

Agenda Item No. 6.1

Ordinance No. 17-1397, For the Purpose of Addressing State Rule
Requirements Regarding the Amount of Urban Reserves and the
Balance of Urban and Rural Reserves in the Metro Region

Ordinances (Second Read)

Metro Council Meeting
Thursday, April 13, 2017
Metro Regional Center, Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ADDRESSING) Ordinance No. 17-1397
STATE RULE REQUIREMENTS)
REGARDING THE AMOUNT OF URBAN) Introduced by Chief Operating Officer
RESERVES AND THE BALANCE OF) Martha Bennett in concurrence with
URBAN AND RURAL RESERVES IN THE) Council President Tom Hughes
METRO REGION)

WHEREAS, in 2007 the Oregon Legislative Assembly enacted SB 1011, authorizing Metro and the three counties in the Metro region to designate urban and rural reserves; and

WHEREAS, between 2008 and 2010 Metro and the three counties conducted an extensive public process bringing together citizens, stakeholders, local governments and state agencies to consider and apply the urban and rural reserve factors to land surrounding the Metro urban growth boundary (UGB); and

WHEREAS, in 2010 Metro and each of the three counties entered into intergovernmental agreements mapping the areas that were determined to be most appropriate as urban and rural reserves under the applicable factors; and

WHEREAS, in 2011 Metro and the three counties submitted ordinances and findings formally adopting the urban and rural reserve designations to LCDC for acknowledgement, and those designations were approved and acknowledged by LCDC in 2012; and

WHEREAS, in 2014 the LCDC acknowledgement order was remanded by the Oregon Court of Appeals, and the Oregon Legislative Assembly enacted HB 4078, which legislatively designated a revised map of urban and rural reserve areas in Washington County; and

WHEREAS, in 2015 LCDC issued an order remanding the remaining urban and rural reserve designations to Metro, Multnomah County, and Clackamas County for further review consistent with the Court of Appeals opinion; and

WHEREAS, in 2016 the Metro Council addressed the remand issues arising out of Clackamas County via Ordinance No. 16-1368, which adopted findings concluding that the urban reserve study areas identified as areas 4A, 4B, 4C, and 4D (generally referred to as “Stafford”) were correctly designated as urban reserve areas; and

WHEREAS, Metro now must adopt findings addressing two state rule requirements that apply to the designation of urban and rural reserves across the entire region, in light of (a) the Metro Council’s adoption of newer regional urban growth projections in the 2014 Urban Growth Report, and (b) the reduction of urban reserve acreage in Washington County via HB 4078; and

WHEREAS, Metro held public hearings on March 2, 2017 and March 16, 2017 at which the Metro Council accepted testimony regarding the urban and rural reserve designations in the Metro Region; and

WHEREAS, the Metro Council has reviewed the staff report, the testimony submitted by interested parties, and all other materials in the record, and now concludes that (a) the amount of existing urban reserves in the region is sufficient to accommodate urban growth in the region for ~~between 40 and~~ 50 years after 2015, and (b) the balance in the designation of urban and rural reserves across the region best achieves the goals of creating livable communities while protecting farms, forests, and natural landscape features; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

- 1. The Findings of Fact and Conclusions of Law in Exhibit A, attached and incorporated into this ordinance, explain how the urban and rural reserve designations adopted in 2011 by Metro Ordinance No. 11-1255, as modified by the 2014 Oregon legislature in House Bill 4078, are consistent with state law.
- 2. The prior record of proceedings before the Metro Council in Ordinance No. 16-1368 is hereby adopted and incorporated as part of the record in this proceeding.

ADOPTED by the Metro Council this 13th day of April 2017.

Tom Hughes, Council President

Attest:

Approved as to Form:

Nellie Papsdorf, Recording Secretary

Alison R. Kean, Metro Attorney

Exhibit A to Ordinance No. 17-1397

The findings set forth below include the supplemental findings of the Metro Council arising out of this proceeding regarding the amount of urban reserves and region-wide balance of urban and rural reserves under applicable state rules. The findings below will replace Section V of the findings adopted by the Metro Council in Ordinance No. 16-1368.

V. SUPPLEMENTAL FINDINGS REGARDING SUPPLY OF URBAN RESERVES AND REGIONWIDE BALANCE

The findings in this Section V supplement the findings adopted by the Metro Council in support of the original 2011 approval of urban and rural reserves via Metro Ordinance 11-1255. To the extent any of the findings in this section are inconsistent with other findings in this document that were previously adopted in 2011, the findings in this Section V shall govern. These findings address issues related to the regionwide supply of urban reserves and the overall balance of reserves in light of (a) the Metro Council's adoption of the current Urban Growth Report in 2015, and (b) the Oregon Legislature's enactment of House Bill 4078.

On April 21, 2011, Metro enacted Ordinance 11-1255 adopting the urban and rural reserve designations agreed upon by Metro and the three counties, and submitted that ordinance and accompanying findings to LCDC for acknowledgement. On August 19, 2011, LCDC voted to approve and acknowledge the reserve designations made by Metro and the counties, and LCDC issued Acknowledgment Order 12-ACK-001819 on August 14, 2012. Twenty-two parties filed appeals of the LCDC Order, and on February 20, 2014 the Oregon Court of Appeals issued its opinion in the *Barkers Five* case, affirming LCDC's decision regarding the majority of the 26 assignments of error raised by the opponents, and remanding the LCDC Order on three substantive issues.

First, the court concluded that LCDC incorrectly approved Washington County's application of the rural reserve factors pertaining to agricultural land, because the county relied on factors that were different from those required by statute for determining whether lands should be designated as rural reserve. The court held that the county's error required remand of all urban and rural reserves in Washington County for reconsideration.

Second, the court held that LCDC incorrectly concluded that Multnomah County had adequately considered the rural reserve factors pertaining to Area 9D. The court found that the county's findings were not sufficient to explain why its consideration of the applicable factors resulted in a designation of rural reserve for *all* of Area 9D, given the fact that property owners in that area had identified dissimilarities between the northern and southern portions of the study area.

Finally, the court held that LCDC did not correctly review Metro's urban reserve designation of the Stafford area for substantial evidence. The court concluded that Metro failed to adequately respond to evidence cited by opponents from Metro's 2035 Regional Transportation Plan (RTP)

indicating that traffic in the Stafford area was projected to exceed the capacity of certain roads by 2035.

Immediately after the Court of Appeals issued its opinion, work began on legislation designed to resolve issues regarding the remand of urban and rural reserves in Washington County. On March 7, 2014 the Oregon Legislature passed House Bill 4078, which legislatively approved Metro's 2011 UGB expansion, added an additional 1,178 acres of urban reserves to the UGB, and made other revisions to the reserves map in Washington County.

As described in Section IV of these findings, when Metro and the three counties adopted their maps of reserve areas, they agreed on a total of 28,256 acres of urban reserves, which reflected Metro's estimate of the acreage that would be required to provide a 50-year supply of urbanizable land as contemplated under ORS 195.145(4). The specific forecast described above in Section IV is for a range of between 484,800 and 531,600 new dwelling units over the 50-year period ending in 2060. Metro relied on the high point of that forecast range in estimating that the region would need a supply of urban reserves sufficient to provide for approximately 152,400 new dwelling units outside of the existing UGB through 2060.

After LCDC voted to approve Metro's findings and acknowledge the designation of 28,256 acres of urban reserves in August of 2011, Metro relied on those designations to expand the UGB onto approximately 2,015 acres of urban reserves in Washington County. However, that expansion was called into question by the Court of Appeals decision in *Barkers Five*, which reversed and remanded all of the urban and rural reserve designations in Washington County.

The compromise reflected in House Bill 4078 included legislative approval and state acknowledgement of the 2,015 acres of 2011 UGB expansions in order to provide certainty to the cities regarding their ability to urbanize those expansion areas. In addition to acknowledging the UGB expansion areas already approved by Metro, House Bill 4078 included 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
- Converted 883 acres of undesignated areas to rural reserve
- Added 1,178 acres of urban reserve to the UGB

In the final accounting, HB 4078 resulted in the net reduction of 3,210 acres of urban reserves below the amount remaining after Metro's 2011 UGB expansion. The remaining acreage of urban reserves in the Metro region is now 23,031.

The legislature's removal of 3,210 acres of urban reserves via HB 4078 potentially implicates two elements of state law governing reserves. First, ORS 195.145(4) requires the designation of a sufficient amount of urban reserve areas to provide the Metro region with a 40 to 50 year supply of urbanizable land. Second, OAR 660-027-0040(10) requires Metro and the counties to

adopt findings explaining why the reserve designations achieve the objective stated in OAR 660-027-0005(2) of a balance in urban and rural reserves that “best achieves” livable communities, viability and vitality of farm and forest industries, and protection of important natural landscape features.

Regarding the requirement for a 40 to 50 year supply of urban reserves, the applicable state rule requires Metro’s estimate of the projected long-range need for urban reserve acreage to be based on the analysis in Metro’s most recent Urban Growth Report (UGR). The projected need for urban reserves adopted by Metro and the counties in 2011 was based on the regional growth forecast set forth in Metro’s 2009 UGR. Since that time, in 2015 the Metro Council adopted the current 2014 UGR, which provides the current residential and employment growth projections for the region.

The findings below address the status of existing urban reserve acreage in light of the newer growth projections in the 2014 UGR, as well as the impact of HB 4078 on both the amount of urban reserves and the regionwide balance of urban and rural reserves under the “best achieves” standard.

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

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 2014 UGR via Ordinance No. 15-1361 on November 12, 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 prepared a memorandum dated February 22, 2017, which was attached to the staff report for Metro’s public hearing on March 2, 2017. That memorandum provides an updated assessment of potential long-term demand for urban reserves, and concludes that the existing amount of urban reserves, combined with buildable land already inside the UGB, can provide a sufficient amount of land to accommodate expected urban growth.

Specifically, the staff memorandum includes an analysis of projected long-term need for residential and employment land, and concludes that the existing 23,031 acres of urban reserves can reasonably be expected to accommodate projected household and employment growth over the next 40 to 50 years. The staff analysis forecasts a potential need for 24,827 acres of urban reserves by 2065. Only for demonstrative purposes of placing that acreage in perspective on a 50-year planning horizon, assuming that 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. However, for the reasons described above in Section IV of these findings regarding more efficient use of land, including the likelihood of

land developing at densities of higher than 10 dwelling units per net developable acre, the Metro Council finds that the existing 23,031 acres of urban reserves are intended to provide a supply of land for 50 years from the date of adoption of the 2014 UGR in 2015.

As explained in the staff memo, any prediction about how much land will be required for urban growth in the region over a 50-year planning horizon is necessarily a rough estimate. The nature of this exercise requires Metro to predict what growth and development trends might look like over the next 50 years, based on the available data. State law does not provide any particular formula or methodology for estimating the future 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).

The 50-year regional growth estimate provided in the February 22, 2017 Metro staff memorandum is based on the analysis and projections in the 2014 UGR. The UGR forecast is then subjected to a series of predictions about what will happen in the future, based on multiple levels of assumptions regarding an array of factors that affect how much residential and employment growth might be expected in the region, such as capture rate, vacancy rate, and projected share of single-family and multifamily housing types. Minor changes in the underlying assumptions regarding these factors will necessarily change the results.

The Metro Council also notes 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.

Based on the analysis and projections provided in the Metro staff memorandum dated February 22, 2017, the Metro Council concludes that the existing 23,031 acres of urban reserves across the region, combined with buildable land already inside the UGB, will provide a sufficient amount of land for urban growth in the region until 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).

During the proceedings before LCDC regarding its adoption of the remand order in 2015, some parties argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 created a shift in the balance of urban reserves that implicates the “best achieves” standard. The following two sections of these findings address the application of the best achieves standard in light of HB 4078.

First, in adopting HB 4078 the legislature enacted a new statute that acknowledged the new balance of urban and rural reserves across the region as being in compliance with state law, and therefore a new analysis by Metro and the counties is not required. Second, in the event such an analysis is required, that standard is still met.

1. The “best achieves” rule is satisfied through HB 4078

The enactment of HB 4078 resulted in the legislative acknowledgement of the new amount of urban reserves and the new balance of urban and rural reserves as being in compliance with all aspects of state law. Therefore, in the absence of any changes to the existing mapped acreage of urban and rural reserves in Clackamas County and Multnomah County, the existing balance of reserves across the region meets all applicable state requirements and there is no need for Metro to revisit the standards related to the “best achieves” requirement as part of these findings.

In the *Barkers Five* opinion, the Court of Appeals remanded the designation of all urban and rural reserves in Washington County for reconsideration. As a result of this wholesale remand of the entire Washington County reserves package, the court also noted that “any new joint designation” of reserves by the county and Metro on remand would also require new findings addressing the “best achieves” standard in OAR 660-027-0005(2). *Barkers Five* at 333.

Thus, the court’s opinion provides that the best achieves standard would only be triggered in the event there are any *new* designations of reserve areas on remand that are different from what was approved in the original decision. That is because the stated purpose of the best achieves standard is to ensure that the overall “balance in the designation of urban and rural reserves” across the entire region “best achieves” liveable communities, vitality of farm and forest uses, and protection of natural features that define the region. Thus, any changes in the “balance” of those designations by Metro and the counties on remand would require a reassessment of whether and how those objectives are still met. But, in the absence of any changes to the reserve maps, no further assessment would be required.

This aspect of the Court of Appeals decision was overridden with respect to Washington County by the enactment of HB 4078, which legislatively established a new map of the locations of the UGB and urban and rural reserves in Washington County. This legislative action negated the

court's directive requiring remand to Metro and Washington County for reconsideration of the reserve designations. The enactment of HB 4078 also negates any need to reconsider or reapply the best achieves standard, which is an administrative rule requirement that was necessarily preempted by the legislature as part of its decision to redesignate substantial portions of the Washington County reserve areas. As long as the remand proceedings regarding Clackamas County and Multnomah County do not result in changes to the reserves maps in those counties, there is no need to reconsider the best achieves standard to account for the HB 4078 revisions.

The Oregon legislature is presumed to be aware of existing law when it enacts new legislation. *Blanchana, LLC v. Bureau of Labor and Industries*, 354 Or 676, 691 (2014); *State v. Stark*, 354 Or 1, 10 (2013). This presumption also applies to administrative rules adopted by LCDC. *Beaver State Sand & Gravel v. Douglas County*, 187 Or App 241, 249-50 (2003). When the legislature adopted revisions to the Washington County reserves map as part of HB 4078, it is presumed to have been aware of LCDC's administrative rule requiring that there be a balance in reserve designations that "best achieves" the stated goals. The adoption of HB 4078 created a statutory requirement regarding the location of reserves in Washington County that takes precedence over LCDC's "best achieves" rule and does not require subsequent action by LCDC, Metro or the counties to explain why the statute satisfies an administrative rule requirement, because statutes necessarily control over administrative rules.

The express terms of HB 4078 also indicate a legislative intent to preempt existing land use law. Each section of HB 4078 that establishes new locations for reserve areas or the UGB begins with the phrase "*For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County...*" HB 4078, Sec 3(1), (2), (3) (2014). The legislature was aware that its actions in redrawing the UGB and reserve maps had the effect of acknowledging the new maps as being in compliance with state law, and thereby preempting other land use planning rules (including for example LCDC's Goal 14 rules regarding UGB expansions). The legislature included this language to clearly state that its action in adopting the new maps constituted acknowledgment of compliance with state law, and that it need not demonstrate compliance with other existing land use statutes, goals or rules, including the "best achieves" rule and the statutory requirement to provide a 40 to 50 year supply of urban reserves.

For these reasons, so long as there are no revisions on remand to the reserve maps in Clackamas County or Multnomah County, the HB 4078 revisions to the reserve designations in Washington County do not create a need to reconsider compliance with the "best achieves" standard or the sufficiency of the supply of urban reserves.

2. The balance in the designation of reserves still achieves the stated goals

The meaning and application of the "best achieves" 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.

Under the four legal premises stated by the Court of Appeals in *Barkers Five*, Metro and the counties have broad discretion in reaching a conclusion regarding whether the regionwide balance of urban and rural reserves achieves the identified objectives of creating livable communities while protecting farms, forest, and natural landscape features.

Some parties have argued that the reduction in urban reserve acreage in Washington County via House Bill 4078 inherently caused 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 have adopted detailed findings 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, and the findings continue to demonstrate that the objectives stated in the rule are being achieved through the selected designations.

Metro and the counties have also adopted detailed findings that explain why the urban and rural reserves adopted by the region satisfy the best achieves standard, which are set forth above in Section II of these findings. Those findings note that urban reserves, if and when added to the UGB, are likely to take some land from the farm and forest base. However, Metro and the counties 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. For the reasons described below, the findings in Section II are still valid and are not impacted by the reduction of urban reserves in Washington County under House Bill 4078.

The designation by Metro and the counties of urban and rural reserves achieves the objectives required under the state rule, in part, by adopting 266,628 acres of rural reserves across the region that establish the long-term limits of urbanization in the Metro area. As described above, consistency with the “best achieves” standard does not require a quantitative balancing of the amount of rural and urban reserve acreage. However, the designation of a significant amount of rural reserve areas around the region, with the vast majority (248,796 acres) being foundation and important agricultural land, demonstrates the region’s commitment to achieving the objectives of ensuring viability and vitality of the agricultural and forest industries and corresponding protection of important natural landscape features. As described in the Court of Appeals opinion, LCDC’s intent when it created the best achieves standard was to provide another level of review specifically designed to protect foundation farmland in the region:

“[Commissioner Worrix] explained that the best achieves standard was seen as ‘the best solution’ for the agricultural industry that had expressed ‘a strong concern ... that there needed to be something that highlighted the importance of foundation land and gave them that little extra bit of scrutiny.’” *Barkers Five*, 261 Or App at 312.

Regarding important natural landscape features, the process associated with achieving a balance in the designation of urban and rural reserves also provided a significant amount of weight to the protection of natural features. Three of the urban reserve factors – (5), (7) and (8) – seek to direct urban development away from important natural landscape features, and away from farm and forest practices. This provides an example of the close relationship between the factors for urban and rural reserve designations and the “best achieves” objective (as described in the fourth premise adopted by the Court of Appeals), and demonstrates how the best achieves standard may

be satisfied through findings explaining why particular areas were chosen as urban or rural reserves. Similarly, the rules that apply to rural reserve designations include very specific directives regarding how natural landscape features must be reviewed and considered. OAR 660-027-0060(3). Section II of these findings includes a bullet-point list of areas where important natural landscape features are located that are protected with rural reserve designations.

Two of the three objectives that the best achieves standard requires to be balanced are primarily achieved through rural reserve designations: (a) protection of farm and forest and (b) protection of important natural resource features. The region's ability to achieve these two objectives through rural reserve designations is not impacted by the reduction of urban reserve acreage that occurred via House Bill 4078. In fact, that legislation enhanced the region's ability to achieve those two standards by adding approximately 2,780 acres of new rural reserves in Washington County, all of which is foundation agricultural land.

The third objective that must be balanced as part of the best achieves analysis is "livable communities." This objective is primarily achieved by designating areas across the region that will be the best locations to build "great communities" through application of the urban reserve factors. As discussed in Section II of these findings, great communities are those that offer residents a range of housing types and transportation modes from which to choose. To that end, urban reserve factors (1), (3), (4) and (6) are aimed at identifying lands that can be developed in a compact, mixed-use, walkable and transit-oriented pattern, supported by efficient and cost-effective services.

The reduction of urban reserves in Washington County by 3,210 acres does not impact the region's ability to build livable communities across the region over the next 40 to 50 years. The quantitative aspect of urban reserve planning is addressed by the rule discussed above that requires sufficient acreage for up to 50 years of urban growth. Meanwhile, the directive of the best achieves standard to provide livable communities is aimed at designating highest *quality* of locations that can provide a range of housing types and transportation modes, as well as efficient public services. As discussed above, the existing urban reserve acreage in the region still provides a sufficient amount of land for urban growth over the next 40 to 50 years. The fact that House Bill 4078 reduced the amount of urban reserves from 26,241 to 23,031 acres has no effect on the region's ability to plan and build livable communities on those 23,031 acres over the next several decades. Therefore, the balance in the designation of urban and rural reserves, in its entirety, still achieves the goals of providing livable communities, viability and vitality of farm and forest industries, and the protection of important natural landscape features that define the region.

In 2011, the region concluded, acting together, that the agreed-upon urban and rural reserve designations provide a balance that achieves the objectives of building livable communities while protecting farms, forests, and natural features. The findings adopted by Metro and the counties support a conclusion that the best achieves standard has been met, and that conclusion is

not impacted by the changes to urban and rural reserve acreage that occurred via House Bill 4078.

C. Responses to Issues Raised by Opponents

During the proceedings leading up to the Metro Council's adoption of Ordinance No. 17-1397, several parties submitted testimony raising legal issues regarding the Metro staff analysis set forth in the February 22, 2017 memorandum to the Metro Council concerning the amount of urban reserves remaining in the region. Responses to these arguments are provided in the Metro staff memorandum dated March 23, 2017, which is included in the record and hereby incorporated as part of these findings.

A common theme in letters submitted by attorneys for the Maletis Brothers and Barkers Five, LLC arises out of Metro's reliance on the 2014 UGR for purposes of determining whether the amount of urban reserves is sufficient to provide a 40 to 50 year supply of urbanizable land. These parties contend that the 2014 UGR is flawed for various reasons and therefore does not provide an adequate basis to forecast the future need for residential and employment land between now and 2065.

A fundamental problem with arguments about the adequacy of the future growth projections in the 2014 UGR is that those projections were developed through a multi-year and extensively peer-reviewed process culminating in adoption of the 2014 UGR by the Metro Council via Ordinance No. 15-1361. That decision was not appealed by any party, and therefore the UGR is acknowledged by LCDC as providing a legally valid forecast that is in compliance with all state requirements. To the extent that opponents are attempting to challenge the adequacy of the assumptions and projections in the adopted and acknowledged 2014 UGR, those arguments are impermissible collateral attacks. The applicable rule establishing the requirement for a 40 to 50 year supply of urbanizable land does not require Metro to generate a new UGR for purposes of estimating the future need for urban reserves. Rather, it directs Metro to rely on the land supply analysis in the most recently adopted 2014 UGR, which is exactly what Metro has done.

Many of the staff responses in the memorandum dated March 23, 2017 to issues raised by counsel for the Maletis Brothers also apply to issues raised by counsel for Barkers Five, LLC in a letter dated March 23, 2017. Nearly all of the issues raised by Barkers Five are based on arguments regarding why they believe the 2014 UGR is not accurate. As addressed above, Metro is entitled to rely on the adopted and acknowledged 2014 UGR forecast and to apply that forecast to the urban reserve analysis. Responses to specific issues raised by counsel for Barkers Five, LLC are included in a separate memorandum from Metro staff dated April 6, 2017, which is included in the record and hereby incorporated as part of these findings.

SUPPLEMENTAL STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 17-1397 FOR THE PURPOSE OF ADDRESSING STATE RULE REQUIREMENTS REGARDING THE AMOUNT OF URBAN RESERVES AND THE BALANCE OF URBAN AND RURAL RESERVES IN THE METRO REGION

Date: April 6, 2017

Prepared by: Roger Alfred, Senior Assistant Attorney

PROPOSED ACTION

Adoption of Ordinance No. 17-1397 including supplemental findings addressing two state rule requirements that apply to the amount of urban reserves regionwide and to the “balance” of urban and rural reserve designations, in light of the Oregon legislature’s reduction of urban reserve acreage in 2014 via House Bill 4078, and the Metro Council’s adoption of the most recent Urban Growth Report.

BACKGROUND

This staff report supplements the prior staff report dated February 23, 2017. The Metro Council held public hearings on March 2, 2017 and March 16, 2017. At the close of the March 16, 2017 public hearing the Council held the record open for additional written submittals until March 23, 2017. A considerable amount of oral and written testimony has been submitted, much of it related to existing rural reserve designations in Multnomah County. Metro staff prepared a memorandum dated March 23, 2017 responding to issues that had been raised by the date of the second hearing. On March 23, 2017, the date the record was closed, Metro received a letter from the Jordan Ramis law firm on behalf of Barkers Five, LLC with accompanying exhibits. That letter raises issues regarding the Metro staff analysis of the sufficiency of existing urban reserves to provide a 50-year supply of urbanizable land.

In response to the letter from Jordan Ramis, Metro staff prepared a memorandum dated April 6, 2017 that addresses relevant concerns. That memorandum is Attachment 1 to this staff report. Staff has also prepared a revised set of supplemental findings (Exhibit A to the Ordinance), which are included in the Council packet. The revised findings are nearly identical to the draft findings that were provided to the Council for the March 16 hearing, with the primary change being the addition of a new Section C at the end, which incorporates the April 6 staff memorandum and provides other findings in response to issues raised by opponents in the public hearings and during the open record period.

PROPOSED FINDINGS

Staff has provided a set of proposed supplemental findings. The findings are “supplemental” in that they are in addition to the reserve findings previously adopted by the Council in 2011 in support of the original urban and rural reserve decision and in 2016 regarding the remand from the Court of Appeals of urban reserve designations in the Stafford area. The supplemental findings will replace Section V of the previous findings from 2016 addressing issues regarding the 50-year supply of urban reserves and the regionwide balance of urban and rural reserves. In adopting Ordinance No. 17-1397 the Council will re-adopt the entire set of findings that were adopted in 2016, with the new Section V included in that document.

RECOMMENDED ACTION

Staff recommends adoption of Ordinance No. 16-1368. As described in the proposed findings, staff's analysis of the evidence in the record supports the conclusion reached by Metro staff in the February 22, 2017 that there is a sufficient amount of urban reserves to provide a 50-year supply, and supports the conclusion that the regionwide balance of urban and rural reserves best achieve the goals of creating livable communities while protecting farms, forests and important natural landscape features.

Memo

Date: April 6, 2017
To: Metro Council
From: Ted Reid, Principal Regional Planner
Roger Alfred, Senior Assistant Attorney
Subject: Urban and rural reserves – Metro Planning and Development staff response to letter from Mr. Peter Watts

This memorandum provides the Metro staff response to a letter submitted by Peter Watts of the Jordan Ramis law firm on March 23, 2017 regarding the sufficiency of the amount of land designated as Urban Reserve in the Metro region. Because the evidentiary record closed on March 23, 2017, this memorandum does not include any new evidence, but only staff comments regarding the arguments and exhibits submitted by Mr. Watts.

First, Mr. Watts contends that it is “unreasonable” for Metro staff to rely on the 2014 UGR for purposes of forecasting the 40 to 50 year need for urban reserves in the Metro region because the 2014 UGR analysis is overly influenced by the recession and “does not represent the current market reality.” As previously described in the Metro staff memorandum dated March 23, 2017, the applicable state rule regarding forecasting the amount of land needed for urban reserves directs Metro to base its analysis on the most recent UGR, and does not require Metro to undertake a new buildable lands analysis under ORS 197.296 in order to project future need for residential and employment land between now and 2065. The 2014 UGR was adopted by Metro Council ordinance in 2015 and acknowledged by LCDC; therefore, its conclusions are not subject to challenge in this proceeding.

In support of his arguments, Mr. Watts first points to census data from 2014 to 2016 regarding housing permits issued in the Portland-Vancouver-Hillsboro Metropolitan Statistical Area (MSA) to argue that the percentage of single family homes constructed in the last three years exceeds Metro’s projection in the 2014 UGR that 36% of new housing units would be single family. Mr. Watts also cites a 2016 Housing Market Analysis prepared by the Department of Housing and Urban Development (HUD), and argues that the HUD analysis predicts that 58% of future demand will be for single family homes, which is 22% more than predicted in the UGR.

The primary error in these arguments is that both the census report and the HUD forecast are based on data and estimates for the entire seven-county MSA, which includes Columbia County, Yamhill County, Skamania County, and Clark County. Meanwhile, the housing mix described in the 2014 UGR is limited to the area defined by the Metro UGB, and does not consider the entire seven-county region. It is not surprising that there will be higher demand for, and development of, single family homes in less densely urbanized locations such as Canby,

Vancouver, Newberg, St. Helens and Stevenson than within the Metro UGB. Comparing the census data and HUD seven-county forecast to the 2014 UGR is not comparing apples to apples.

Further, the cited figures from the seven-county HUD forecast are based exclusively on housing tenure (sales vs. rentals) as opposed to the UGR, which translates tenure into actual housing type (single family vs. multifamily). Therefore, the comparatively higher number of “single family homes” that are predicted by HUD includes condominiums, which are considered multifamily dwellings rather than single family for purposes of the UGR.

The remainder of the letter from Mr. Watts includes paragraphs (a) through (g) raising additional issues with the 2014 UGR projections. Each of those paragraphs is addressed below.

- a. Mr. Watts incorrectly asserts that the staff analysis regarding future urban reserve acreage is somehow related to estimated growth in Skamania County. That county is part of the federally defined seven-county MSA for which detailed census data are available and are relied upon by Metro as the starting point for its forecasts of population and job growth in the Metro area. However, the seven-county forecasts are then pared down through the application of a market-based land and transportation computer model that is used to determine what percentage of the new jobs and households expected in the seven-county MSA are likely to locate within the Metro UGB. This “capture rate” was approximately 72% in the 2014 UGR. Neither the UGR nor the February 22, 2017 urban reserve assessment by Metro staff include any projections regarding what particular amount of growth will occur in Skamania or any of the other counties that are not part of the Metro area. To the extent Mr. Watts is challenging the capture rate for the Metro area as applied in the 2014 UGR, that decision has been adopted and acknowledged and Metro may properly rely upon it.
- b. Mr. Watts challenges the application of a four percent vacancy rate in the February 22, 2017 urban reserve assessment. In that analysis, Metro staff applied the same four percent vacancy rate that was applied in the 2014 UGR. Mr. Watts asserts that “no county in the seven county region achieved even a 5% vacancy rate, let alone a 4% vacancy rate per the 2000 and 2010 census,” but provides no evidence to support that assertion. However, Mr. Watts did submit evidence to the contrary in the HUD report addressed above, which states on page one that the owner-occupied vacancy rate in the seven-county housing market area is one percent and the rental housing vacancy rate is 2.9%. Thus, based on the evidence provided by Mr. Watts, the 4% rate assumed by Metro staff might be considered too high. However, no particular vacancy rate is required for purposes of the urban reserve assessment and Metro may properly rely on the same vacancy rate estimate that was applied in the 2014 UGR.
- c. Mr. Watts asserts that Metro staff’s assumption in the urban reserve assessment that 45% of gross urban reserve acreage will be net developable acres is too high, pointing to net developable areas in South Hillsboro, North Bethany, South Cooper Mountain and the Stafford Basin. Regarding South Hillsboro, the page cited by Mr. Watts in the South Hillsboro Community Plan provides a figure for net developable acres of 649 but does not

provide the gross acreage for the entire plan area. However, page three of the Community Plan describes the plan area as containing approximately 1,400 acres, which equates to 46% net developable acres. Similarly, Mr. Watts describes North Bethany as having 237 net developable acres out of 691 gross acres, but the page he cites in the Washington County materials that he submitted as an exhibit does not reflect those figures. Rather, those materials consistently refer to 326 net developable acres. Assuming that the 691 gross acre figure is correct, 326 acres out of 691 equates to 47% net developable acres. Mr. Watts also cites South Cooper Mountain where the net-to-gross acreage was 237/544, which equates to 43.6% buildable land, or only 1.4% less than the 45% assumed by Metro staff in the urban reserve assessment.

The reliance by Mr. Watts on the concept plan materials he submitted regarding the Stafford Basin is similarly puzzling. His letter states that only 1,000 out of 4,700 acres were deemed buildable; however page 5 of the plan document states the following: "The Basin covers roughly 4,300 acres of land, of which just over 2,000 are considered buildable after accounting for existing homes, natural areas and steep slopes." Based on this statement, net buildable acreage in the Stafford Basin would be 46.5% of the gross acreage. To be fair, we know that the three urban reserve areas at issue (4A, 4B and 4C) actually do contain approximately 4,700 acres. Assuming that the Stafford Basin concept plan materials are correct regarding the basin containing 2,000 acres of net buildable land (which is questionable since it appears to have considered only a 4,300 acre plan area rather than a 4,700 acre area), that would equate to 42.5% net buildable land.

These four examples, which all fall within about two percentage points of 45% (two of the examples are higher), validate Metro staff's decision to apply an assumption that 45% of urban reserve land will be buildable.

- d. Mr. Watts points to existing urban reserve areas that are located east and south of the former City of Damascus and contends that those areas "are no longer viable as urban reserves" because water and sewer services cannot be easily provided and they are unlikely to be annexed by Gresham or Happy Valley. When these urban reserve areas were designated in 2010, they were adjacent to the UGB and the City of Damascus. While the disincorporation of that city might make it more challenging for these areas to be urbanized in the future, they remain designated as urban reserves and Metro cannot disregard their existence for purposes of undertaking the analysis required under OAR 660-027-0040(2). Further, even if Mr. Watts is correct that the City of Gresham is currently not interested in annexing into Clackamas County, there is no reason to believe that the city's current political position will never change over the course of a 50-year planning horizon.
- e. Mr. Watts asserts that the Metro staff assumption of 10 dwelling units per acre in the February 22, 2017 urban reserve assessment is too high, citing a prior agreement regarding future density in the Stafford area; however, no such agreement has been submitted as evidentiary support for this statement. Assuming that portions of Stafford urban reserves are brought into the UGB at some point in the future, future development and density in

those areas will be based on concept plans prepared by a city with plans to annex the area, in conjunction with Metro and Clackamas County. The same is true for the Advance Road urban reserve area adjacent to the City of Wilsonville.

- f. Mr. Watts asserts that the Metro staff assumption of 10 dwelling units per acre in the urban reserve assessment is unlikely, and actual density in future urban areas will be lower. As examples, Mr. Watts cites a recent UGB expansion in the City of Lafayette with a density of six units per acre, as well as suburban locations and smaller cities in Clark County, Washington. It is entirely possible, and not at all surprising, that development is occurring at lower densities outside of the Metro UGB in Washington. Metro has no jurisdiction over those decisions. In the Metro region, cities and counties are subject to DLCD's Metropolitan Housing Rule, which requires higher densities. In fact, that rule requires an overall density of 10 units per acre in Multnomah County, Portland, Gresham, Beaverton, Hillsboro, Lake Oswego and Tigard. The Metro Council has the authority to place conditions of approval, including expectations for housing numbers and densities, on UGB expansions. For instance, the 2011 Metro Council ordinance expanding the UGB into South Hillsboro and South Cooper Mountain included conditions resulting in densities in the range of 10 to 15 units per net developable acre, as referenced in Metro staff's February 22, 2017 assessment.

Mr. Watts asserts that Metro is ascribing 28 percent of future growth to the four counties outside of the Metro UGB and asserts that those counties (Yamhill, Skamania, Columbia and Clark counties) cannot be expected to take on that much growth. We believe that Mr. Watts is referencing the 28 percent of total seven-county growth that is not "captured" in the Metro UGB per the 2014 UGR's analysis (72 percent is the forecast Metro UGB capture rate). The premise of this argument is incorrect because the 72 percent capture rate applies to projected growth inside the Metro UGB, not inside the boundaries of the three counties included in the Metro UGB. There are many other cities located within Washington, Clackamas and Multnomah counties where future growth will occur that are not within the Metro UGB. It is incorrect to say that all growth not captured within the Metro UGB will occur in the other four counties; therefore, that number would actually be much smaller than 28 percent. In any event, the capture rate forecast is based on the best available information and results from Metro's land use model – Metro's job is to predict how much growth will occur within the Metro UGB, not to forecast growth in Yamhill, Skamania, Columbia and Clark counties.

- g. Mr. Watts states that the population growth estimates for the region are too low, pointing to estimates released in 2015 from the U.S. Census Bureau. The Metro staff estimates are based on the population forecast in the 2014 UGR that was adopted by the Metro Council and acknowledged by LCDC. The population forecast in the 2014 UGR is derived from the most recent U.S. Census data available at the time, in the 2010 census. As described above, the urban reserve rules do not require Metro to undertake a new UGR analysis under ORS 197.296 and corresponding population forecast for purposes of estimating the current sufficiency of urban reserves. Rather, Metro is correctly relying on the projections set forth in the adopted and acknowledged 2014 UGR.