

Agenda Item No. 6.1

Public Hearing on Urban and Rural Reserves
Public Hearings

Metro Council Meeting
Thursday, March 2, 2017
Metro Regional Center, Council Chamber

STAFF REPORT

IN CONSIDERATION OF THE REMAND BY THE OREGON COURT OF APPEALS AND LCDC REGARDING THE DESIGNATION OF URBAN AND RURAL RESERVES IN THE METRO REGION

Date: February 23, 2017

Prepared by: Roger Alfred, Senior Assistant Attorney

PROPOSED ACTION

Hold a public hearing regarding the remand by the Oregon Court of Appeals and the Land Conservation and Development Commission (LCDC) of urban and rural reserves in the Metro region. The specific purpose of this proceeding is to adopt supplemental findings addressing two state rule requirements that apply to the amount of urban reserves region-wide, and the “balance” of those designations, in light of the Oregon legislature’s reduction of urban reserve acreage in 2014 via the “Grand Bargain” (HB 4078), and the Metro Council’s adoption of the current Urban Growth Report in 2015. The two applicable state rules are:

1. A requirement that the amount of land designated as urban reserve must be sufficient to accommodate urban growth in the region for between 40 and 50 years after Metro’s adoption of the most recent Urban Growth Report; and
2. A requirement that the balance in the designation of urban and rural reserves across the region “best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.”

PROCEDURAL SUMMARY

In 2014, the Oregon Court of Appeals issued its opinion in *Barkers Five v. LCDC et al.*, remanding to LCDC the joint decision of Metro and the three counties that designated urban and rural reserves around the region. Shortly following the Court of Appeals decision, the Oregon legislature enacted HB 4078, which legislatively adopted revisions to the reserves map and the UGB in Washington County. In 2015, LCDC issued a remand order formally remanding the reserves decision back to Metro, Clackamas County, and Multnomah County for further proceedings and action consistent with the Court of Appeals opinion. In response to the remand regarding the designation of urban reserves in Clackamas County, the Metro Council adopted Ordinance No. 16-1368 on February 4, 2016.

OVERVIEW

A detailed description of the history of urban and rural reserves in the Metro region since the 2007 enactment of Senate Bill 1011 is set forth in the staff report to the Metro Council dated September 30, 2015 regarding Ordinance No. 16-1368. That ordinance and all supporting materials should be re-adopted and incorporated into the record of this proceeding.

The purpose of the current proceeding is neither to revisit the regionally agreed-upon map of urban and rural reserves, nor to reconsider the findings adopted by the Metro Council in 2016 in support of the designation of Stafford and other reserve areas in Clackamas County. Rather, the purpose of this proceeding is to consider two region-wide issues that must be addressed under applicable state rules governing urban and rural reserves:

1. Whether the existing amount of urban reserves across the region is sufficient to accommodate estimated urban growth for between 40 and 50 years after the Metro Council's adoption of the most recent Urban Growth Report in 2015; and
2. Whether the balance of designated urban and rural reserves across the region "best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents."

Metro and the three counties considered and addressed these two regional issues in the joint findings supporting the urban and rural reserve designations in 2011. However, two relatively recent occurrences call for reconsideration of these two standards. First, in enacting the "Grand Bargain" legislation (HB 4078) in 2014, the Oregon legislature changed the urban and rural designations of several thousand acres of land in Washington County, resulting in a net reduction of approximately 3,210 acres of urban reserves. Second, the projected 50-year need for urban reserves in 2011 was based on the regional growth forecast set forth in Metro's previous Urban Growth Report (UGR), adopted in 2010. The Metro Council adopted the current UGR in 2015, which provides new residential and employment growth projections for the region. The applicable state rule requires that the estimated need for urban reserve acreage must be based on the analysis in the most recent UGR.

ANALYSIS

A. Amount of Land Designated Urban Reserve in the Metro Region

In 2011, Metro and the three counties adopted ordinances designating a total of 28,256 acres of urban reserves in the Metro region. Later that year, Metro adopted Ordinance No. 11-1264B, which expanded the UGB onto approximately 2,000 acres of urban reserves located in Washington County. In 2014, the Oregon legislature enacted House Bill 4078, which legislatively approved Metro's 2011 UGB expansion, and made the following changes to the reserves map in Washington County:

- Converted 2,449 acres of urban reserves to rural and undesignated
- Converted 417 acres from rural reserve to urban reserve
- Added 1,178 of urban reserve to the UGB

Thus, HB 4078 resulted in the net reduction of 3,210 acres of urban reserves. When combined with urban reserves that were included in the 2011 UGB expansion, the current acreage of urban reserves in the entire Metro region is now 23,031.

The state rules governing the designation of urban and rural reserves require that the amount of land designated as urban reserves must be planned to accommodate estimated urban population and employment growth in the Metro region for between 20 and 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in its most recent Urban Growth Report. OAR 660-027-0040(2). The Metro Council adopted the current UGR in December 2015,

In order to update the 50-year need analysis for urban reserves to 2065 by applying the most current growth projections, Metro planning staff has prepared the attached memorandum. That memorandum provides an updated assessment of potential long-term demand for urban reserves, and concludes that the existing 23,031 acres of urban reserves across the region, combined with buildable land already inside the UGB, are an appropriate size for accommodating expected urban growth for between 40 and 50 years.

Specifically, the attached memorandum includes an analysis of projected long-term need for residential, commercial, and employment land, and concludes that there is a potential 50-year demand for 24,827 acres of urban reserves. Assuming an equal amount of urban reserve acreage is converted annually over 50 years, the existing 23,031 acres of urban reserves would provide a 46-year supply of land for urban growth in the Metro region.

No particular formula or methodology is suggested or required under state law for estimating a 50-year need for urban reserves. As explained by LCDC in its 2012 order regarding Metro's compliance with the requirement to provide a 40 to 50-year supply of urban reserves, the statutes and rules provide Metro "a substantial degree of discretion concerning... the methods and policy considerations that Metro uses to project future population and employment." (LCDC Compliance Acknowledgment Order 12-ACK-001819, page 26).

With that in mind, it is important to note that preparing this type of 50-year estimate requires multiple levels of assumptions; therefore, minor changes in the underlying assumptions would necessarily change the results. Metro's ability to precisely forecast growth and development trends 50 years into the future is necessarily limited.

It is also important to recall that the intergovernmental agreements between Metro and each of the three counties regarding the designation of reserves provide for a review of existing urban reserves in each county 20 years after the date of adoption, or sooner if agreed to by Metro and all three counties. Therefore, the adequacy of the amount of land designated for future urbanization can and will be revisited, and additional lands may be added if necessary, much sooner than 2065.

B. Balance in the Designation of Reserves that "Best Achieves" Certain Goals

Included among the state rules governing urban and rural reserves is a requirement that Metro and the counties must explain how the urban and rural reserve designations achieve the following objective:

"The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents." OAR 660-027-0005(2).

The meaning and application of this rule was the subject of considerable debate in the appeals filed with LCDC in 2011 and with the Court of Appeals in 2012. Ultimately, in the *Barkers Five* opinion, the Court of Appeals agreed with the positions taken by LCDC and Metro that the "best achieves" standard provides significant discretion to Metro and the counties, and is satisfied through their site-specific findings concerning the application of the urban and rural reserve factors. Specifically, the Court of Appeals identified and agreed with the following four legal premises regarding the application of the standard:

First, the best achieves standard is a qualitative standard, rather than a quantitative one. The court agreed with LCDC that the standard "is not a balance in terms of the quantitative *amount* of urban and rural reserve acreage, but a balance between encouraging further urban expansion versus land conservation." The court explained that Metro and the counties are not required to justify a quantitative "balance" in the specific amount of acreage of urban reserves and rural reserves.

Second, the best achieves standard applies to Metro and the counties' designation of reserves "in its entirety" and not to the designation of individual properties or areas as urban or rural reserves.

Third, the best achieves standard allows for a range of permissible designations, and not a single “best” outcome. The court agreed with LCDC and Metro that the standard does not require a ranking of alternative areas from worst to best. The court specifically rejected arguments presented by the cities of West Linn and Tualatin that the word “best” requires a comparative analysis that identifies a single highest-ranked designation.

Fourth, the court held that Metro and the counties must explain how the designation satisfies the best achieves standard through their findings concerning the application of the urban and rural reserve factors to specific areas. The court agreed with LCDC that there is a close relationship between the “factors” that Metro and the counties must consider for urban and rural reserve designations and the overall “best achieves” objective, and that the best achieves standard is satisfied through findings explaining why particular areas were chosen as urban or rural reserves.

Applying the four legal premises identified by the Court of Appeals in *Barkers Five*, it is clear that Metro and the counties have broad discretion in reaching a conclusion regarding whether the region-wide balance of urban and rural reserves achieves the identified objectives of creating livable communities while protecting farms, forest, and natural landscape features.

During the proceedings before LCDC regarding its adoption of the remand order in 2015, several parties argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 necessarily created a shift in the “balance” of urban reserves that runs afoul of the best achieves standard. However, under the above-stated first premise of the Court of Appeals, that is incorrect. The court held that the best achieves standard does not require quantitative balancing of the specific amount of urban reserve acreage in one county or another. Thus, the reduction of urban reserves in Washington County by 3,210 acres does not inherently raise concerns under this standard.

Metro and the counties adopted detailed findings in their decisions in 2011 regarding the consideration of all urban and rural reserve factors, explaining why particular areas were chosen as urban or rural reserves, and explaining how the regional partners came to agree that the overall package of urban and rural reserves reflects a balance that best achieves the objectives of creating livable communities while protecting farms, forest, and natural landscape features. Those findings are consistent with the fourth premise identified by the Court of Appeals regarding compliance with the best achieves standard.

Importantly, Metro and the three counties expressly recognized that the adoption of urban and rural reserves reflect the region’s decision regarding the long-term limits of urbanization in the Metro area, as well as its commitment to stewardship of farm and forest, and its respect for the natural landscape features that give the people of the region their sense of place. Urban reserves, if and when added to the UGB, will necessarily take some land from the farm and forest base. However, the regional partners also recognized that some of the same characteristics that make an area suitable for agriculture also make it suitable for livable communities under the best achieves standard, including mixed-use pedestrian and transit-supportive urban development, as well as industrial uses. The region concluded, acting together, that the designations adopted in 2011 will best achieve a balance between livability and protection of farms, forests, and natural features. The prior findings adopted by Metro and the three counties would be re-adopted as part of any decision by the Metro Council resulting from this proceeding, and would be correctly relied upon to support a conclusion that the best achieves standard is still met.

CONCLUSION

The Metro Council will take evidence and testimony at the public hearing on March 2, 2017; at the close of the hearing the Council should continue the hearing to March 16 or March 23 in order to allow sufficient time to accept and consider additional evidence submitted by interested parties and staff.

Memo

Date: February 22, 2017
To: Metro Council
From: Ted Reid, Principal Regional Planner
Subject: Updated assessment of the amount of Urban Reserves

Background

The DLCD rules governing the designation of urban and rural reserves require that the amount of land designated as urban reserves must be planned to accommodate estimated urban population and employment growth in the Metro region for between 20 and 30 years beyond the 20-year period for which Metro has demonstrated a buildable land supply inside the UGB in its most recent Urban Growth Report (UGR). When urban reserves were designated and adopted by Metro and the three counties in 2010, the analysis was based on urban growth projections in the 2009 UGR, and the amount of land that would be needed for urban reserves was estimated to provide a 50-year supply, ending in 2060. This memorandum provides an update to that analysis based on the most recent UGR, which was adopted in 2015, and estimates urban growth needs in the region out to 2065.

As noted in materials supporting the initial adoption of urban reserves in 2011, the reserves process was purposefully focused on studying the suitability of lands outside the urban growth boundary (UGB) for future urban and rural uses rather than on identification of an exact number of acres required for each. Our ability to forecast growth and development trends 50 years into the future is limited and no mathematical formula or methodology is provided in the reserve statutes or administrative rules for determining the scale of urban reserves. Nevertheless, below is an updated assessment of potential long-term demand for urban reserves demonstrating that – combined with buildable land already inside the UGB – the 23,031 acres of urban reserves are an sufficient for accommodating expected growth for the 2015 to 2065 time period.

Given the long-term nature of this analysis it is appropriate to consider all of its numbers as estimates. To create these estimates, a number of assumptions were made. For instance, this assessment includes assumptions about future housing types and densities and the mix of uses in future UGB expansion areas. Those assumptions are not intended to imply new Metro Council policies.

The 2009 Urban Growth Report (UGR) was previously used as a starting point for estimating the scale for urban reserves. Since that time, the Metro Council adopted – by Ordinance No. 15-1361 – a newer 2014 UGR, which includes the region’s most recent, peer-reviewed population and employment forecast and buildable land inventory. The 2014 UGR includes analysis for the 2015 to 2035 planning period, but also includes a forecast through the year 2060. The forecast

is extrapolated out for five more years to produce a fifty-year assessment for the 2015 to 2065 urban and rural reserves planning period.

The current 2014 UGR analysis reflects updated methods as well as updated information. Perhaps most noteworthy, the 2014 UGR was completed after the Great Recession, which is expected to have dampening effect on a long-term growth. The effects of the Great Recession help offset the decrease in urban reserve acreage in Washington County as legislated by HB 4078.

Residential and employment uses are used as categories for estimating demand in this analysis, but they are ultimately combined into a single estimate of potential urban reserve land demand. This is to recognize the inherent uncertainty associated with long-term estimates of this sort. These two analytic categories do not imply land designations for either use.

While the 2014 UGR presented a forecast range, the Metro Council adopted the midpoint of the forecast range for the current 20-year planning period from 2015 to 2035. Therefore, the midpoint forecast is used for these reserve calculations.

Potential residential land demand

Converting the regional population forecast to a household forecast

The 2014 UGR contains a seven-county region population forecast as well as a household forecast. The population forecast is converted into the household forecast by using household size estimates. Average household sizes are expected to decrease over time as fertility rates decrease and the average age of the population increases, making one-and-two-person households more prevalent. Average household size is expected to decrease from 2.61 people per household in 2015 to 2.45 people per household in 2060.

At the midpoint of the forecast range, the number of households in the seven-county area is expected to increase by 507,300 between 2015 (898,700 households) and 2060 (1,406,000 households). The forecast estimates an increase of 6,550 households per year in the final 10-year period (2050 to 2060) of the forecast. For the purposes of this assessment, that 6,550 household-per-year increase is extrapolated out five more years, through the year 2065, leading to an estimated 1,438,750 total households in the seven-county area by the year 2065. This amounts to an increase of 540,050 households in the seven-county area between 2015 and 2065.

Portion of seven-county household forecast likely to locate in Metro UGB (“capture rate”)

Not all of the larger seven-county area’s household growth will happen in the Metro UGB. The 2014 UGR estimated that, in the 2015 to 2035 time period, 72.1 percent of the additional households in the seven-county area would locate within the Metro UGB. That same 72.1 percent “capture rate” is assumed here through the year 2065, amounting to approximately 389,375 additional households inside the Metro UGB from 2015 to 2065.

Vacancy rate

The vacancy rate is the percent of dwelling units that are expected be vacant at any given moment to allow people to move from residence to residence. The 2014 UGR assumed a future vacancy rate of 4 percent. That same assumption is used here, effectively increasing the 2015 to 2065 UGB housing demand by 15,575, from 389,375 to 404,950 housing units.

2015 seven-county households	898,700
2065 seven-county households (midpoint of range)	1,438,750
2015 – 2065 additional seven-county households	540,050
2015 – 2065 Metro UGB household demand (72.1 percent capture)	389,375
Additional dwelling units needed to achieve 4 percent vacancy rate (Metro UGB, 2015 – 2065)	15,575
Total new dwelling unit demand (Metro UGB, 2015 – 2065)	404,950

Demand by housing type

Currently, about two-thirds of the region’s housing is single-family housing. Though the Metro Council does not have any adopted policy on the share of new housing that will be multifamily versus single-family, a shift towards more multifamily housing will be required to make more efficient use of land and for cities in the region to comply with the state’s Metropolitan Housing Rule. The Metropolitan Housing Rule requires that cities in the Metro region plan for at least half of their growth capacity to be for multifamily housing or single-family attached housing. To represent that requirement and demographic shifts towards smaller households, this analysis assumes that half of new housing from 2015 to 2065 will be multifamily housing. This assumption does not constitute or imply a Metro Council policy.

Total new dwelling unit demand (Metro UGB, 2015 – 2065)	404,950
New single-family dwelling if 50 percent share (Metro UGB, 2015 – 2065)	202,475
New multifamily dwelling demand if 50 percent share (Metro UGB, 2015 – 2065)	202,475

Existing residential capacity inside the UGB

The buildable land inventory in the 2014 UGR found that there was long-term growth capacity inside the UGB for approximately 113,225 additional single-family homes and 274,110 additional multifamily homes.

Potential residential demand for urban reserves

There is adequate existing multifamily capacity inside the UGB to accommodate anticipated multifamily demand for the 2015 to 2065 time period.

Existing multifamily dwelling unit capacity inside Metro UGB	274,110
New multifamily dwelling unit demand if 50 percent share (Metro UGB, 2015 – 2065)	202,475
Multifamily dwelling unit demand for urban reserves	-

However, during the same time period, demand for single-family housing is expected to exceed single-family capacity inside the UGB. This results in potential demand for 89,250 single-family homes in urban reserves.

Existing single-family dwelling unit capacity inside Metro UGB	113,225
New single-family dwelling unit demand if 50 percent share (Metro UGB, 2015 – 2065)	202,475
Single-family dwelling unit demand for urban reserves	89,250

Converting housing demand into acreage

The number of urban reserve acres needed to accommodate 89,250 single-family homes will depend on future density requirements. The Metro Council does not have an adopted policy on densities for future UGB expansion areas. It is expected that the Council will place density conditions on future expansions when they expand the UGB. A typical expectation in past UGB expansion areas has been 10 to 15 units per net buildable acre. This analysis assumes densities at the lower end of that range to determine if the number of acres of urban reserves will be sufficient to accommodate anticipated household growth, while also providing the Metro Council with flexibility to work with cities to determine appropriate densities for expansion areas on a case-by-case basis.

At 10 units per net acre, 89,250 single-family homes would require 8,925 net buildable acres of urban reserves. In reality, some of these units would be multifamily or attached single-family housing to achieve desired community balance. However, this analysis does not attempt to arrive at that level of planning detail. This assumption does not constitute or imply a Metro Council policy.

Because of environmental constraints as well as needs for future streets, sidewalks, parks and schools, not all acres of urban reserve land will be buildable. The original urban reserves analysis assumed that 45 percent of urban reserve land will be buildable after accounting for those constraints. Applying that same gross-to-net acreage assumption, results in potential residential demand for 19,834 gross acres of urban reserves (8,925 net acres, divided by .45 = 19,834 gross acres).

Residential (dwelling unit) demand for urban reserves	89,250
Net acres of residential demand for urban reserves (assuming 10 units per net acre)	8,925
Gross acres of residential demand for urban reserves (assuming 45% gross-to-net)	19,834

Potential employment land demand

Estimating long-term employment land needs is highly speculative – more so than estimating residential needs. Among other factors, changes in technology, global economic conditions, international relations, monetary policies, education policies and costs, competition with other regions, land prices and redevelopment trends, as well as infrastructure investment will influence employment trends and land needs.

The 2014 UGR uses methods that, while appropriate for a 20-year planning period, would imply too much precision if used for the longer-term reserves time horizon. For instance, the 2014 UGR contains assumptions about:

- The share of employment in different sectors that will locate in different building types; and,
- How many square feet per employee will be needed in different building types; and,
- The intensity of development (floor-area-ratios) for different building types.

Commercial employment

The 2014 UGR handles commercial and industrial employment needs separately. Commercial employment tends to locate in central locations or along transportation corridors close to where people live. For this reason, this analysis assumes that additional redevelopment and infill – beyond what is estimated in the 2014 UGR – would happen inside the existing UGB to create space to accommodate most long-term commercial employment growth.

As a matter of good planning practice, it generally would make no sense to locate additional commercial acreage on the urban edge unless that development served nearby areas or were integrated into a new mixed-use development. To the extent this analysis estimates urban reserve needs for commercial employment land, it is tied to the previous estimates of residential land demand with the idea that any commercial employment in urban reserve areas would be planned as mixed-use centers or commercial nodes that serve nearby residential areas.

The mix of commercial employment in future UGB expansion areas will be determined in city-led concept plans and will likely vary considerably depending on local conditions. Past UGB expansion areas show this variability. Some past expansions have little land area devoted to commercial development while others incorporate mixed-use centers or commercial nodes. For long-term estimation purposes, this analysis assumes that for every one hundred gross acres of residential demand for urban reserves, there is additional demand for five gross acres for commercial employment. This analysis indicates potential demand for 19,834 gross acres of urban reserve for residential purposes. Five percent of 19,834 acres results in an estimated commercial employment demand for approximately 992 gross acres.

Gross acres of residential demand for urban reserves (2015 – 2065)	19,834
Assume 5 percent additional demand for commercial employment in urban reserves	992
Gross acres of commercial employment demand for urban reserves (2015 – 2065)	992

Industrial employment

Industrial employment does not typically get integrated into residential development like commercial employment does, so there are fewer urban form questions to grapple with when coming up with an estimate of long-term land demand. However, there is still significant uncertainty regarding long-term employment and development trends for industrial uses. To recognize this uncertainty and to avoid implying false precision, this analysis simply projects the 2014 UGR’s estimated annual industrial land demand out through the year 2065. At the

midpoint of the forecast range, the 2014 UGR estimated that there would be demand for 3,778 net buildable acres of industrial land from the year 2015 to the year 2035. This amounts to an annual demand of 189 net acres. Extrapolated out from 2015 to 2065, this amounts to potential 50-year demand for 9,445 net acres for industrial employment.

The 2014 UGR found that there are 7,271 net buildable acres of industrial employment land inside the UGB. For the 2015 to 2065 planning period, the potential employment demand for 9,445 net acres exceeds the 2014 UGR estimate of UGB capacity by 2,174 net acres. Because of environmental constraints as well as needs for future streets, sidewalks, parks and schools, not all acres of urban reserve land will be buildable. The original urban reserves analysis assumed that 45 percent of land will be buildable after accounting for those constraints. Applying that same gross-to-net acreage assumption, results in a preliminary employment demand for 4,831 gross acres of urban reserves (2,174 net acres, divided by .45 = 4,831 gross acres).

HB 4078 added an additional 830 gross employment acres to the UGB that Metro was prohibited from counting as capacity in the 2014 UGR, but will be required to count going forward. Counting these 830 gross acres of existing capacity results in potential 50-year industrial employment demand for 4,001 gross acres in urban reserves.

2015 – 2035 industrial employment demand for Metro UGB (net acres)	3,778
2015 - 2035 annual industrial employment demand for Metro UGB (net acres)	189
2015 – 2065 extrapolated industrial employment demand for Metro UGB (net acres)	9,445
2014 UGR estimate of existing industrial land capacity inside Metro UGB (net acres)	7,271
Preliminary industrial employment demand for urban reserves not counting HB 4078 lands (net acres)	2,174
Preliminary industrial employment demand for urban reserves not counting HB 4078 lands (gross acres, assuming 45% gross-to-net)	4,831
HB 4078 additional industrial acres not counted in 2014 UGR (gross acres)	830
Total industrial employment demand for urban reserves after accounting for HB 4078 expansions (gross acres)	4,001

Conclusion

This analysis concludes that there is potential 50-year demand (2015 – 2065) for an estimated 19,834 gross acres of reserves for residential uses. It also concludes that there is potential 50-year demand for an estimated 992 gross acres for commercial employment uses and 4,001 gross acres of reserves for industrial employment uses. As previously noted, employment and residential uses are categories used for calculation purposes. However, our ability to forecast land needs for a 50-year period is limited and these analysis categories are not intended to imply land use designations. For these reasons, potential 50-year urban reserve demand is summarized as a total of 24,827 acres. Minor changes to the underlying assumptions would increase or decrease this estimate.