 NATURE OF THE DECISIONS

3 Petitioner Benjfran Development, Inc. appeals two decisions  
4 by the Metropolitan Service District. In LUBA No. 86-072, the  
5 petitioner appeals denial of its request for a major amendment  
6 to the urban growth boundary. In LUBA No. 86-080, petitioner  
7 appeals Ordinance 86-208 which amended the urban growth  
8 boundary pursuant to a request by Riviera Motors, Inc.  
9 Petitioner asks that both decisions be reversed.

10 FACTS

11 Petitioner requested an amendment to the urban growth  
12 boundary in Washington County. The request would add 470 acres  
13 southeast of the City of Hillsboro to the urban growth  
14 boundary. The property is within about 20 minutes driving time  
15 of the greater Sunset Corridor, a high technology ("hi tech")  
16 industrial area in Washington County.

17 Petitioner's request was one of three similar proposed  
18 changes to the urban growth boundary. Two additional requests  
19 were filed by Kaiser Development, Inc. (Kaiser) and Riviera  
20 Motors (Riviera). Both the Kaiser application and the Riviera  
21 applications were approved. Petitioner's request was denied.

22 ASSIGNMENTS OF ERROR

23 We first consider the seven assignments of error in LUBA  
24 No. 86-072. Next, we will consider the four assignments of  
25 error in LUBA No. 86-080.

26

1 ASSIGNMENT OF ERROR NO. 1

2 "Metro improperly construed the applicable law where  
3 it interpreted the public need standard in Factor 1 of  
4 Goal 14 as requiring Petitioner to prove that support  
5 industries must be located within a 20-minute travel  
6 time of high tech companies by showing:

7 "(1) that high tech firms will not locate in the  
8 Sunset Corridor unless support industries are  
9 within 20 minutes driving time; or

10 "(2) that support industries cannot survive unless  
11 they are located within the 20-minute time."

12 Petitioner cites Goal 14's requirement that a change in an  
13 urban growth boundary must be based, in part, on a

14 "demonstrated need to accommodate long-range urban  
15 population growth requirements consistent with LCDC  
16 goals...."

17 Petitioner states the appropriate test for public need is as  
18 follows:

19 "1. Will proposed use benefit the community as  
20 opposed to predominantly serving the interests of  
21 an individual or organization?

22 "2. Will the proposed use satisfy a need or  
23 requirement as opposed to a preference  
24 expectation or desire?

25 "3. Is the site the best site to facilitate the  
26 use?" Petition for Review at 20-21.

27 Petitioner asserts its application to Metro clearly  
28 illustrated the urban growth boundary change was (1) needed and  
29 (2) petitioner's site was the best site in terms of "spatial  
30 economy of the region and other land use concerns." Petition  
31 for Review at 10.

32 Petitioner explains the Sunset Corridor is an emerging  
33 industrial core area for high tech companies which require

1 support industries. The relationship between high tech  
2 companies and support services dictates that travel time  
3 between the high tech companies and their support industries  
4 needs to be 20 minutes or less. The tract which petitioner  
5 proposes to develop for support industries is within this 20  
6 minute travel radius of the Sunset Corridor.

7 Metro found that while a need exists for high tech support  
8 industries, petitioner had not demonstrated a need to amend the  
9 UGB. The Metro hearings officer (and later the Metro council)  
10 found that while the evidence showed it is desirable to have  
11 support industries within 20 minutes driving time of major  
12 industries, this desirability is not tantamount to a need.

13 Petitioner argues this characterization of the need  
14 criterion is erroneous. Petitioner argues Metro's  
15 interpretation defines public need as a social or economic  
16 imperative. Petitioner argues the appropriate line of  
17 questioning is whether the claimed need is a community need  
18 and, if so, whether the particular site is the best location to  
19 satisfy this need.

20 Goal 14 provides that:

21 "In the case of a change of a boundary, a governing  
22 body proposing such change in the boundary separating  
23 urbanizable land from rural land, shall follow the  
procedures and requirements as set forth in Land Use  
Planning goal (Goal 2) for goal exceptions."

24 The companion requirement in Goal 2 provides an exception  
25 may be granted when

26 "areas which do not require a new exception cannot

1 reasonably accommodate the use...."

2 To justify enlargement of the UGB, the applicant must show  
3 no property within the urban growth boundary can reasonably  
4 accommodate the use. See Still v. Board of Commissioners of  
5 Marion Co., 45 Or App 115, 600 P2d 433 (1979). Of the 220,000  
6 acres now within the Metro UGB, over 17,500 acres are vacant  
7 and zoned for industrial use. The record shows an estimate of  
8 8,975 acres now needed for industrial use. Record 1015. While  
9 petitioner's evidence may show support services are needed and  
10 should be located within 20 minutes of the Sunset Corridor,  
11 Metro found petitioner failed to show there was no land within  
12 the UGB which could reasonably accommodate this need.

13 Respondent explains that in this case, Goal 14 requires  
14 that an optimum site outside the urban growth boundary must be  
15 rejected in favor of a reasonable site within the urban growth  
16 boundary. See excerpt from Goal 2 above. Respondent states  
17 Metro found that sites within 20 minutes from the corridor were  
18 desirable, but there was no showing that sites farther away but  
19 inside the UGB could not reasonably provide necessary support  
20 services.

21 Metro also cites to evidence in the record showing some  
22 existing support services are located in excess of 20 minutes  
23 from the supported businesses. Record 354-357, 948, 957-958.  
24 Other evidence cited by respondent includes testimony of an  
25 expert in the electronics industry and testimony from a land  
26 use planning group, 1000 Friends of Oregon, as well as a survey

1 prepared by a law student. The survey shows the distance of  
2 various support services from a major high tech firm in the  
3 area, Tektronics. Respondent argues this evidence is  
4 sufficient to support Metro's finding that petitioner had  
5 failed to show a need for the change.

6 We agree. The evidence shows the 20 minute distance is not  
7 an essential prerequisite for high tech support. The evidence  
8 that high tech firms prefer support industries within that  
9 distance expresses a preference only. Metro chose the  
10 appropriate standard, and substantial evidence in the record  
11 supports Metro's decision. In order to overturn the decision  
12 on petitioner's argument, petitioner would have to show the  
13 need existed for support industries at the chosen location as a  
14 matter of law. Petitioner has not carried this burden.

15 The First Assignment of Error is denied.

16 ASSIGNMENT OF ERROR NO. 2

17 "Metro's decision to deny the petition for amendment  
18 to the urban growth boundary upon the ground that  
19 petitioner had not demonstrated public need was flawed  
20 by procedural error prejudicial to petitioner, because  
21 petitioner has not properly advised in advance of  
22 Metro's final decision as to what standards would be  
23 utilized in evaluating petitioner's proposal."

24 ASSIGNMENT OF ERROR NO. 3

25 "Metro's findings concerning public need and the  
26 standard it used to determine whether a public need  
27 existed for the use proposed by petitioner are vague."

28 In these two assignments of error, petitioner argues Metro  
29 failed to articulate its own understanding of what "public  
30 need" meant. Petitioner adds the findings about the nature of

1 public need and whether petitioner met that need are vague. In  
2 this case, Metro gave no advance notice to petitioner of the  
3 standard used, and petitioner posits Metro should have clearly  
4 articulated standards.

5 We do not find error as alleged. The standard of approval  
6 is contained in the statewide planning goals, specifically Goal  
7 14 and Goal 2, and these standards were known to petitioner.  
8 Petitioner's application identifies these goals as applicable.  
9 See Record 44-501. Metro argues, and we agree, that the goals  
10 require no further elaboration.

11 Further, we do not find fault with Metro's analysis of the  
12 public need standard. Metro's interpretation of Goal 14 and  
13 Goal 2 together require a rather difficult burden for  
14 petitioner: petitioner must show other land not requiring an  
15 exception can not reasonably house the support industries.  
16 This interpretation of the goals is reasonable, and we will not  
17 overturn it. Alluis v. Marion Co., 64 Or App 478, 668 P2d 1242  
18 (1983).

19 Next, petitioner argues Metro's findings fail to provide  
20 guidelines as to what must be done in order to obtain  
21 approval. See Commonwealth Property v. Washington Co., 35 Or  
22 App 387, 582 P2d 1384 (1978).

23 The hearings officer (and later Metro) found petitioner was  
24 obligated to show that support industries must be located  
25 within a 20 minute driving time of high tech companies.  
26 Petitioner argues the hearings officer's use of the word must

1 is unclear. Petitioner also says the hearings officer found  
2 need could be shown by evidence that high technology industries  
3 would locate elsewhere if support industries are more than 20  
4 minutes distant. Petitioner argues it is apparent, but not  
5 clear, that the hearings officer equated need with survival of  
6 an industry.

7 Last, petitioner complains about the hearings officer's  
8 finding that petitioner had to support its application by  
9 empirical evidence and that such evidence was not forthcoming.  
10 The hearings officer suggested the evidence should address land  
11 use patterns in other high tech areas and changes in the  
12 Portland land use patterns as a result of high tech  
13 development. Petitioner claims this task is "vague."

14 The hearings officer characterized petitioner's case as  
15 being predicated on a following:

16 "a. There is a need for land for support industries;

17 "b. The land must be within 20 minutes driving time  
18 of the Sunset Corridor;

19 "c. There is a shortage of single 'unconstrained'  
20 land planned for industrial development within  
the 20 minute driving time; and

21 "d. This proposal satisfies that need." Record 14.

22 The hearings officer rejected the claim that land for  
23 support industries "must be within 20 minutes driving time of  
24 the Sunset Corridor." The order cites evidence in the record  
25 which shows that while close proximity between support services  
26 and high tech industries is desirable, it is not required to

1 sustain high tech industries.

2 The hearings officer also found that given the preference  
3 to locate support industries in close proximity to high tech  
4 industries, an argument to support a change in the urban growth  
5 boundary must be supported by empirical evidence. The hearings  
6 officer found that there was no such evidence in the record and  
7 stated as follows:

8 "In fact, the petitioner did not cite to any charging  
9 [sic] (changing) land use relationship in the Portland  
10 area as a result of the high tech development within  
11 the Sunset Corridor. The hearings officer will need  
12 case studies or citations to literature which document  
13 that support industries must be located within a  
14 20-minute driving time of high tech companies in order  
15 to support their need argument."

16 The hearings officer added

17 "Need can be shown in many ways; e.g., documentation  
18 to the fact that high tech firms will not locate in  
19 the corridor unless the support industries are within  
20 20 minutes driving time or that support industries  
21 cannot survive unless they are located within the 20  
22 minute driving time."

23 We do not agree that the findings are vague or that Metro  
24 has failed to outline what petitioner must show in order to  
25 comply with Metro's standard. See Lee v. City of Portland, 57  
26 Or App 798, 646 P2d 662 (1982). In short, we do not find error  
27 as alleged.

28 The Second and Third Assignments of Error are denied.

29 ASSIGNMENT OF ERROR NO. 4

30 "Assuming that the correct standard for determining  
31 public need was applied in Kaiser and Riviera, then  
32 the manner in which Metro applied that standard in  
33 this case was unreasonable."

34

1 In this assignment of error petitioner alleges the need  
2 standard applied to the Kaiser and Riviera Motors' application  
3 was different than that applied to Benjfran Development, Inc.  
4 Petitioner alleges that while the hearings officer required  
5 petitioner to show support services must be located within 20  
6 minutes of travel time of high tech companies, the hearings  
7 officer did not impose this standard in the Kaiser and Riviera  
8 cases.

9 We understand petitioner's claim to be that Metro  
10 discriminated against petitioner. It is not clear, however,  
11 why this discrimination should result in a reversal or remand  
12 of the decision by this Board. Perhaps petitioner is arguing  
13 that Benjfran was denied privileges and immunities afforded to  
14 Kaiser and Riviera, but this claim is neither clearly stated  
15 nor explained. We will not review an undeveloped claim of  
16 error. Deschutes Development v. Deschutes Cty, 5 Or LUBA 218  
17 (1982).

18 The hearings officer's findings in the Benjfran, Kaiser and  
19 Riviera orders do not suggest that a different standard was  
20 applied, but that different evidence was considered. In the  
21 Benjfran application, the hearings officer found that Benjfran  
22 had introduced evidence which only showed a preference of high  
23 tech companies for support services within a 20 minute travel  
24 distance. In the Kaiser and Riviera applications, the hearings  
25 officer relied on expert testimony from various sources  
26 including the "Hobson Report." That evidence tended to show

1 that high tech companies chose sites which provided not only  
2 needed support services, but also close proximity to other  
3 similar enterprises and educational institutions. We are cited  
4 to no similar evidence submitted by Petitioner Benjfran.

5 Therefore, while the findings may be read to suggest that a  
6 different standard was applied in two of the three requests for  
7 amendment of the urban growth boundary, our review of the three  
8 orders suggests that the hearings officer simply reacted to  
9 different evidence in each of the cases.

10 Of course, whether Metro adequately satisfied the test in  
11 its findings and in the supporting evidence is a question not  
12 before us at this time, and we offer no opinion on this  
13 question.

14 The Fourth Assignment of Error is denied.

15 ASSIGNMENT OF ERROR NO. 5

16 "The finding by Metro that '[b]y the year 2005, much  
17 of the presently constrained lands will be  
18 developable.' is 1) not supported by substantial  
19 evidence in the record and 2) is an inadequate finding  
to specifically determine whether the petitioner has  
demonstrated a need for additional land to accommodate  
the proposed use."

20 ASSIGNMENT OF ERROR NO. 6

21 "Metro's requirement that the petitioner bear the  
22 burden of proof to demonstrate how much of the  
23 presently constrained land will become unconstrained  
24 by the year 2005 (1) imposes an impossible and undue  
25 burden on petitioner to demonstrate whether the  
26 petitioner has demonstrated a need for additional land  
to accommodate the proposed use, (2) was not a burden  
of proof that was imposed in Kaiser and Riviera and  
(3) the petitioner was not advised prior to the  
proceedings that it had a burden to dispute the  
property identified by Metro as 'constrained' would

1       become 'unconstrained' by the year 2005."

2       Under these assignments of error, petitioner claims it  
3 demonstrated to Metro that additional land must be included in  
4 the UGB in order to accommodate projected growth. Petitioner  
5 used electronics industry employment projections for the year  
6 2005 to show this need exists. Metro, however, determined  
7 petitioner's analysis was not correct. Metro found that "much"  
8 but not all of the constrained land in the UGB will become  
9 developable. We understand constrained land to be land which  
10 is not now developable for some reason. Record 21. Petitioner  
11 claims no evidence in the record supports a finding that  
12 constrained land will become free to develop.

13       Further, petitioner argues the findings are not adequate  
14 because they do not say how much of the land will be  
15 developable. Petitioner argues it is impossible to determine  
16 how much of the presently constrained lands will become  
17 developable over a period of time. Petitioner also complains  
18 it was not given sufficient notice of the standard in order to  
19 develop proof necessary to satisfy Metro's requirement.

20       Metro argues these findings were unnecessary to its  
21 decision. We agree to the extent that we have found that one  
22 of Metro's findings is sufficient to support a denial. See our  
23 discussion of Assignment of Error 1, supra. However, we will  
24 consider the remainder of petitioner's assignment of error.

25       Metro argues that the basis for petitioner's fifth and  
26 sixth assignments of error is the assumption that there is a

1 need to locate support services within 20 minutes or less of  
2 primary high tech industries. Metro rejected that assumption.  
3 Because Metro did not find support services within a stated  
4 distance are a necessity for high technology industries, Metro  
5 did not conclude that the supply of land inside the UGB would  
6 be inadequate.<sup>1</sup>

7 We do not find error as alleged. We agree that the basis  
8 of petitioner's argument in these two assignments of error is  
9 petitioner's premise that needed support services must be  
10 located within a 20 minute travel contour of the Sunset  
11 Corridor. Because Metro did not accept this premise,  
12 petitioner's argument must fail. Metro applied the appropriate  
13 standard. We therefore deny these two assignments of error.

14 ASSIGNMENT OF ERROR NO. 7

15 "Metro improperly construed the applicable law by  
16 requiring petitioner to demonstrate that the  
17 particular size of the proposed site was the only size  
18 to accommodate the proposed use."

19 Petitioner argues Metro's analysis of the size of parcel  
20 necessary to accommodate the proposed use as follows:

21 "Even if there is not enough land for support  
22 industries within an appropriate 20-minute travel time  
23 contour, is there an additional need for sites 200  
24 acres or larger to allow such industries to cluster  
25 together on the same site?" Record 69.

26 Petitioner argues this test is not reasonable. The  
appropriate test, according to petitioner, is whether the  
subject property is the best site considering the need for high  
tech support industries.

1           Petitioner acknowledges it argued that the size of the  
2 industrial park needs to be a minimum of 200 acres and as large  
3 as 450 acres to provide for future growth. However, petitioner  
4 states Metro should be required "to evaluate the size of the  
5 proposed parcel in light of the identified need and other  
6 considerations." Petition for Review at 46. Petitioner says  
7 it is inappropriate to scatter support companies on small  
8 parcels not large enough for development as an industrial  
9 park. Id.

10           Metro notes that its findings are based on petitioner's  
11 statement that the appropriate size of parcel to meet the need  
12 identified by petitioner is 200 to 450 acres. That is, Metro  
13 claims it simply reacted to petitioner's own statement of what  
14 parcel size is appropriate.

15           We do not find error as alleged. We agree with Metro that  
16 it simply reacted to petitioner's argument about parcel size.  
17 Further, to accept petitioner's argument, one must accept  
18 petitioner's analysis that a need exists for support services  
19 within a 20 minute travel time contour and that a large parcel  
20 is best suited to meet this need. Metro did not accept this  
21 premise, and we have held earlier it was under no obligation to  
22 do so.

23           This assignment of error is denied.

24 ASSIGNMENT OF ERROR NO. 8

25 (LUBA No. 86-080 - Assignment of Error No. 1)

26 "Metro misconstrued MSDC Sec. 2.05.035(b) by

1 interpreting the code to require that specific rather  
2 than general exceptions to the proposed order of a  
3 Hearings Officer be filed before a party is permitted  
4 to participate concerning the exceptions; and Metro  
erred in denying petitioner the opportunity to  
participate where it relied upon the erroneous  
interpretation of the preceding code section."

5 Petitioner cites MSDC (Metropolitan Service District Code)

6 Section 2.05.035(b) as follows:

7 "(b) The parties shall be given the opportunity to  
8 file with the Council written exceptions to the  
9 proposed order and, upon approval of the Council,  
10 present oral argument regarding the exceptions to the  
11 Council. Argument before the Council shall be limited  
12 to parties who have filed written exceptions to the  
13 proposed order pursuant to this section, and shall be  
14 limited to argument on the written exceptions and  
15 argument in rebuttal of the argument on written  
16 exceptions."

17 Petitioner alleges that at the hearing of June 12, 1986,  
18 Metro refused to allow petitioner to participate because  
19 petitioner had filed general rather than specific exceptions to  
20 the proposed order of the hearings officer. Petitioner claims  
21 it was entitled to participate at the hearing and alleges this  
22 denial resulted in error prejudicial to its substantial  
23 rights.

24 Petitioner filed exceptions to the hearings officer's  
25 decision on June 5, 1986. Petitioner learned of criticism  
26 about the specificity of the exceptions through a Metro staff  
person and submitted a revised statement of exceptions at the  
June 12 hearing. Metro denied petitioner participation in the  
June 12 hearing.

Petitioner argues that MSDC 2.05.035(b) makes no

1 distinction between general and specific exceptions.

2 Respondent agrees that the code does not specify the  
3 character and exceptions to be filed. However, the code does  
4 state that oral argument on exceptions is only by approval of  
5 the council. In other words, the council has discretion to  
6 decide whether or not an oral argument may be presented.  
7 The council was under no duty to allow petitioner to argue from  
8 the original or any other exceptions. That is, the right to  
9 present oral argument rests entirely with the council.

10 While the council's action in this instance is harsh and  
11 may serve little purpose, we do not find error in its refusal  
12 to consider petitioner's request for oral argument.<sup>2</sup>

13 The Eighth Assignment of Error is denied.

14 ASSIGNMENTS OF ERROR NOS. 9 and 10

15 (LUBA No. 86-080 - Assignments of Error 2 and 3)

16 "Metro failed to follow proper procedures in setting  
17 deadlines for filing exceptions to the proposed order  
of the Hearings Officer.

18 "Metro erred in excluding petitioner's supplemental  
19 memorandum at the hearing on June 12, 1986, and in  
denying petitioner the opportunity to be heard by  
20 reason of the exclusion of said memorandum."

21 Under these two assignments of error, petitioner claims  
22 Metro erred in refusing to allow petitioner to participate in  
23 the June 12 hearing on the ground the supplemental exceptions  
24 document was untimely. Petitioner explains that the first  
25 deadline to submit exceptions established by the hearings  
26 officer was May 22, 1986. The deadline was extended by the

1 hearings officer to June 5, 1986, in anticipation of a June 12  
2 hearing date. At the hearing on June 12, Metro refused to  
3 consider petitioner's additional but more detailed exceptions  
4 document because it was not timely.

5 Petitioner argues there is no deadline in MSDC 2.05.035(b),  
6 and there is nothing to suggest the council adopted the  
7 hearings officer's suggestion for a deadline. Petitioner  
8 argues that if the council had intended to adopt a June 5  
9 deadline, the council would have expressly said so. Therefore,  
10 petitioner argues its later exceptions submitted on June 12  
11 were timely.

12 Metro Code 2.05.035(b) governs exceptions. It does not set  
13 dates. However, we do not believe timing of the exceptions is  
14 the issue in this assignment of error. Metro met the code  
15 provision allowing exceptions to be filed.. Any procedural  
16 irregularities regarding the timing of a second set of  
17 exceptions does not result in error for which we have the  
18 authority to reverse or remand. In other words, the council  
19 complied with all legal requirements in its code  
20 notwithstanding its cavalier treatment of petitioner.<sup>3</sup> See  
21 our discussion under Assignment of Error No. 8, supra.

22 These assignments of error are denied.

23 ASSIGNMENT OF ERROR NO. 11

24 (LUBA No. 86-080 - Assignment of Error No. 4)

25 "Metro's decision approving Riviera's petition to  
26 amend the UGB was flawed by procedural error  
prejudicial to petitioner in that Metro's refusal to

1 allow petitioner to participate in the June 12, 1986,  
2 hearing deprived petitioner of its right to procedural  
3 due process under the fourteenth amendment of the  
4 United States Constitution and the 'due course of law'  
5 provision of Article I, section 10, of the Oregon  
6 Constitution."

7 Petitioner continues its argument that Metro's refusal to  
8 allow petitioner to participate in the June 12 hearing was  
9 error. In this assignment of error, petitioner claims Metro's  
10 action violates the due process clause of the United States  
11 Constitution and the "due course of law" provision of Article  
12 I, section 10 of the Oregon Constitution.

13 Petitioner's argument depends on our acceptance of its  
14 premise that participation in oral argument is a requirement of  
15 due process. We decline to accept such an interpretation.  
16 Petitioner was afforded the opportunity to participate in the  
17 process by filing exceptions. Petitioner did so. We are aware  
18 of no requirement in the state or federal constitution which  
19 require a local government to afford petitioner not only the  
20 opportunity to be heard, but to be heard in any particular  
21 manner. The fact the council has a provision in its code  
22 allowing for the filing of exceptions creates a limited right.  
23 It is our view that this right was adhered to by the council.

24 This assignment of error is denied.

25 The Metro decision on appeal in LUBA No. 86-072 is affirmed.

26 The Metro decision on appeal in LUBA No. 86-080 is affirmed.

FOOTNOTES

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Metro further explained it looked at the vacant land available between the present and the year 2005. It did not because petitioner's need analysis was based not on immediate need for more land, but on a need through the year 2005. Given this broad view of available land, Metro believed it was appropriate to require petitioner to demonstrate why some lands now without needed services, such as sewer, will remain unsewered in the year 2005. We find no fault with this method.

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2  
Metro's staff suggested the revised exceptions be rejected because the document was late. Staff also recommended the council deny oral argument because the original exceptions document was not specific. In its motion and vote, the council gave no reason for its decision to disallow the revised exceptions and oral argument. Record 146. Because it has discretion to allow or deny oral argument, no reason needed to be given. We express no opinion on the effect of a council order giving erroneous reasons for an exercise of unbridled discretion. See 3 K.C. Davis, Administrative Law Treatise, Sec. 14.29 (2d, ed., 1980).

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3  
The council finding explaining it refused to consider the second set of exceptions and to allow oral argument is surplusage. The council was under no obligation to allow the additional exceptions or oral argument and its decision of the matter in the findings provides insight to its views but does not provide reviewable findings on ordinance standards.