

IN THE COURT OF APPEALS OF THE STATE OF OREGON

HOUSING LAND ADVOCATES,
Petitioner,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION,
METRO, CITY OF HILLSBORO, CITY OF WILSONVILLE,
CITY OF BEAVERTON, and CITY OF KING CITY,
Respondents.

Land Conservation and Development Commission No. 20-UGB-001910

Court of Appeals No. A173406

RESPONDENT METRO'S ANSWERING BRIEF

July 27, 2020

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STATEMENT OF THE CASE

Respondent Metro accepts the statement of the case in the opening brief filed by Petitioner except for a portion of section A, and sections E and F in their entirety.

First, in section A petitioner incorrectly cites 2017 Or Laws 199 (House Bill 2095) as the statutory basis for Metro's decision to expand the urban growth boundary (UGB) for the Metro region. House Bill 2095 added new language in ORS 197.299(5) authorizing Metro to expand the UGB within three years of its most recent housing need analysis under ORS 197.296 by revising that analysis, rather than by completing a new analysis as generally required every six years under ORS 197.299(1). However, Metro did not employ that statute in making the decision on appeal; rather, Metro undertook a new analysis of its buildable lands and future housing need as described in ORS 197.299(1) and ORS 197.296.

Metro also does not accept section E of petitioner's statement of the case regarding the questions presented on appeal or section F regarding the summary of arguments. Metro rejects petitioner's questions presented and summary of arguments because they misstate applicable law and mischaracterize the Metro Council decision, as described in detail below.

Questions Presented

1. Is petitioner's interpretation of Goal 14 inconsistent with ORS 197.296(4)?
2. Is petitioner's interpretation of Goal 14 inconsistent with ORS 197.296(6)?
3. Did LCDC adopt a plausible interpretation of the term "reasonably accommodate" in Goal 14 when it approved Metro's decision to add land to the Urban Growth Boundary in the Portland metropolitan region?

Summary of Argument

Petitioner argues that the "reasonably accommodate" language in Goal 14 requires Metro and other cities to amend local zoning to increase allowed density in single-family residential neighborhoods before they may decide to expand a UGB to meet an identified need for housing. That has never been the law in Oregon and petitioner cites no authority directly supporting its theory that Goal 14 requires cities to increase residential density prior to completing an inventory of housing capacity under ORS 197.296(3)(a) or as an alternative to expanding the UGB.

That is because the statute requires almost the exact opposite. Under ORS 197.296(6), if a city or Metro determines that it does not have a sufficient supply of buildable land for housing *based on existing residential zoning*, then they are authorized to either: (a) expand the UGB, or (b) increase density inside

the existing UGB. Subsection (b) specifically allows rezonings to increase density as one option for addressing an identified 20-year housing need, rather than expanding the UGB. However, any such actions to increase density must be the result of an inventory of buildable lands that applies *existing* residential zoning and concludes there is not enough housing capacity to provide a 20-year supply. Petitioner is placing the cart before the horse.

As described below, petitioner is asking this court to apply Goal 14 in a way that: (a) ignores the express directive in ORS 197.296(4)(b) that Metro and other cities must apply existing city zoning when preparing their inventory of buildable lands; and (b) is contrary to the plain text of ORS 197.296(6), which provides Metro the option of meeting a future housing need by *either* expanding the UGB or taking steps to increase density. Petitioner also fails to establish that LCDC's interpretation of what it means to "reasonably accommodate" needed housing inside the existing UGB is implausible or contrary to law.

ANSWER TO FIRST ASSIGNMENT OF ERROR

Petitioner's interpretation of the phrase "reasonably accommodate" in Goal 14 is contrary to the text and context of ORS 197.296. Goal 14 is an administrative rule adopted by LCDC, and LCDC correctly interpreted that rule when it approved Metro's conclusion that a UGB expansion was warranted because a small percentage of single-family housing that would be needed in

the next 20 years could not be “reasonably accommodated” inside the existing UGB.

Preservation

Metro agrees that petitioner preserved its assignment of error in the LCDC proceedings.

Standard of Review

LCDC’s final order is subject to judicial review under ORS 197.651, which provides that this court may not reverse or remand unless the order is unlawful in substance or procedure, unconstitutional, or is “[n]ot supported by substantial evidence in the whole record as to facts found by the commission.” ORS 197.651(10). In determining whether LCDC’s order is unlawful in substance, this court must defer to LCDC’s interpretation of its own rule if that interpretation is “plausible” and not inconsistent with another source of law. *Barkers Five, LLC v. LCDC*, 261 Or App 259, 302; 323 P3d 368 (2014).

In conducting the substantial evidence review under ORS 197.651(10)(c), this court does not “review the record on [its] own to determine whether [the local government’s] decisions, in fact, satisfied the substantial evidence standard.” *City of West Linn v. LCDC*, 201 Or App 419, 431, 119 P3d 285 (2005). Rather, this court’s role “is to determine whether [LCDC] *applied the correct legal test* in deciding whether [the local government’s] decision is

supported by substantial evidence.” *Id.* at 429 (emphasis added); *see also Barkers Five*, 261 Or App at 348 (“[W]here LCDC properly articulates the substantial evidence standard of review, we will affirm unless the evidence is so at odds with LCDC's evaluation that we can infer that LCDC misunderstood or misapplied the proper standard.”).

ARGUMENT

Petitioner’s argument is based on a fundamental misunderstanding of state law regarding how Metro and other cities across the state are required to inventory housing capacity inside an urban growth boundary (UGB) for purposes of determining whether there is a need to expand their UGB.¹ Petitioner also ignores a key statute that expressly provides Metro the option of meeting an identified need for more housing by *either* expanding the UGB or by taking actions to increase density.

Petitioner contends that the Land Conservation and Development Commission (LCDC) erred by approving Metro’s decision to expand the regional UGB because Metro’s decision violates Statewide Planning Goal 14. Petitioner’s arguments are based entirely on Goal 14, which is an administrative rule adopted by LCDC. OAR 660-015-0000(14); *1000 Friends of Oregon v.*

¹ Petitioner’s proposed misapplication of state law would apply not just to Metro, but to all cities in Oregon with populations of 25,000 or more. ORS 197.296(1)(a).

LCDC (Curry County), 301 Or 447, 452, 724 P2d 268 (1986) (noting that Goal 14 “is a rule within the meaning of the Administrative Procedures Act.”).

Petitioner argues that LCDC “misinterpreted and misconstrued” Goal 14. Opening Brief at 11. This court must defer to LCDC’s interpretation of its own rule if that interpretation is “plausible” and not inconsistent with another source of law. *Barkers Five*, 261 Or App at 302 (citing *DeLeon, Inc. v. DHS*, 220 Or App 542, 548; 188 P3d 354 (2008)). Petitioner fails to establish that LCDC’s interpretation of Goal 14 is implausible or inconsistent with state law. In fact, as described below, *petitioner’s* interpretation of Goal 14 is inconsistent with the statute that governs UGB decisions. LCDC’s interpretation of whether Metro’s decision was “reasonable” under Goal 14 is not only plausible, it is legally correct.

Petitioner relies on a highly discretionary policy in Goal 14 stating that prior to expanding a UGB, local governments must demonstrate that an identified need for more developable land “cannot *reasonably* be accommodated on land already inside the UGB.” (Emphasis added.) However, petitioner elects to ignore the statute that provides more detailed directions to Metro and other cities regarding how they must inventory housing capacity in order to determine whether a UGB expansion is necessary. The applicable statute is ORS 197.296 and it describes an analysis and process that is nearly

the opposite of what petitioner argues Metro was required to do under Goal 14. As explained below in Section B of this brief, Metro followed the statutes and all applicable rules – including Goal 14 – to the letter.

Petitioner is asking this court to apply a generalized and discretionary policy in Goal 14 about “reasonably accommodating” land needs in a manner that conflicts with very specific directives in ORS 197.296 regarding how cities and Metro must inventory their available land for housing. As an administrative rule, Goal 14 may not be applied in a manner that is inconsistent with the statutes that it implements. *See, e.g., Avis Rent A Car System, Inc. v. Dept. of Rev.*, 330 Or 35, 41, 995 P2d 1163 (2000).

A. Petitioner misconstrues the statutory growth management process described in ORS 197.296.

Urban growth boundaries are a cornerstone of Oregon’s statewide land use planning system, which was established in 1973 with the passage of Senate Bill 100. A primary purpose of Oregon’s UGB requirements is to concentrate urban development in cities and to prevent suburban sprawl from consuming valuable natural resource land across the state. As the Oregon Supreme Court has noted, “land use planning and regulation in Oregon occurs within a framework enacted in 1973 as Senate Bill 100 which, with some amendments, now appears as ORS ch 197.” *1000 Friends of Oregon v. LCDC*, 292 Or 735, 744-45, 642 P2d 1158 (1982) (footnote omitted).

1. Petitioner's Goal 14 arguments are inconsistent with ORS 197.296(4).

The essential state law requirements governing UGB decisions are set forth in ORS 197.296, which petitioner essentially ignores. The statute requires Metro and every city with a population of 25,000 or more to maintain a UGB that includes “sufficient buildable lands ... to accommodate estimated housing needs for 20 years.” ORS 197.296(2). In order to ensure that the necessary 20-year supply of land for housing exists, Metro and other large cities are required to periodically undertake an inventory of buildable lands within their UGB and then compare that inventory against a forecast of future housing needs for the next 20 years. ORS 197.296(3). Metro must complete the land inventory and future need analysis at least every six years, while other cities across the state are placed on individual schedules for periodic review by LCDC. *See* ORS 197.299(1) (Metro) and ORS 197.296(2) (cities).

To guide Metro and the cities in this work, ORS 197.296(4) provides a definition of “buildable lands” that describes what lands must be included in the buildable lands inventory (BLI) and identifies certain factors that must be considered in preparing the BLI. The statute provides that the BLI must be an inventory of how much new housing capacity could be built on lots that are vacant, partially vacant, or that could be built upon through residential infill or redevelopment. ORS 197.296(4)(a). The purpose of the BLI is to determine

how much additional housing could fit within residentially zoned areas inside the UGB.

The inventory of existing capacity for new housing must then be measured against a 20-year forecast of future housing needs in order to determine if a sufficient amount of land exists to provide the 20-year supply required by ORS 197.296(2). If the analysis described in ORS 197.296(3)-(4) concludes that the current supply of buildable lands inside the UGB will not be sufficient to meet the projected 20-year demand, the next steps are governed by ORS 197.296(6), which is described below in Section A.2.

Significantly for this appeal, ORS 197.296(4)(b) provides that when Metro is preparing its inventory of how much new housing could be built on residentially zoned land that is vacant, partially vacant, or otherwise buildable through infill and redevelopment, Metro must consider “[t]he extent that residential development is prohibited or restricted by local regulation and ordinance, state law and rule or federal statute and regulation.” This subsection of the statute expressly requires Metro to apply *existing* city zoning codes in order to determine how much density will be allowed for new homes. For example, in a residential neighborhood with city zoning of R-5, which typically allows one dwelling per 5,000 square foot lot, in the absence of city code provisions allowing for higher density, the statute directs Metro to count a

vacant lot in that neighborhood as providing capacity for one housing unit, because that is what is allowed under existing local zoning.² That is precisely what Metro did in its BLI.

Petitioner argues that the “reasonably accommodate” language in Goal 14 prevents Metro from considering the effect of Metro Charter Section 5, subsection (4)(b) and Metro Code Section 3.07.1220 in its housing capacity analysis.³ But petitioner ignores ORS 197.296(4)(b), which requires Metro to “consider the extent that residential development is prohibited or restricted by local regulation or ordinance.” Thus, the statute expressly *requires* Metro to consider the fact that the Metro Charter and Code “prohibit or restrict residential development” by preventing Metro from requiring increased density in single-family neighborhoods.

² In 2019 the Oregon Legislative Assembly adopted House Bill 2001, creating new state law requiring cities in the Metro region and across the state to allow for higher density residential development in their single family zones. Metro’s BLI for the Portland metropolitan region was prepared in 2016-17 and Metro’s final decision on appeal in this case was adopted in 2018, and therefore pre-date the existence of the House Bill 2001 requirements and any corresponding changes to city zoning codes.

³ The charter provision at issue prohibits Metro from requiring cities to increase density in single-family neighborhoods. It was added to the Metro Charter through a ballot measure that was passed in 2002 by the voters in the Metro region, and was put on the ballot and approved again by voters in 2014 as required by the 2002 ballot measure. The cited Metro Code section repeats and implements the Metro Charter requirement.

Despite the clear statutory directive to Metro to consider and apply local codes and regulations in its BLI analysis, petitioner argues that the Goal 14 “reasonably accommodate” language requires Metro to somehow rezone single family neighborhoods to increase density in order to provide more housing capacity and avoid expanding the UGB. However, Goal 14 may not be applied in a manner that is inconsistent with ORS 197.296(4)(b) and petitioner’s arguments must be rejected.

Further, as a practical matter, Metro does not have authority to amend city or county zoning codes to increase residential density. Local zoning is the exclusive province of the 24 cities and three counties within the Metro region. *See* ORS 197.175(2). By contrast, Metro is a metropolitan service district charged with “coordinating” planning activities affecting land use for areas within the service district. ORS 195.025(1); *see also* ORS 268.380(1). Although Metro does have the statutory authority to adopt “functional plans” creating planning requirements that must ultimately be incorporated by cities and counties into their land use regulations, Metro cannot by itself change local zoning as part of a growth management decision as petitioner appears to contend. *See* ORS 268.390.

Additional textual support is provided by ORS 197.296(4)(b)(C), which directs Metro to consider in its analysis of whether there is capacity for more

housing inside the UGB “[t]he presence of a single family dwelling or other structure on a lot or parcel.” This statute requires Metro to consider whether higher density is unlikely in locations where residential lots are already developed with single family dwellings. In other words, the statute expressly authorizes Metro to assume that increased density will *not* occur on lots with existing dwellings, which is the opposite of what petitioner is arguing.

This statute is implemented by DLCD rules that provide a more detailed directive regarding how cities may estimate the likelihood of future density increases. Under OAR 660-024-0050(2), cities with populations under 25,000 are authorized to assume for purposes of their inventory that any existing residential lot of less than half an acre (approximately 22,000 square feet) that is currently occupied by a single residence “may be assumed to be fully developed.” Thus, under this state rule even a 22,000 square foot lot that contains only one dwelling may be dismissed as a potential source of additional future housing capacity in the city’s BLI. The rule creates a “safe harbor” assumption for smaller cities that does not apply to Metro; however, it provides context supporting the intent of ORS 197.296(4)(b)(C), which similarly authorizes Metro to assume that residential lots currently occupied by a single-family dwelling will not be more densely developed.

As described by LCDC in its final order, Metro actually applied a more aggressive approach to estimating residential infill potential in its BLI than is required under state law. ER 27 (LCDC Order at 45). For purposes of estimating future single-family residential development in existing neighborhoods (commonly referred to as “infill” development), Metro assumed that unless an existing lot contained a very high-value home, all lots at least 2.5 times the minimum lot size of existing zoning (or 2.2 times in the City of Portland) would be divided into additional single-family residential lots. ER 27-28 (LCDC Order at 45-46). As discussed below in Section B, LCDC cited this approach in support of its finding that Metro took steps to minimize the need for a UGB expansion by “reasonably accommodating” future single-family development inside the existing UGB.

Petitioner’s argument that Goal 14 requires Metro to create increased density beyond what is allowed under existing zoning is contrary to the text and context of ORS 197.296(4) and should be rejected.

2. Petitioner’s Goal 14 arguments are inconsistent with ORS 197.296(6).

As described above, the first step for Metro and other cities in demonstrating compliance with ORS 197.296(2) is to prepare a BLI in order to quantify the amount of new housing that could be built inside the UGB under existing city zoning. ORS 197.296(3)-(4). That inventory must then be

measured against the 20-year forecast of future population growth and housing needs required by ORS 197.296(3)(b) in order to determine if a sufficient amount of land exists to provide a 20-year supply of buildable land for housing. If the BLI and future housing need analysis described in ORS 197.296(3)-(4) conclude that there is sufficient capacity under existing zoning to meet the 20-year housing need, no further action is required. However, if the inventory and analysis show that there will not be enough supply to meet the projected 20-year demand, the next steps are governed by ORS 197.296(6). *See, e.g., 1000 Friends of Oregon v. LCDC (McMinnville)*, 244 Or App 239, 246, 259 P2d 1021 (2011) (describing the required analysis under ORS 197.296).

Under ORS 197.296(6), when Metro or a city concludes that housing need will exceed buildable capacity within the next 20 years, the statute provides three options: (a) amend the UGB to add enough land to accommodate the future housing need; (b) amend land use plans and/or zoning codes to increase densities in order to accommodate the need; or (c) a combination of the actions described in (a) and (b). *See, e.g., City of West Linn v. LCDC*, 201 Or App 419, 423, 113 P3d 285 (2005) (describing the three options provided under ORS 197.296(6) for addressing an identified housing need).

The plain text of this statute provides Metro with the option of meeting an identified 20-year need for more buildable land for housing by *either*

expanding the UGB or by taking steps to increase density (or a combination of both). Petitioner argues that Goal 14 should be applied in a way that eliminates the option expressly provided in the statute and instead *requires* Metro to increase residential density rather than expand the UGB. Petitioner's interpretation of Goal 14 is contrary to the express language of ORS 197.296(6) and should be rejected.

Petitioner's argument ignores ORS 197.296 and renders that statute a nullity. Under petitioner's interpretation of Goal 14, Metro and other cities across the state would be required to rezone all existing single-family neighborhoods to maximum conceivable densities when they undertake their duties under ORS 197.296, and there might not ever be a basis for expanding a UGB for housing again. Where, as in the present case, the housing inventory and growth projections identify a need for more housing, ORS 197.296(6) expressly provides Metro and other cities the discretion to decide whether they will choose to grow "up or out," *i.e.*, by taking steps to increase density or by expanding the UGB.

The court should reject petitioner's interpretation of Goal 14 because it is inconsistent with the plain text of ORS 197.296(6).

B. LCDC correctly interpreted and applied Goal 14

Petitioner argues that LCDC “misinterpreted and misconstrued” Goal 14. Opening Brief at 11. This court must defer to LCDC’s interpretation of its own rule if the interpretation is “plausible” and not inconsistent with another source of law. *Barkers Five*, 261 Or App at 302. As this court has explained, the level of judicial deference is significant: “When, as here, an agency has interpreted its own rules, we give *significant* deference to that interpretation and are required to affirm it if it is ‘plausible,’ that is, if it is not inconsistent with the wording of the rule itself or with the rule’s context, or with any other source of law.” *Growing Green Panda v. DHS*, 302 Or App 325, 332-33; 461 P3d 1026 (2020) (quoting *Boatwright v. DHS*, 293 Ore. App. 301, 304-05; 425 P3d 449 (2018) (emphasis added; internal quotes omitted)).

Petitioner contends that LCDC misinterpreted a discretionary policy in Goal 14 providing that the housing need identified by Metro “cannot *reasonably* be accommodated” on land already inside the UGB. (Emphasis added.) Petitioner appears to be incorrectly reading Goal 14 as if it says “cannot *possibly* be accommodated” inside the existing UGB. Applying this court’s significantly deferential standard of review, petitioner is faced with the challenging task of establishing that LCDC’s interpretation of what it means to “reasonably accommodate” needed housing is implausible.

1. Metro's UGB decision

At least every six years Metro is required by ORS 197.299(1) to make a growth management decision for the Portland metropolitan region in order to ensure that there is a 20-year supply of buildable land for housing, as required by ORS 197.296(2). As described above in Section A, the applicable statute requires Metro to inventory the current housing capacity inside the UGB and compare that capacity to population growth forecasts and housing need projections in order to determine whether there is enough land for housing inside the existing UGB. ORS 197.296(3)-(4). The resulting analysis and conclusions are published in Metro's Urban Growth Report (UGR), which forms the basis for the Metro Council's decision regarding whether an expansion of the UGB is warranted.

The UGR at issue in this appeal is the 2018 UGR, which the Metro Council adopted on December 13 2018 via Ordinance No. 18-1427. SER 1; Record 13.⁴ Together with its nine supporting appendices, the 2018 UGR consists of over 1000 pages of data, tables, charts, maps and textual analysis. Record 46-1075. Creating the UGR requires the Metro Planning Department

⁴ The Metro ordinance, conditions of approval, map of the UGB amendments and findings of fact and conclusions of law in support of Metro's decision are attached to this brief as Metro's Supplemental Excerpt of Record (SER).

and Data Resource Center to undertake an extremely comprehensive and detailed multi-year analysis of population and economic forecasts, demographic trends, current and future housing costs, and employment trends. On the housing inventory side, the analysis requires Metro to inventory every single residentially zoned lot in the Metro region and to estimate the potential development and redevelopment capacity of all lots zoned residential and mixed use in the entire region. Record 151-225 (2018 UGR, Appendix 2).

In Exhibit F to Ordinance No. 18-1427, the Metro Council adopted findings of fact and conclusions of law that address each and every statutory and regulatory requirement that applies to Metro's decision to meet the 20-year housing need by adding 2,181 acres of land to the UGB. SER 10. As described in those findings, Metro's inventory of housing capacity in all 24 cities and portions of three counties concludes that the existing UGB has sufficient developable and redevelopable land to provide 92,300 single family units and a range of between 136,000 and 271,100 multifamily units. SER 16; *see also* Record 204-210 (2018 UGR, Appendix 2). The range falls between the data points generated by two different methods employed by Metro for estimating the potential for future redevelopment over the next 20 years. *Id.* As noted in Metro's findings, "predicting whether and when property that is already

developed will be redeveloped for multifamily and mixed use purposes is probably the most challenging aspect of the BLI analysis.” SER 16.

Next, Metro measured the current inventory of housing capacity against its 20-year growth projections for the Metro region based on fourteen different growth scenarios that Metro Planning Department staff generated through the MetroScope model, which is an integrated land use and transportation computer model that provides forecasts regarding where future housing and employment are most likely to locate across the Metro region. SER 16; *see also* Record 233 (2018 UGR, Appendix 3 p. 3). The results of the MetroScope modeling showed a surplus of multifamily capacity inside the UGB over the next 20 years, and therefore no need to add land for that type of housing or to take other steps to increase multifamily development. SER 19. However, Metro’s modeling showed that the existing single-family capacity of 92,300 units would be slightly insufficient to meet the future demand because there was a projected need for 98,400 single-family units in 20 years. SER 19; *see also* Record 327.

Metro then found that the projected shortage of 6,100 single-family units could not be “reasonably accommodated” inside the existing UGB because: (1) 92,300 of the needed single-family units *could* be located inside the existing UGB, which “reasonably accommodates” almost all of the need, (2) density requirements inside the Metro UGB are established by an LCDC rule known as

the “Metropolitan Housing Rule” (OAR 660-007-0035), and all Metro-area cities and counties are already in compliance with those standards; and (3) in response to petitioner’s assertion that Goal 14 requires Metro to increase residential density rather than expanding the UGB, Metro cited the charter provision that prohibits it from increasing density in existing single-family neighborhoods. SER 19-20.

Having completed the analysis required under ORS 197.296 and Goal 14, Metro added 2,181 acres of land to the UGB in order to accommodate the projected need for 6,100 units of single-family housing. SER 3-4, 19. Metro’s decision attached conditions of approval requiring the four cities to include higher-density single-family housing in their new expansion areas “including townhomes, duplexes, triplexes and fourplexes.” SER 6. The conditions of approval also direct cities to amend their codes citywide to allow accessory dwelling units in single-family residential zones as required under Metro Code and state law. SER 6-7. Thus, the conditions of approval attached to Metro’s UGB expansion include requirements designed to increase future density both inside the four new expansion areas and within the entire city boundaries.

2. LCDC’s application of Goal 14

On review, LCDC agreed that Metro’s decision complied with all applicable state requirements, including Goal 14. LCDC adopted detailed

findings explaining why Metro's projected deficiency of 6,100 single-family units in 2038 could not be "reasonably accommodated" inside the existing UGB. Because those findings are a plausible – and correct – interpretation of Goal 14, the court should reject petitioner's assignment of error.

First, in its final order LCDC describes specific steps taken by Metro to ensure that as much of the projected single-family need as possible would be accommodated inside the existing UGB over the next 20 years, as provided in Goal 14 and OAR 660-024-0050(4), and concluded that those standards are met:

"Metro's submittal analyzes this issue, and includes a fairly 'aggressive' calculation of new single-family infill residential development within the existing UGB, assuming that, unless an existing lot contained a very high-value home, all lots at least 2.5 times the minimum lot size of existing zoning (2.2 in the City of Portland) would be divided into additional single-family residential building lots. Record at 150. Metro has also found that the median single-family lot size in the region has taken a major long-term decrease from 8,300 square feet in 1980 to 4,400 square feet in 2016. Record at 271. Metro provides a description of its thorough methodology for making these assumptions, including peer review with [DLCD's] participation. Record at 143. The Commission determines that Metro's own assumptions and evidence, as well as the fact that the preponderance of new single-family residential development within the Metro area is expected to occur within the existing Metro UGB (92,300 of 98,400 units, or 93 percent of the 20-year need for such units), shows Metro compliance with the provisions of Goal 14 and ORS 197.296(6)."

ER 27-28 (LCDC Order at 45-46).

Next, LCDC responds specifically to petitioner's argument that Goal 14 requires Metro to increase density in single-family neighborhoods, concluding that Metro has "reasonably accommodated" projected housing needs inside the existing UGB, regardless of the charter provision at issue:

"At issue is the requirement, found in Goal 14 and OAR 660-024-0050(4) that, 'prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB.' This brings into consideration the question of whether requiring additional densities in the specified single-family residential neighborhoods is a 'reasonable accommodation' that Metro should have required, per OAR 660-024-0050(4). The Commission concludes that it is not, because Metro's identified need is for 6,100 single-family dwelling units.

"The fact that Metro anticipates meeting 97 percent of the projected housing need over the next 20 years within the existing UGB, as discussed previously, (and 93 percent of the projected single-family housing need) demonstrates that Metro continues to make efficient use of land within its UGB, consistent with OAR 660-024-0050(4).

"The Commission concludes that HLA has not established that Metro Charter Section 5(4)(b) has impacted Metro's accommodation of its identified need within the existing UGB. The Commission finds that the record demonstrates that Metro is accommodating nearly all of its housing needs within the existing UGB."

ER 29 (LCDC Order at 47).

In these findings, LCDC interprets Goal 14 to mean that it is "reasonable" for Metro to accommodate 97 percent of the total number of housing units that it will need over the next 20 years inside of the existing UGB and to expand the boundary to accommodate the remaining three percent.

Petitioner may not like LCDC's interpretation of Goal 14, but petitioner has not established that LCDC's interpretation of what is "reasonable" under Goal 14 is implausible or otherwise contrary to law. Again, the relevant language in Goal 14 does not say "cannot *possibly* be accommodated" on land inside the UGB.

Prior to this UGB amendment, the Metro UGB had not been expanded since 2011. It is worth emphasizing that Metro's analysis in the 2018 UGR determines that the UGB as established in 2011 would be able to accommodate 97 percent of the region's future population growth through the year 2038, which is 27 years of growth. This remarkable accomplishment is testament to the fact that Metro and the cities and counties in the region have been extremely effective in directing growth into existing urban areas and preventing sprawl into farm and forest lands outside of the boundary, as envisioned by the Oregon legislature in 1973 and as directed by Goal 14. Contrary to petitioner's dire warnings and admonitions, the Oregon land use program is operating effectively and as intended in the Metro region.

C. There is no basis for preemption

Petitioner also argues that the Metro Charter provision at issue is preempted by state law. Petitioner appears to contend that the charter provision that prohibits Metro from requiring increased density in single-family

neighborhoods is preempted by the “reasonably accommodate” language in Goal 14 and by Goal 10.

A state law can preempt local law if the state law either expressly precludes all municipal regulation in an area, such that the state "occupies the field" in that area, or if the laws conflict such that they "cannot operate concurrently." *Qwest Corp. v. City of Portland*, 275 Ore. App. 874, 883, 365 P.3d 1157 (2015). There is no basis to contend that Goal 10 or Goal 14 expressly “occupy the field” of Metro growth management decisions, and petitioner does not appear to make that claim.

Petitioner also fails to establish that goal provisions regarding “reasonably accommodating” a 20-year housing need inside the UGB or providing a “fair share” of housing are so irreparably in conflict with the Metro charter or code that it is impossible for them to operate concurrently. First, as described above, petitioner’s interpretation of Goal 14 directly conflicts with the statute governing Metro’s decision-making process and there can be no preemption by Goal 14 where Metro’s decision is consistent with ORS 197.296.

Next, petitioner appears to be reading Goal 14 as if it says “cannot *possibly* be accommodated” inside the existing UGB. Petitioner does not explain how it could never, under any circumstances, be “reasonable” or “fair” to accommodate 97 percent of the next 20 years’ worth of future housing need

inside the existing UGB without rezoning existing neighborhoods for higher density to accommodate the remaining three percent. It is within the discretion of LCDC to make the determination of what is “reasonable” under Goal 14, and that interpretation is entitled to “significant deference” on appeal. *Growing Green Panda*, 302 Or App at 332.

The court should deny petitioner’s assignment of error because petitioner has not established that LCDC misinterpreted or misapplied Goal 14 in its final order approving Metro’s UGB amendment and there is no basis for preemption. Metro also adopts and incorporates the arguments presented by LCDC in its answering brief.

CONCLUSION

For all of the reasons described above, and the reasons described in the briefs submitted by LCDC, petitioner’s assignment of error should be denied.

Dated this 27th day of July 2020.

/s/ Roger A. Alfred

Roger A. Alfred, OSB No. 935009
Office of Metro Attorney

CERTIFICATE OF COMPLIANCE WITH ORAP 5.05(1)(d)

Brief Length

I certify that the word count of this brief as described in ORAP 5.05(1)(b)(ii) is 6,334 words.

Type Size

I certify that the size of type in this brief is 14-point for both the text of the brief and footnotes as required by ORAP 5.05(1)(d).

/s/ Roger A. Alfred

Roger A. Alfred, OSB No. 935009
Attorney for Respondent Metro

CERTIFICATE OF FILING AND SERVICE

I certify that on July 27, 2020, I directed the foregoing Metro's Answering Brief to be electronically filed with the Appellate Court Administrator, Appellate Court Records Section, by using the Oregon Appellate eFiling system and to be electronically served upon the following parties by using the electronic service function of the eFiling system:

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BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF EXPANDING THE)	ORDINANCE NO. 18-1427
URBAN GROWTH BOUNDARY TO)	
PROVIDE CAPACITY FOR HOUSING TO)	Introduced by Martha J. Bennett, Chief
THE YEAR 2038 AND AMENDING THE)	Operating Officer, with the concurrence of
METRO CODE TO CONFORM)	Tom Hughes, Council President
)	

WHEREAS, state law requires Metro to assess the capacity of the urban growth boundary (UGB) on a periodic basis and, if necessary, to increase the region's capacity for housing and employment for the next 20 years; and

WHEREAS, Metro's previous growth management decision was made in 2015 when Metro adopted the 2014 Urban Growth Report (UGR) via Ordinance No. 15-1361, which forecasted population and employment growth in the region to the year 2035, inventoried the supply of buildable land inside the UGB, and concluded there was sufficient land capacity for the next 20 years; and

WHEREAS, in adopting Ordinance No. 15-1361 the Metro Council included a directive to Metro staff to produce a new urban growth report within three years, rather than waiting six years as provided in state law; and

WHEREAS, in adopting Ordinance No. 15-1361 the Metro Council also made a commitment that Metro would work with its regional partners to explore possible improvements to the regional growth management process; and

WHEREAS, in furtherance of that commitment, in May 2016 Metro convened an Urban Growth Readiness Task Force consisting of 17 public and private sector representatives to develop recommendations for improving the growth management process; and

WHEREAS, the Task Force met five times between May 2016 and February 2017, and ultimately presented a set of recommendations to the Metro Council for improvements that were accepted by the Metro Council via Resolution No. 17-4764 on February 2, 2017; and

WHEREAS, the Task Force recommendations included three core concepts: (1) clarify expectations for cities proposing modest residential UGB expansions into concept-planned urban reserves; (2) seek greater flexibility for addressing regional housing needs; and (3) seek greater flexibility when choosing among concept-planned urban reserves for UGB expansions; and

WHEREAS, the Task Force recommended that Metro adopt changes in its decision-making processes to implement the three core concepts by taking an outcomes-based approach to growth management focused on specific UGB expansion proposals made by cities; and

WHEREAS, to implement the Task Force recommendations, Metro and its regional partners sought and obtained changes to state law via House Bill 2095 (2017), which allows Metro to make mid-cycle residential UGB expansions by amending its most recent inventory and analysis of the regional buildable land supply based on specific residential growth proposals brought forward by cities; and

WHEREAS, to further implement the Task Force recommendations, the Metro Council directed staff to work with the Metro Technical Advisory Committee (MTAC) on proposed amendments to the

Urban Growth Management Functional Plan (UGMFP) that would implement the Task Force directives and House Bill 2095; and

WHEREAS, over the course of 10 meetings between July 2016 and September 2017, Metro staff and MTAC prepared and refined proposed amendments to Title 14 of the UGMFP to implement the Task Force and Metro Council directives, and those proposed amendments were unanimously approved by the Metro Policy Advisory Committee (MPAC) on October 11, 2017; and

WHEREAS, on December 14, 2017 the Metro Council adopted MPAC's recommended amendments to Title 14 via Ordinance No. 17-1408, concluding that those amendments to the Metro Code "will effectively implement House Bill 2095 and the directive of the Urban Growth Readiness Task Force to create a more flexible and outcomes-based approach for future UGB expansions in the Metro region;" and

WHEREAS, consistent with the new approach to regional growth management decisions, four cities submitted proposals to Metro for UGB expansions for housing by the May 31, 2018 deadline: the cities of Wilsonville, Hillsboro, Beaverton, and King City; and

WHEREAS, the four city proposals were reviewed by Metro staff and by a City Readiness Advisory Group (CRAG) convened by the Metro President, and the cities made presentations to the Metro Council regarding their proposals at work sessions on June 12, 2018 and June 19, 2018; and

WHEREAS, on July 3, 2018 Metro staff presented a draft 2018 Urban Growth Report (UGR) to the Metro Council, MPAC and MTAC, which provides a range forecast for future population and employment growth in the region, an inventory of buildable residential and employment land in the region, and an analysis of multiple growth scenarios involving different assumptions and permutations regarding population, redevelopment potential, and the four proposed expansion areas; and

WHEREAS, the 2018 UGR concludes that the Metro Council has latitude to determine whether there is a regional need for some or all of the four proposed UGB expansion areas; and

WHEREAS, Metro's Chief Operating Officer (COO) issued a recommendation to the Metro Council on August 28, 2018 to expand the UGB in the four proposed areas with conditions of approval that encourage a mix of housing types, and the COO recommendation was unanimously endorsed by MPAC on September 12, 2018; and

WHEREAS, on September 27, 2018 the Metro Council adopted Resolution No. 18-4914, which provided Metro staff with direction to expand the UGB in all four areas, consistent with the COO recommendation and MPAC endorsement, and to include conditions of approval that will ensure an adequate mix and supply of various housing types in the expansion areas; and

WHEREAS, following the Metro Council direction in Resolution No. 18-4914, Metro staff completed a housing needs analysis that identifies a need for additional land in the UGB to address single-family housing needs for both attached and detached housing; and

WHEREAS, the four proposed expansion areas will add approximately 2,181 acres of urban reserve land to the UGB and provide approximately 6,100 single-family housing units and approximately 3,100 multifamily units, for a total of approximately 9,200 homes; and

WHEREAS, Metro staff evaluated all land in the region designated as urban reserves for possible addition to the UGB based upon their relative suitability under the Goal 14 locational factors; and

WHEREAS, as part of this growth management decision the Metro Council is also adopting an administrative amendment to bring a 4.48 acre parcel of land in Washington County into the UGB to alleviate a significant public health hazard from a failing septic system, in order to allow existing commercial businesses on that property to connect to a City of Hillsboro sewer line; and

WHEREAS, the Metro Council held public hearings on this ordinance on December 6, 2018 and December 13, 2018; now therefore

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The UGB is amended to add the four areas shown on Exhibit A, attached and incorporated into this ordinance, to provide capacity for housing.
2. The UGB is also amended to add 4.88 acres of land shown on Exhibit B, attached and incorporated into this ordinance, to alleviate a health hazard from a failing septic system.
3. The conditions set forth in Exhibit C, attached and incorporated into this ordinance, are applied to the UGB expansion areas as indicated on that Exhibit.
4. The Urban Growth Boundary and Urban and Rural Reserves Map in Title 14 of the Urban Growth Management Functional Plan, attached and incorporated into this ordinance as Exhibit D, is amended to reflect the UGB amendments shown on Exhibits A and B.
5. The 2018 Urban Growth Report attached as Exhibit E to this ordinance is hereby adopted as support for the Metro Council's decision to amend the Metro UGB to provide capacity for housing.
6. The Findings of Fact and Conclusions of Law attached as Exhibit F to this ordinance are hereby adopted to explain how this ordinance is consistent with state law and applicable Metro policies, and to provide evidentiary support for this decision.
7. The areas being added into the Metro UGB by this ordinance are also annexed into the Metro jurisdictional boundary as provided by ORS 268.390(3)(b),

ADOPTED by the Metro Council this 13th day of December 2018.




Attest:


Sara Farrokhzadian, Recording Secretary


Tom Hughes, Council President

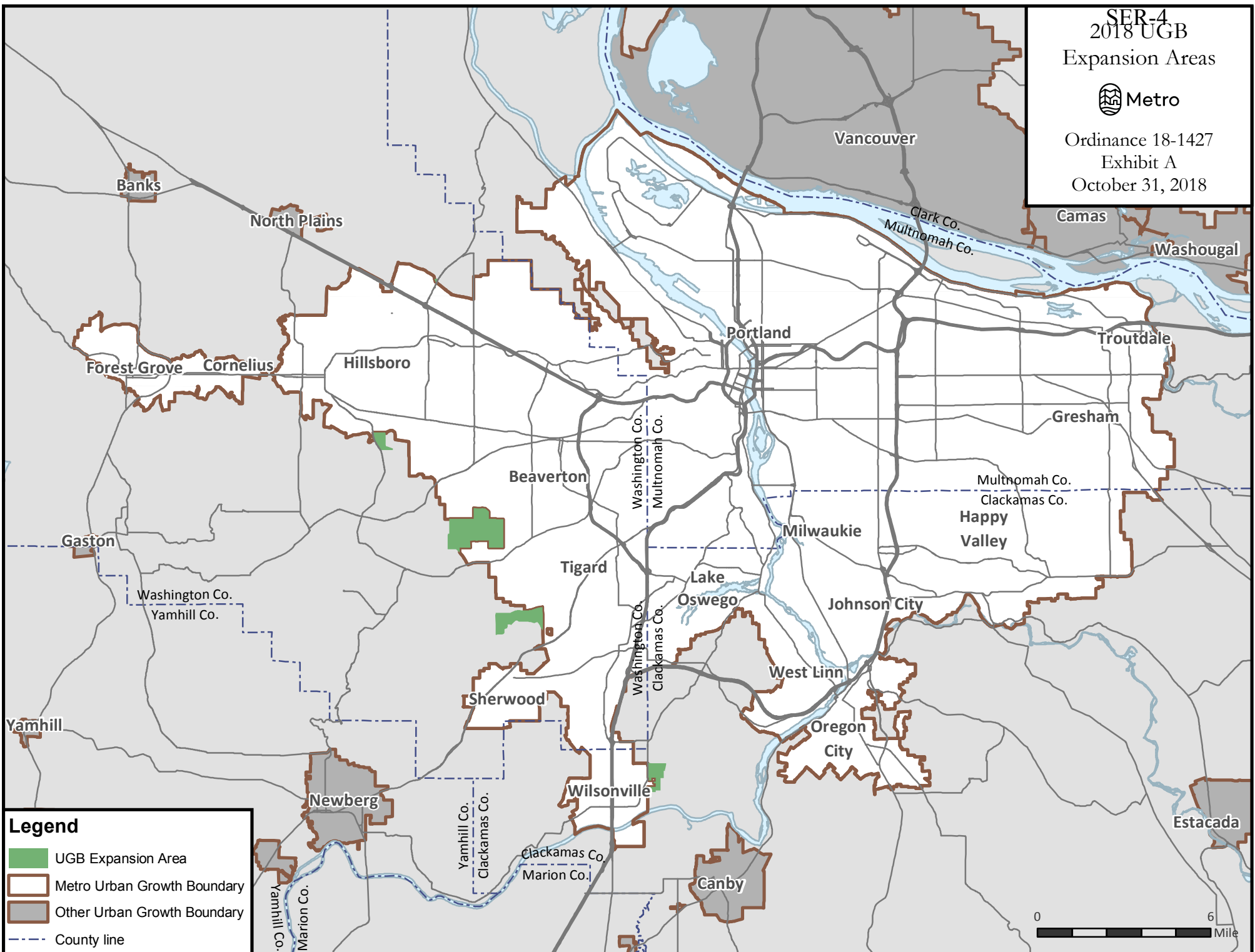
Approved as to Form:


Nathan Sykes, Acting Metro Attorney

SER-4
2018 UGB
Expansion Areas



Ordinance 18-1427
Exhibit A
October 31, 2018



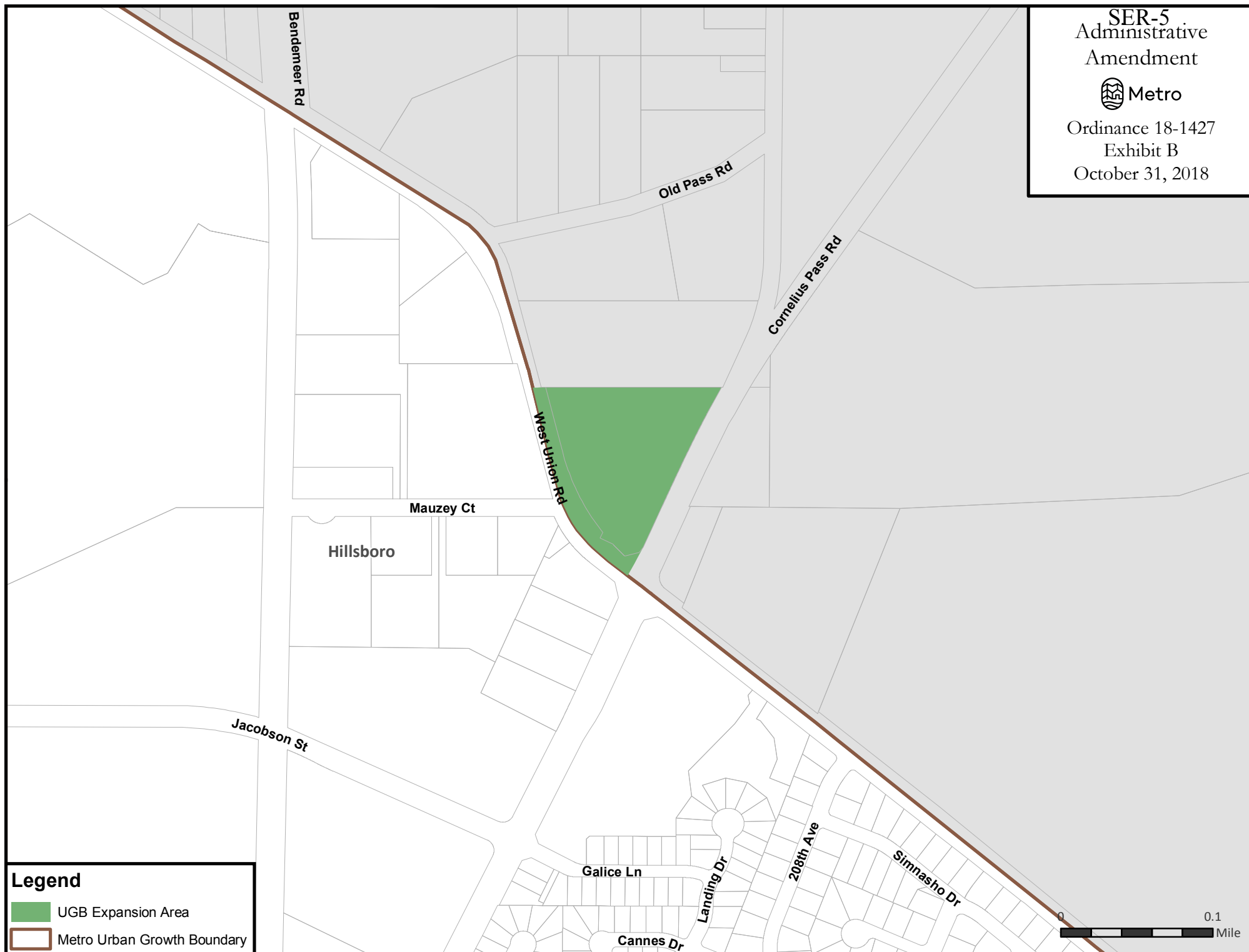
Legend

- UGB Expansion Area
- Metro Urban Growth Boundary
- Other Urban Growth Boundary
- County line



SER-5
Administrative
Amendment



Ordinance 18-1427
Exhibit B
October 31, 2018



Legend

-  UGB Expansion Area
-  Metro Urban Growth Boundary

Conditions of Approval on Land Added to UGB

A. Comprehensive planning in the four UGB expansion areas:

1. Within four years after the date of this ordinance, the four cities shall complete comprehensive planning consistent with Metro code section 3.07.1120 (Planning for Areas Added to the UGB).
2. The four cities shall allow, at a minimum, single family attached housing, including townhomes, duplexes, triplexes, and fourplexes, in all zones that permit single family housing in the expansion areas.
3. The four cities shall explore ways to encourage the construction of ADUs in the expansion areas.
4. As the four cities conduct comprehensive planning for the expansion areas, they shall address how their plans implement relevant policies adopted by Metro in the 2014 regional Climate Smart Strategy regarding: (a) concentrating mixed-use and higher density development in existing or planned centers; (b) increasing use of transit; and (c) increasing active transportation options. The cities shall coordinate with the appropriate county and transit provider regarding identification and adoption of transportation strategies.
5. As the four cities conduct comprehensive planning for the expansion areas, they shall regularly consult with Metro Planning and Development staff regarding compliance with these conditions, compliance with the Urban Growth Management Functional Plan, compliance with the state Metropolitan Housing Rule, and use of best practices in planning and development, and community engagement. To those ends, cities shall include Metro staff in advisory groups as appropriate.
6. At the beginning of comprehensive planning, the four cities shall develop – in consultation with Metro – a public engagement plan that encourages broad-based, early and continuing opportunity for public involvement. Throughout the planning process, focused efforts shall be made to engage historically marginalized populations, including people of color, people with limited English proficiency and people with low income, as well as people with disabilities, older adults and youth.

B. Citywide requirements (for the four cities):

1. Within one year after the date this ordinance is acknowledged by LCDC (excluding any subsequent appeals), the four cities shall demonstrate compliance with Metro code section 3.07.120(g) and ORS 197.312(5) regarding accessory dwelling units. In addition to the specific requirements cited in Metro code and state law, cities shall not require that

accessory dwelling units be owner occupied and shall not require off street parking when street parking is available.

2. Before amending their comprehensive plans to include the expansion areas, the four cities shall amend their codes to ensure that any future homeowners associations will not regulate housing types, including accessory dwelling units, or impose any standards that would have the effect of prohibiting or limiting the type or density of housing that would otherwise be allowable under city zoning.
3. Before amending their comprehensive plans to include the expansion areas, the four cities shall amend their codes to ensure that any future homeowners associations will not require owner occupancy of homes that have accessory dwelling units.
4. The four cities shall continue making progress toward the actions described in Metro Code section 3.07.620 (Actions and Investments in Centers, Corridors, Station Communities, and Main Streets).
5. Cities shall engage with service providers to consider adoption of variable system development charges designed to reduce the costs of building smaller homes in order to make them more affordable to purchasers and renters.
6. For at least six years after this UGB expansion, the four cities shall provide Metro with a written annual update on compliance with these conditions as well as planning and development progress in the expansion areas. These reports will be due to the Metro Chief Operating Officer by December 31 of each year, beginning December 31, 2019.

C. Beaverton:

1. Beaverton shall plan for at least 3,760 homes in the Cooper Mountain expansion area.
2. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.
3. The city may propose the addition of Corridors for depiction on the 2040 Growth Concept map as an outcome of comprehensive planning for the area.

D. Hillsboro:

1. Hillsboro shall plan for at least 850 homes in the Witch Hazel Village South expansion area.
2. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.

3. The city may propose the addition of Corridors for depiction on the 2040 Growth Concept map as an outcome of comprehensive planning for the area.

E. King City:

1. King City shall coordinate with Washington County and the City of Tigard as it engages in its work on a Transportation System Plan, other infrastructure planning, and comprehensive planning.
2. Before amending the King City comprehensive plan to include the expansion area, King City shall conduct additional market analysis to better understand the feasibility of creating a new mixed-use town center.
3. Pending the results of the market analysis of a new town center, King City shall plan for at least 3,300 homes in the Beef Bend South expansion area. If the market analysis indicates that this housing target is infeasible, King City shall work with Metro to determine an appropriate housing target for the expansion area.
4. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.
5. Pending the results of the market analysis of a new town center, Metro will work with King City to make necessary changes to the 2040 Growth Concept map.
6. Prior to amending the King City comprehensive plan to include the expansion area, King City shall complete a Transportation System Plan for the city.
7. Prior to amending the King City comprehensive plan to include the expansion area, King City shall amend its code to remove barriers to the construction of accessory dwelling units, including:
 - a. Remove the requirement that accessory dwelling units can only be built on lots that are at least 7,500 square feet, which effectively prohibits construction of accessory dwelling units in the city.
 - b. Remove or increase the requirement that accessory dwelling units be no bigger than 33 percent of the square footage of the primary home so that an accessory dwelling unit of at least 800 square feet would be allowable.
8. The Columbia Land Trust holds a conservation easement over portions of the Bankston property, which King City's concept plan identifies as the intended location for a key transportation facility serving the expansion area. King City shall work with the Columbia Land Trust to protect, to the maximum extent possible, the portion of the

Bankston property covered by the conservation easement.

9. To reduce housing costs, King City shall, in its comprehensive planning, explore ways to encourage the use of manufactured housing in the expansion area.

F. Wilsonville:

1. Wilsonville shall plan for at least 1,325 homes in the Advance Road expansion area.
2. The expansion area shall be designated Neighborhood on the 2040 Growth Concept map.
3. The city may propose the addition of Corridors for depiction on the 2040 Growth Concept map as an outcome of comprehensive planning for the area.

G. West Union Village Property:

1. There shall be no change of use or intensification of individual uses on any portion of the 4.88-acre property until Urban Reserve Area 8F has been brought into the UGB and the City of Hillsboro has adopted comprehensive plan amendments for the surrounding urban reserve land.

Findings of Fact and Conclusions of Law

Ordinance No. 18-1427 accepts the recommendation of Metro's Chief Operating Officer (COO) to expand the Urban Growth Boundary (UGB) to add approximately 2,181 acres of land in four locations in order to provide an adequate supply of land for housing in the Metro region over the next 20 years. These findings of fact and conclusions of law explain how the Metro Council decision complies with state and regional land use laws and policies.

Section A of these findings describes some of the history leading to this decision, and summarizes the new approach applied by Metro in the preparation of the 2018 Urban Growth Report (UGR) and the Metro Council's decision to expand the UGB. Section B of these findings describes compliance with requirements in Statewide Planning Goal 2 and regional policies regarding coordination with other local governments in the region. Section C describes compliance with requirements in Statewide Planning Goal 1 and regional policies regarding citizen involvement. Section D describes compliance with state and regional requirements regarding urban growth boundary decisions, including Statewide Planning Goals 14 and 10 and ORS 197.296. Section E provides findings in support of the administrative amendment to the UGB to add 4.8 acres of property on NW Cornelius Pass Road in order to alleviate a public health hazard from a failing septic system. Section F describes compliance with all other Statewide Planning Goals.

A. Framework for Decision

Metro's 2018 growth management decision applies a new approach that has been a decade in the making. The journey began in 2007 when the Oregon Legislature adopted Senate Bill 1011, authorizing Metro and the three counties to designate urban and rural reserves. The designation of urban reserves establishes the maximum footprint for urban growth boundary expansions in the next 50 years, and removes hundreds of thousands of acres of valuable farm and forest land from potential urbanization.

In 2010, the Metro Council adopted a policy of taking an outcomes-based approach to future growth management decisions. This policy is based in part on Metro's experience with prior UGB expansions into areas where there was no existing plan for governance, future development, or financing needed infrastructure; unfortunately, those areas have often failed to develop. The history of Metro UGB expansions over the last 20 years clearly demonstrates that land readiness is more important than land supply for addressing housing needs and job growth. In order to increase the likelihood that development will actually occur in new UGB expansion areas, Metro now requires advance planning for areas that cities want to annex and urbanize. In 2010, Metro adopted amendments to Title 11 of the Urban Growth Management Functional Plan requiring cities to adopt concept plans for urban reserve areas prior to those areas being added to the UGB.

In November 2015 the Metro Council adopted the 2014 UGR, concluding that there was sufficient capacity within the existing UGB to provide a 20-year supply of land for housing and employment growth. As part of that ordinance, the Council directed Metro planning staff to work

with regional partners to explore possible improvements to the growth management process and to produce a new UGR within three years, rather than six.

Responding to that directive, in May 2016 Metro convened an Urban Growth Readiness Task Force comprised of 17 public and private sector representatives to develop recommendations for improving the growth management process. The Task Force met five times between May 2016 and February 2017 and ultimately presented a set of recommendations to the Metro Council for improvements, which were accepted by the Metro Council via Resolution No. 17-4764. Those recommendations included three core concepts: (1) create expectations for cities to propose modest residential UGB expansions into concept planned urban reserves; (2) seek greater flexibility for addressing regional housing needs; and (3) seek greater flexibility when choosing among concept planned urban reserves for UGB expansions.

The Task Force recommended that Metro adopt changes in its decision-making processes to implement the three core concepts by making future growth management decisions based on specific UGB expansion proposals submitted by cities. Metro staff worked with the Metro Technical Advisory Committee (MTAC) to prepare and refine proposed amendments to the Metro Code to implement the directives from the Task Force and the Metro Council. Those code amendments were approved by the Metro Policy Advisory Committee (MPAC) and adopted by the Metro Council via Ordinance No. 17-1408 on December 14, 2017.

This 2018 UGB decision is the first application of Metro's new approach to UGB expansions. Consistent with the directives of the Task Force and the Metro Council, Metro staff created a process where interested cities submitted proposals for UGB expansions. Four cities submitted proposals by the May 31, 2018 deadline. Those proposals were reviewed by Metro staff and by a City Readiness Advisory Group (CRAG) convened by the Metro President, and the four cities made presentations to the Metro Council regarding their proposals during Council work sessions.

Metro staff released the draft UGR on July 3, 2018, providing an analysis of the regional buildable land supply, a 20-year population and employment growth forecast, and an analysis of a number of potential scenarios testing different permutations of growth related assumptions, including the four proposed UGB expansions. The draft UGR concluded that the Metro Council has the latitude to determine whether there is a regional need to expand the UGB in any of the four urban reserve areas as proposed by the cities. There are two components to the UGR: a 40-page narrative summary and the eight appendices attached to it. The actual technical analysis that comprises the UGR is included in the appendices, and the UGR narrative provides a descriptive summary of the information included in the appendices. The UGR and its appendices have been revised and updated since release of the draft in July 2018.

After reviewing the four city proposals and the recommendations of the CRAG, the Metro COO issued her recommendation on September 4, 2018, recommending that all four proposed areas should be added to the UGB, with conditions designed to ensure an adequate supply and mix of housing, particularly "missing middle" housing. The COO recommendations were endorsed by MPAC on September 12, 2018. After taking public testimony regarding the four city proposals and the COO recommendation on September 20, 2017, the Metro Council adopted Resolution

No. 18-4914 on September 27, 2018, which endorsed the COO recommendation and directed Metro staff to proceed with planning and analysis regarding expanding the UGB in all four areas.

B. Coordination with Local Governments and State Agencies

This section addresses the coordination requirements of Statewide Planning Goal 2 and Regional Framework Plan (RFP) Policies 1.11.3, and 1.14. In preparing and adopting the UGR, Metro has coordinated extensively with the cities and counties in the region and relevant state agencies over the last two years. This includes significant coordination in the development of the technical elements of the UGR, discussed further in Section C below, and engagement at MPAC and MTAC as described in this section.

Metro and the four cities proposing UGB expansions have also coordinated with affected school districts. Cities are required under Title 11 of the Urban Growth Management Functional Plan to coordinate with school districts as they complete concept plans for urban reserves. All four cities proposing UGB expansions included representatives of the school districts in their planning efforts. School districts also have representatives on both MTAC and MPAC, providing them with a means to stay informed and comment on the urban growth management decision. Lastly, lands owned by school districts, which are often zoned for residential use, are excluded from the buildable land inventory documented in UGR Appendix 2.

Since 2017, topics related to this growth management decision have been extensively reviewed and discussed by MPAC, which is an advisory committee to the Metro Council consisting of elected officials from cities, counties and special districts throughout the region, as well as citizens and representatives of TriMet and the Department of Land Conservation and Development (DLCD). At its meeting on September 12, 2018, MPAC voted unanimously to recommend that the Metro Council accept the COO recommendations and expand the UGB in the locations proposed by all four cities. As described in more detail below, the UGR has been an agenda item before MTAC in at least 19 of its meetings since 2016, and before MPAC in at least 14 meetings since 2017.

MTAC has discussed aspects of this growth management decision on the following occasions:

MTAC meeting date	Topic
3-2-16	Work program update regarding 2018 growth management decision
6-1-16	Urban Growth Readiness Task Force update
7-6-16	Urban Growth Readiness Task Force update
7-13-16	Initial suggestions for addressing recommendations from the Urban Growth Readiness Task Force
8-3-16	Initial suggestions for addressing recommendations from Urban Growth Readiness Task Force
9-7-16	Urban Growth Readiness Task Force update
10-19-16	Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)

Exhibit F to Ordinance No. 18-1427

12-7-16	Urban Growth Readiness Task Force update
2-1-17	Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)
4-5-17	Work program overview for 2018 growth management decision
4-5-17	Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)
8-2-17	Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)
9-6-17	Recommendation to MPAC: Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)
10-4-17	Goal 14 analysis (locational factor analysis of urban reserves)
2-7-18	Regional population and employment forecast
3-7-18	Buildable land inventory
5-16-18	Goal 14 analysis (locational factor analysis of urban reserves)
6-20-18	UGB expansion proposal presentations by Beaverton, Hillsboro, King City, Wilsonville
7-11-18	Draft UGR; urban reserve alternatives analysis
7-18-18	Summary of CRAG discussions of city expansion proposals

Since 2017, MPAC has devoted many meetings to discussing residential and employment trends and the region's economic outlook, reviewing and commenting on proposed revisions to the Metro Code implementing the Task Force recommendations, reviewing the four city proposals for UGB expansions, reviewing the draft UGR, and generally preparing to make a growth management recommendation to the Metro Council. MPAC meetings related to the urban growth management decision include the following:

MPAC meeting date	Topic
3-8-17	2018 Growth management work program summary
9-27-17	Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)
9-27-17	Housing trends in Portland and Hillsboro
10-11-17	MPAC recommendation: Metro Title 14 amendments (expectations for cities proposing residential UGB expansions)
10-25-17	Housing trends in Wilsonville and Beaverton
1-24-18	Housing trends in Tigard
3-14-18	Update on growth management process
4-11-18	Regional population and employment forecast panel discussion
4-25-18	Employment trends panel discussion
6-13-18	Expansion proposals: Hillsboro and King City
6-27-18	Expansion proposals: Wilsonville and Beaverton
7-11-18	Draft Urban Growth Report
7-25-18	Report from CRAG on strengths and weaknesses of city expansion proposals
9-12-18	Review of COO recommendation on expansion proposals; vote regarding MPAC recommendation

At its meeting on September 12, 2018, MPAC voted unanimously to recommend that the Metro Council accept the COO recommendations and expand the UGB in the locations proposed by all four cities.

C. Citizen Involvement

These findings address Statewide Planning Goal 1 and Regional Framework Plan (RFP) Policy 1.13. Metro began the process of preparing the UGR in 2017 and has worked closely with key stakeholders and residents of the region from the beginning.

The UGR is a reflection of the expert knowledge of many stakeholders from around the region. Throughout the development of the draft UGR, staff engaged outside expertise from the public and private sectors. This work also builds on previous technical engagement activities. From mid-2017 through mid-2018, staff sought review and collaboration on a number of topics:

- The Land Use Technical Advisory Group (LUTAG), a working group of approximately 20 public and private sector experts provided advice on the methods used for estimating the region's buildable land inventory (UGR Appendix 2), with a particular emphasis on how to estimate redevelopment potential. LUTAG also conducted a review of the preliminary buildable land inventory results.
- All cities and counties in the region were given the opportunity to review a preliminary buildable land inventory at the tax lot level. All comments received by Metro were incorporated into the inventory used in the UGR. In response to additional comments received after the release of the draft UGR, minor corrections have been made to the inventory.
- A peer review group of seven public and private sector economists and demographers advised on the assumptions built into the seven-county population and employment range forecast (UGR Appendix 1), the forecast results, sources of uncertainty in the forecast, and possible future improvements to the forecast model.
- A peer review group of eight public and private sector economists and modelers reviewed the MetroScope land use and transportation model's parameters and validation results and made suggestions for possible future improvements. The use of the MetroScope model is described in UGR Appendix 3.
- A partnership of six public and private sector organizations worked with the consulting firm Mackenzie on an update of the Regional Industrial Site Readiness project (UGR Appendix 8). The inventory of large industrial sites that was identified through that work is used to describe the region's supply of such sites in the UGR.
- In June 2018, Metro Council President Hughes convened private and public sector experts in affordable housing, parks planning, residential and mixed-use development, multimodal transportation, and equity. City Readiness Advisory Group (CRAG)

members were asked to identify the strengths and weaknesses of city proposals. Their findings were presented at a Metro Council work session, and at MTAC and MPAC.

In addition to the above-described collaboration with public and private sector stakeholders, the public process involved in adopting the UGR has provided considerable opportunities for citizen involvement and engagement. In addition to the MTAC and MPAC meetings regarding the UGR detailed above, all of which were public meetings, the Metro Council has held eleven public meetings in 2018 alone on topics involving the UGR, including public hearings on September 20, 2018, September 27, 2018, December 6, 2018 and December 13, 2018. A public comment period on city proposals for UGB expansions was held open from June 8 to July 9, 2018. Public comments were summarized in a report that was provided to MPAC and the Metro Council and posted on Metro's website.

D. Urban Growth Management Statutes and Rules

These findings address Statewide Planning Goals 10 and 14, ORS 197.295 – 197.314, OAR chapter 660 divisions 7 and 24, and RFP Policy 1.9.2.

Metro's obligation to complete an inventory of buildable lands and analysis of housing need for purposes of ensuring a 20-year supply of land inside the UGB arises out of ORS 197.299. That statute directs Metro to undertake the inventory and analysis required under ORS 197.296(3) not later than six years after completion of the previous analysis. As part of the previous growth management decision in 2015, the Metro Council directed the Metro planning department to prepare a new UGR within three years, rather than six.

1. Buildable Land Inventory

The first step in the process required under ORS 197.296(3)(a) is to undertake an inventory of the supply of buildable residential land inside the UGB. The applicable Goal 14 rules provide that local governments "must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs" for both residential and employment land. OAR 660-024-0050(1). This section of the findings focuses on Metro's analysis of the residential component of the inventory.

For purposes of the inventory required under ORS 197.296(3)(a), buildable land is defined to include vacant and partially vacant land planned or zoned for residential use, land that may be used for mixed residential and employment uses under existing planning or zoning, and land that may be used for residential infill or redevelopment. ORS 197.296(4)(a). The buildable land inventory informs the calculation of the capacity of the UGB to accommodate future growth.

Metro's methodology for calculating the region's buildable land inventory is described in Appendix 2 of the UGR and summarized on pages 34-35 of the UGR narrative. The methodology began by analyzing detailed aerial photos of all land inside the UGB and applying current local plan and zoning designations. The methodology also applied the specific inventory requirements set forth in ORS 197.296(4)(a)-(b). See Appendix 2, page 23. One of the more complicated aspects of creating an inventory of buildable land is determining how to accurately

predict whether land that is already developed might be redeveloped in the next 20 years, as required under ORS 197.296(4)(a)(A). To assist in estimating the developable and redevelopable land in the region, Metro assembled two peer review groups – an expert peer review panel consisting of academics, real estate professionals and MPO modeling and forecasting practitioners, and an independent land use technical advisory group (LUTAG) consisting of representatives from cities, counties, the state, and the Portland Homebuilders Association. During the fall and winter of 2017 and 2018, the two groups reviewed and validated specific methodologies and data for assessing the development and redevelopment potential of land inside the UGB. Those methodologies are described in Appendix 2 of the UGR.

As noted above, predicting whether and when property that is already developed will be redeveloped for multifamily and mixed use purposes is probably the most challenging aspect of the BLI analysis. In a change from the 2014 UGR, Metro staff and the LUTAG applied two different methods to this analysis, which produced a range of possible redevelopment outcomes. The low end of the BLI range for redevelopment purposes is based on a statistical analysis of recently observed development trends. This approach is referred to in the BLI as the “statistical method.” The high end of the range is estimated using the same methods as the 2014 UGR, which relied on a strike price approach (described on page 55 of Appendix 2). This is referred to in the BLI as the “threshold method.”

The buildable land inventory results are shown on the tables at pages 4 and 5 of Appendix 2. After applying the methodologies agreed upon by the technical working group, and taking input from cities and counties on a preliminary draft of the inventory, the analysis concludes that the existing UGB has an inventory of buildable land that can provide 92,300 single family units. Applying the two different methodologies for multifamily redevelopment, the low end of the range (statistical method) identifies a supply of 136,000 multifamily units, while the high end of the range (threshold method) identifies a supply of 271,100 multifamily units.

2. Assumptions Regarding Future Growth

Appendix 3 of the UGR describes application of the MetroScope model to test different potential growth scenarios in the region, including different permutations involving the four proposed UGB expansion areas. MetroScope is an integrated land use and transportation computer model that provides forecasts regarding where future housing and employment are likely to locate in the Metro region. The model estimates housing supply based on simulated market behaviors and produces outputs including housing prices, household location choices by zone, type (single family or multifamily), and tenure (rent or own).

The Metro Council directed staff to examine different growth scenarios to provide the Council with a range of permissible decision options for this 2018 growth management decision. Metro staff utilized MetroScope to analyze those ranges using three key forecast inputs: (1) the possible range of overall regional growth in people and jobs; (2) a range of possible contributions of existing capacity inside the UGB for housing and employment construction; and (3) expanding or not expanding the UGB based on proposals from the four cities.

Metro staff formulated and tested 14 different scenarios using MetroScope by combining different settings for those three key inputs, including:

- Growth: high, medium and low versions of the population and employment forecast in Appendix 1 (with medium representing the most likely outcome and a 95% confidence level that growth will occur within that range).
- Existing capacity: high, medium, and low estimates for potential redevelopment from the buildable land inventory results in Appendix 2.
- All or none of the four city-proposed UGB expansions.

The results of the MetroScope modeling indicate that if the Metro Council chooses to plan for “likely” future growth over the next 20 years (*i.e.*, selecting the midpoint of the population forecast range) there will be a corresponding need for greater than historical housing production. Of the fourteen different combinations of growth scenarios tested by MetroScope, the outcomes of four scenarios provided tenable options for the Metro Council to make the necessary assumptions about future growth. The four scenarios are summarized in Appendix 3 at page 17, and described in more detail at pages 20-23.

The MetroScope modeling also includes a “reference scenario,” identified as Scenario Zero, which represents a “no action” scenario that assumes no UGB expansion, medium growth, and redevelopment capacity based on a historical trend over the last nine years. That modeling indicates complete consumption of all existing single family capacity, with a resulting excess demand and sharp price appreciation for single family housing. The findings associated with this scenario conclude that there is a need for increased production in the region of both single family and multifamily housing, but especially for single family. Appendix 3, pages 19-20.

After analyzing the MetroScope data and the viability of those four scenarios, the Metro COO recommended that the Metro Council base its 2018 growth management decision on Scenario 4, which assumes the “likely” (midpoint) population growth projection, a mid-range assumption regarding redevelopment capacity, and expansion of the UGB in all four proposed locations. Regarding housing type projections, the Scenario 4 outcomes show strong demand for single family products based on a low amount of remaining single family capacity, and corresponding increases in single family price.

The Metro Council agreed with the COO recommendation, and used Scenario 4 as the basis for its analysis and conclusions, as summarized on pages 37-38 of the UGR narrative and explained in more detail in the Appendix 5A Housing Needs Analysis.

3. Housing Needs Analysis

The next step in the process required under ORS 197.296(3)(b) is to analyze projected housing need by type and density range in order to determine the number of units and amount of land needed inside the UGB for each needed housing type for the next 20 years. This analysis is guided in part by ORS 197.296(5)(a), which provides that the determination of future housing need must be based on data from the last five years, and that the data must include:

- (A) The number, density and average mix of housing types of urban residential development that have actually occurred;
- (B) Trends in density and average mix of housing types of urban residential development;
- (C) Demographic and population trends;
- (D) Economic trends and cycles; and
- (E) The number, density and average mix of housing types that have occurred on the buildable lands described in subsection (4)(a) of this section.

The data required by ORS 197.296(5)(a) is provided in Appendix 5 of the UGR, which describes all of the indicator data required by that statute, as well as ORS 197.301 performance measures and housing affordability statistics by race.

In order to identify future housing needs over the next 20 years, Metro prepares a regional population and employment forecast, which is provided in Appendix 1 of the UGR and summarized on pages 28-33 of the UGR narrative. As with the buildable land inventory, Metro convened a peer review group consisting of economists and demographers to help create the 2038 forecast.

The UGR describes the 20-year population and employment forecasts for the region as a range, in terms of probability. The baseline forecast (midpoint on the forecast range) provides the best estimate of what future growth in the region may be. The range is bounded by a low end and a high end, with an estimated 95% probability that actual growth will occur within the range. In order to satisfy its statutory obligation to estimate the number of dwelling units and acres of land that may be necessary to accommodate growth in the next 20 years, the Metro Council has selected the midpoint of the range as the basis for its growth projections.

The population forecast estimates that, assuming the mid-point of the forecast range as recommended by the COO and endorsed by the Metro Council, there will be about 524,000 additional people (equating to about 279,000 new households) and 209,000 additional jobs in the seven-county Metropolitan Statistical Area (MSA) by 2038. UGR narrative at pages 28-30. Applying a five percent vacancy rate to account for an average number of vacancies at any given time equates to a need for 293,000 new dwelling units in the seven-county MSA. Appendix 5A, pages 10-11.

The next step involves estimating what percentage of the total number of forecasted units in the seven-county MSA will locate within the Metro UGB by applying a capture rate. A review of the historic Metro UGB population growth compared to the MSA shows an average capture rate of 61% based on data from 1979 to present. Historical capture rates have been between 54% and 64%, typically correlated with real estate and regional economic business cycles. Appendix 3, page 12. As described in Appendix 3, the MetroScope modeling of future growth scenarios shows a projected increase in the capture rate above historic rates, ranging from 63 to 72 percent. Capturing more household growth inside the Metro UGB is helpful for reducing vehicle miles traveled and carbon emissions if that higher capture rate can be achieved while maintaining a

compact urban form. For purposes of estimating future housing needs in the Metro region, the housing needs analysis describes the capture rate as a range between 64 and 70 percent. Appendix 5A, page 10; UGR narrative, page 37.

Regarding housing type, the housing needs analysis notes that all of the scenario results from the MetroScope modeling indicate demand for both multifamily and single family housing, but show a particular regional need for additional single family. Appendix 5A, page 1. Regarding multifamily need, the analysis also notes that based on the range of available multifamily capacity stated in the BLI forecasts (136,000 to 271,000 units), even at the low point of that range there is a surplus of multifamily capacity in the existing UGB. Appendix 5A, pages 9-10. The Metro Council accepts the COO recommendation to apply a single family rate of 50% for purposes of estimating the split of future housing types, which is consistent with historical trends and with results from the MetroScope scenarios.

The potential unmet need for single family units is correlated to a range of assumptions regarding single family percentages and capture rates in Table 3 of Appendix 5A (page 10). The row headings on that table show a plausible range of future capture rates between 64 and 70 percent, while the columns show a range of single family housing rates between 50 and 70 percent. The selected growth assumptions are then applied to the population forecast and buildable land inventory results to determine the amount of single family units that cannot be provided for within the existing urban growth boundary. Those numbers are shown in Table 4 of Appendix 5A (page 10), which subtracts the 92,300 single family unit capacity inside the existing UGB from the range of needed new single family units (93,800 to 102,600), resulting in a range of unmet need for single family housing of between 1,500 and 10,300 units.

The 2,181 gross acres of UGB expansions for housing are estimated to provide approximately 6,100 single family housing units along with approximately 3,100 multifamily units. The proposed 6,100 single family units falls near the midpoint of the range of need for between 1,500 and 10,300 single family homes in the Metro region. Most of the concept plans submitted by the cities include some amount of multifamily housing in order to ensure that the new areas will provide a variety of housing choices, decrease infrastructure costs per home, and comply with the state Metropolitan Housing Rule.

In the final 2018 UGR, for purposes of a final reconciliation of housing need the Metro Council selects a point at almost exactly the midpoint of the capture rate range. Based on an assumption of a 67.2% future capture rate within the UGB, the unmet need for single family housing is 6,100 units, which directly corresponds with the number of units proposed in the concept plans for the four city UGB expansions.

Prior to expanding the UGB, Goal 14 requires Metro to determine that the identified housing need “cannot reasonably be accommodated on land already inside the UGB.” As described above and in Appendix 5A, Metro’s analysis indicates that there is sufficient capacity inside the UGB for the projected multifamily need over the next 20 years. However, the analysis also identifies a need for additional single family homes that cannot be met on land already inside the UGB. As described above and in Appendix 2, Metro’s buildable land inventory determines that the existing UGB has the capacity to provide 92,300 single family units. That single family capacity

relies heavily on efficient use of land inside the UGB. Approximately 61 percent of the single family capacity already inside the UGB comes from infill. When that capacity is compared to growth projections, and under the needs analysis described above, even assuming the low end of the capture rate range there is an insufficient supply of land inside the UGB to meet the identified single family need. Metro's charter prohibits Metro from requiring any increased density in existing single family neighborhoods, which significantly limits its ability to achieve any further efficiency to address single family housing demand. Metro also notes that the methodology it employs for creating the buildable land inventory accounts for locally adopted measures that would increase local capacity.

Further, while there is not an objective standard for what could "reasonably be accommodated on land already inside the UGB" under Goal 14, the state Metropolitan Housing Rule provides some guidance. All cities and counties in the region have comprehensive plans that have been acknowledged by the DLCD, indicating that they are in compliance with that rule. This compliance indicates that cities and counties in the region have taken reasonable actions to accommodate housing growth on land already inside the UGB.

4. Locational Alternatives Analysis

Statewide Planning Goal 14 directs local governments, including Metro, to consider four locational factors as part of any decision to expand the UGB:

- Factor 1 – Efficient accommodation of identified land needs;
- Factor 2 – Orderly and economic provision of public facilities and services;
- Factor 3 – Comparative environmental, energy, economic and social consequences;
- Factor 4 – Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.

Metro's analysis of the four locational factors is governed by OAR 660-024-0060, which provides that when considering a UGB amendment, "Metro must determine which land to add by evaluating alternative urban growth boundary locations," consistent with the priority of lands specified in ORS 197.298. The highest priority of land available under ORS 197.298 is urban reserve. Because all expansion areas are designated urban reserve, OAR 660-024-0060(1)(b) directs Metro to apply the location factors of Goal 14 to the urban reserve areas to choose which land in that priority to include in the UGB.

Metro's application of the urban reserve factors to all 32 urban reserve areas in the Metro region is set forth in Appendix 7 to the UGR. As described in that analysis, Metro undertook a two-step process by first applying the Goal 14 factors and other locational requirements in OAR 660-024-0060 to all urban reserve areas (Appendix 7). Next, based on the outcome of the initial analysis, Metro applied the separate Metro Code location factors to a smaller set of 25 urban reserve areas that were determined to be the most suitable under the Goal 14 factors. That analysis is included in Appendix 7A.

Seven of the urban reserve areas were determined to be the least suitable for urbanization based on the Goal 14 analysis: Boring, Boring-Highway 26, Damascus, Stafford, Rosemont, Norwood

and Tonquin. The summary rankings for all 32 areas under each factor are shown in the table at the end of Appendix 7 (Attachment 4). These seven areas all share significant infrastructure hurdles that would need to be addressed prior to services such as sanitary sewer and water being available. For instance, the closest sanitary sewer services to the Damascus or the Boring urban reserves is well over a mile away and sanitary sewer service for Stafford and Rosemont needs to flow through the Borland urban reserve area, requiring the Borland urban reserve area to be urbanized first.

A second group of urban reserves were determined to rate low for more than one public facilities and services type. While the obstacles may not be as significant as in the areas noted above, these areas do face infrastructure difficulties related to large swaths of adjacent undeveloped land inside the UGB, undetermined service providers, current need for improvements to meet existing demand, and high costs for future needed improvements. In addition, a few of these areas are likely to have high environmental consequences due to the number and location of potential stream crossings. This includes Beaver Creek Bluffs, Borland, David Hill, Gresham East, Holcomb, Holly Lane, Maplelane, Roy Rogers East, Roy Rogers West and Sherwood South.

The remaining urban reserve areas rated reasonably well for public facilities and services as well as the other Goal 14 factors. This group includes Advance, Beef Bend South, Bendemeer, Bethany West, Brookwood Parkway, Cooper Mountain, Elligsen Road North, Elligsen Road South, Grahams Ferry, Henrici, I-5 East, Sherwood North, Sherwood West, South and Wilsonville Southwest. Most of these areas rated at medium or high for the four different locational factors.

However, of the six areas that did not have at least one low rating, four of them are very small and would not provide sufficient buildable land to meet the identified housing need (Brookwood Parkway, Grahams Ferry, Sherwood North and Wilsonville Southwest). The fifth, Bethany West, is not adjacent to a city, the preferred provider of urban services in Washington County per the Urbanization Forum agreement between Washington County and the cities within the county, which reduces its likelihood of being urbanized in time to efficiently accommodate the identified land need. The sixth urban reserve area is Advance Road, which is one of the locations included in this expansion.

In undertaking this review of alternative urban reserve areas, the Metro Council is cognizant of the region's history of expanding the UGB into areas that have failed to develop, or have developed very slowly, due to a lack of governance and/or planning for development. Therefore, in its evaluation of the relative merits of the urban reserve areas under the factors in Goal 14 and the Metro Code, the Metro Council is exercising its discretion to place greater weight on the two factors that are impacted by the existence of adjacent cities with adopted concept plans demonstrating that they are willing and able to accommodate the identified need for land to provide single family housing. Those two factors are: (1) efficient accommodation of identified land needs, and (2) orderly and economic provision of public facilities and services.

The 2018 UGR concludes in part that the region needs more housing production to keep up with population growth, particularly single family housing. In order to meet that identified need, the Metro Council is choosing to focus its consideration on urban reserve areas with concept plans,

because those areas are the most likely to produce housing sooner and thereby more efficiently accommodate the identified need for housing. The concept plans also describe city plans for future development and paying for infrastructure, thereby making it more likely these areas can provide public facilities and services in an orderly and economic manner.

The four expansion areas being approved in this ordinance are located in the following urban reserve areas: Advance (Wilsonville), Beef Bend South (King City), Cooper Mountain (Beaverton) and the Witch Hazel Village South portion of the South urban reserve area (Hillsboro). As described in Appendix 7 and 7A, these areas all ranked comparatively high under the Goal 14 factors and the Metro Code factors, and have the benefit of completed concept planning by cities that are eager to annex, urbanize, and govern those areas. The concept plans describe the cities' ability to provide and pay for urban services, expected housing types and number of units, natural resource protection needs and governance issues. Identifying and planning for these issues in advance dramatically increases the likelihood that these urban reserve areas will be able to efficiently accommodate the identified residential land need within a reasonable timeframe, and will provide public facilities and services in an orderly and economic manner. Therefore the Metro Council finds that those four areas will better accommodate the identified land need and more readily provide urban services under those locational factors in both the Metro Code and Goal 14.

Application of the non-redundant locational factors in the Metro Code to the remaining 25 urban reserve areas is provided in Appendix 7A of the UGR. As noted in Table 3 of Appendix 7A, all urban reserve areas received a high ranking for factor 2 regarding protection of farmland for commercial agriculture, since all areas are urban reserves that by definition are appropriate for urbanization. All but one of the urban reserve areas received a low ranking under factor 4 regarding contribution to the purposes of Centers and Corridors, primarily due to the distance between the urban reserve areas and the closest designated Center, lack of direct connections and transit service, and the character of the land uses in between.

Turning to the remaining two factors, only two urban reserve areas (Brookwood Parkway and Holly Lane/Newell Creek) received high rankings for those factors regarding transition between urban and rural lands using natural and built features, and avoidance of regionally significant fish and wildlife habitat. However, those two urban reserve areas have unique features that make them less efficient for accommodating the identified land need. Brookwood Parkway is very small at 53 acres with all but four parcels containing residences or institutional uses, leaving only 24 net buildable acres, which limits its ability to provide land to accommodate the identified residential need.

Holly Lane/Newell Creek Canyon is mostly surrounded by the UGB with only a 1,100 foot rural edge and has a state highway (Hwy 213) running through the middle of it. However, a significant amount of the reserve area is steeply sloped and a considerable portion of the riparian and upland habitat areas are in public ownership, which accounts for one-third of the land in the reserve area. The main amount of buildable land is along one north-south road, South Holly Lane, which contains numerous rural residences and has limited potential connections to land inside the UGB to the east due to steep slopes and significant natural resources. The Metro Council finds that, although this area has high scores regarding two of the Metro Code factors, on balance those

advantages are outweighed by factors 1 and 2 under Goal 14 and the Metro Code – the topography, parcelization, protected areas, and difficulty of providing urban services to the area make it less able to efficiently accommodate the identified need for housing or to provide public facilities and services in an orderly and economic manner.

On balance, considering and weighing the locational factors under both the Metro Code and Goal 14, the Metro Council finds that the four selected urban reserve areas received among the highest rankings when all of the factors are considered together. As described above, the Council is exercising its discretion to provide greater weight to the first and second factors under both Goal 14 and the Metro Code regarding efficient accommodation of identified land needs and orderly and efficient provision of public facilities and services. Under this analysis, and based on the evidence and findings provided in Appendix 7 and Appendix 7A regarding application of the factors to the 35 urban reserve areas, the Metro Council finds that the four selected areas provide the best locations for this UGB expansion.

5. Additional Factors for UGB Expansion Proposals

At the direction of the Urban Growth Readiness Task Force, in 2017 the Metro Council adopted amendments to Metro Code section 3.07.1425 identifying certain other factors to be considered in determining which urban reserve areas being proposed by cities for a UGB expansion will better meet an identified need for housing. Those factors are considered and applied in this section. The Metro Council finds that because the purpose of this new code section is to choose between urban reserve areas being proposed for addition to the UGB by cities, only the four areas being proposed for expansions may be considered. The Council also notes that in adopting these factors, the Council's expressly stated intent was not to create criteria that must be satisfied, but factors to be considered and weighed, in the manner of the Goal 14 locational factors.

The first factor is whether the urban reserve area is adjacent to a city with an acknowledged housing needs analysis that is coordinated with the Metro regional growth forecast. All four cities proposing expansions have acknowledged housing needs analyses that are coordinated with Metro.

The second factor is whether the area has been concept planned consistent with Title 11 of the Urban Growth Management Functional Plan. All four areas have been concept planned.

The third factor is whether the city that prepared the concept plan has demonstrated progress toward the actions described in Metro Code section 3.07.620 in its existing urban areas. That section of Title 6 provides that in order to be eligible for a regional investment in a Center, Corridor, Station Community, or Main Street, a city must adopt a map showing boundaries for those areas and adopt a plan of actions and investments. The Metro Council finds that all four cities proposing expansions have demonstrated progress toward those Title 6 requirements. The cities of Beaverton and Hillsboro have adopted boundaries for their Centers. The City of Wilsonville is currently updating their existing Town Center plan. In 2015, King City prepared a Town Center Plan and Implementation Strategy through a Metro grant.

The fourth factor is whether the city that prepared the concept plan has implemented best practices for preserving and increasing the supply and diversity of affordable housing in its existing urban areas. This factor was considered by the City Readiness Advisory Group (CRAG) in its review of the city proposals, and comments from CRAG were forwarded to the Metro Council via a staff memorandum dated July 11, 2018, followed by a presentation to the Metro Council by CRAG on July 17, 2018. The Metro Council has reviewed those comments, as well as the information presented by the cities in their proposals regarding this factor, and the Council has considered whether each city has implemented best practices regarding affordable housing under this factor. The Metro Council finds that all four cities have taken at least some steps toward encouraging the development of affordable housing in their jurisdictions, as described in the CRAG comments and the cities' proposals. The City of Beaverton in particular has demonstrated a very firm commitment to providing affordable housing. While it cannot be said that all four cities have implemented "best practices," the cities have demonstrated progress toward providing more affordable housing. The Metro Council finds that one purpose of this factor is to encourage cities seeking UGB expansions to make preserving and increasing the supply of affordable housing more of a priority, and that purpose has been met. Also, the conditions of approval attached to the UGB expansions regarding housing mix, removing barriers to accessory dwelling units, and variable system development charges are all being imposed in order to increase the supply of affordable housing in the four cities.

The fifth factor is whether the city that prepared the concept plan has taken actions to advance Metro's six desired outcomes in the Regional Framework Plan. This factor was also considered by CRAG in its review of the city proposals, and comments from CRAG were forwarded to the Metro Council via a staff memorandum dated July 11, 2018, followed by a presentation to the Metro Council by CRAG on July 17, 2018. The Metro Council has reviewed those comments, as well as the information presented by the cities in their proposals regarding this factor, and the Council has considered whether each city has taken actions to advance the six desired outcomes under this factor. The Metro Council finds that all four cities have taken steps and adopted plans and policies that advance Metro's six desired outcomes, as described in the CRAG comments and the city proposals. While it cannot be said that each city has taken steps that directly advance all six of the outcomes, the cities have demonstrated progress toward those outcomes.

6. Employment Land Analysis

In addition to the statutory and rule requirements addressed above regarding provision of a sufficient amount of residential land for needed housing, Goal 14 also requires Metro to ensure there is adequate development capacity inside the UGB to accommodate needs for employment land over the next 20 years. As with residential land, that analysis begins with a buildable land inventory, which "must include suitable vacant and developed land designated for industrial or other employment use." OAR 660-024-0050(1). That rule requires that the inventory must be conducted in accordance with the Goal 9 rule at OAR 660-009-0015, which requires a description of all employment land sites, including site characteristics and development constraints, within each zoning district.

The approach utilized by Metro to comply with the requirements of the Goal 9 rule was developed in consultation with DLCD and is set forth in Appendix 6 of the UGR. Relevant site

characteristics and data points are described in Table 1, and those characteristics are reviewed and applied to particular areas and employment land types as shown on the maps and tables in the rest of Appendix 6.

The methodology utilized by Metro in making its capacity calculations for vacant and redevelopable employment land is described in Appendix 2 of the UGR along with the residential inventory. As with the residential inventory, the methodologies for developing the inventory of employment capacity were developed by a technical working group consisting of representatives from public and private sector organizations.

The results of the employment land inventory are set forth in Appendix 2 of the UGR. The adjusted supply figures are provided in the two tables at pages 7 and 8 of Appendix 2, which show an inventory of between 2,150 and 2,530 acres of land available for commercial employment use and 8,683 acres for industrial use. As described in the UGR narrative at pages 9 to 11, comparing the employment forecast to the buildable land inventory leads to a conclusion that there is no regional need to expand the UGB specifically for employment purposes.

Metro and several public and private sector partners have also updated the region's inventory of large industrial sites (greater than 25 buildable acres per site). That inventory is included as UGR Appendix 8.

7. Responses to Issues Raised by Housing Land Advocates

In a letter to the Metro Council dated December 4, 2018, Housing Land Advocates (HLA) raises various issues regarding housing under federal, state and local law. The first three pages discuss federal caselaw under the Fair Housing Act (FHA), the significance of which is unclear. Metro recognizes that courts have held that the FHA prohibits local zoning that has the effect of discriminating against individuals based on protected characteristics such as race, sex, and disability. However, Metro is not a local government with zoning authority, and Metro does not zone property. HLA does not identify any basis on which Metro would have the type of authority that could result in a violation of the FHA by Metro; nor does HLA identify any basis for its assertion that Metro has the authority to enforce FHA requirements against local governments in the region.

Next, HLA correctly notes that the Metro Code requires cities and counties in the Metro region to include in their comprehensive plans measures designed to maintain and increase affordable housing. All cities and counties in the region are currently in compliance with Metro's functional plan requirements, indicating that requirement is being met. HLA also correctly notes that local governments are required by state law to conduct a housing needs analysis (HNA). All four cities where the UGB is being expanded have HNAs that are acknowledged by DLCD as being in compliance with state law. HLA then asserts that, as part of a UGB expansion, "Metro must use its authority to require cities and counties to change their plans and regulations to comply with the FHA." HLA cites no authority under which Metro is tasked with applying the FHA as part of a UGB expansion, and Metro is aware of no such authority.

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It is worth noting that a primary focus of this UGB expansion decision has been on finding ways to provide more affordable housing. The conditions of approval attached to the ordinance approving the expansion areas are set forth in Exhibit C, and they include numerous conditions that are directly aimed at requiring the four cities to encourage the development of more affordable housing, both in the new expansion areas and within existing city limits. The relevant conditions are A.2, A.3, B.1, B.2, B.3, and B.6.

Next, HLA correctly notes that ORS 197.296 requires Metro to analyze the region's housing needs as part of a UGB expansion. That analysis is summarized in Sections D.1-3 above, and is set forth in approximately 170 pages in the 2018 Urban Growth Report Appendices 2, 3, 5, and 5A (Exhibit E to this ordinance). HLA then devotes three pages to describing two LUBA cases that have no relevance to a UGB decision. HLA asserts that the first case (*HLA v. Happy Valley*) says that cities have a legal duty to demonstrate compliance with Metro Code 3.07.120(e). This is a correct statement with regard to a city plan or zoning code amendment, but that code section has no relevance to a UGB expansion. The second case (*Deumling v. Salem*) involves a reasons exception under Goal 2, which has nothing to do with the decision being made by Metro and has no applicability in this situation.

Finally, HLA "questions whether Metro will be able to make adequate Goal 10 findings," asserting that "nowhere in the record is there any evidence concerning a reasoned analysis of Goal 10, Metro's regional buildable land inventories, housing need projections ... or their application to this proposed UGB amendment." To the contrary, Metro has provided an extremely thorough and detailed analysis as required under Goal 10 and state statutes. That analysis, consisting of approximately 170 pages, is set forth in Appendices 2, 3, 5, and 5A to the 2018 Urban Growth Report (Exhibit E to this ordinance). Those Appendices have been available to the public on the Metro website since the Urban Growth Report was released on July 3, 2018. Metro's first draft of these findings, including Sections D.1-3 above addressing Goal 10 and ORS 197.296, have been available to the public since this ordinance was first posted on the Metro website on November 21, 2018. It appears that HLA neglected to review Metro's proposed decision before submitting its letter on December 4, 2018 asserting that there is no evidence in the record that Metro has undertaken any Goal 10 analysis.

E. Findings Regarding 4.8-Acre Administrative Amendment

In March 2018 Metro staff was approached by the owner of the property at 6491 NW Cornelius Pass Road to explore options for bringing a 4.8-acre parcel of land into the urban growth boundary (UGB) to address a public health hazard caused by a failing septic system. The parcel is located at the corner of NW Cornelius Pass Road and NW West Union Road in unincorporated Washington County and is within an urban reserve area 8F. The location is shown on the map attached as Exhibit B to this ordinance. The property is zoned Rural Commercial District (R-Com) and is occupied by West Union Village Square, which includes a variety of commercial uses including a butcher shop/smokehouse, an insurance agency, an auction house and a hair salon.

1. Evaluation of the Problem

In October 2017 an evaluation of the 41-year old on-site septic tank system was completed in response to recent failings, and submitted to the Oregon Department of Environmental Quality. See Attachment 7 to Metro staff report dated November 21, 2018. The evaluation found deficiencies and concerns regarding the systems continued functionality that support the presence of an imminent public health hazard being posed by continued use of the system, especially during the winter rainy season. Deficiencies and concerns regarding the continued use of the system include:

- The assumed design peak flow is apparently being exceeded by a factor of two or nearly three on a daily basis.
- Waste strength is very high and continued loading of the drainfield with high strength wastes is likely unsustainable.
- Ponding was observed near the bottom of the drainfield during the winter of 2016-17.
- There does not appear to be any suitable area on the property for drainfield replacement. The only area unencumbered by buildings or parking areas is in the north portion of the site that contains several feet of fill. In addition, the original site evaluation records indicate that test pits prepared in that general area were denied.

In June 2018 Environmental Health Program staff from the Washington County Department of Health & Human Services (DHHS) visited the site and noted that the septic system was not functioning properly. Their inspection determined that the system is currently failing, and that untreated or partially treated wastewater is surfacing over a portion of the drainfield, creating a public health hazard as defined in OAR 340-071-0100(117). These concerns are described in a letter from Washington County Senior Environmental Health Specialist Larry Fenster dated July 5, 2018 (Attachment 6 to Metro staff report dated November 21, 2018). As described in that letter, surfacing wastewater also constitutes a violation of the state Onsite Wastewater Treatment System Rules contained in OAR chapter 340 and must be addressed in a timely manner. County staff also confirmed that the only location available for the installation of a replacement drainfield was previously evaluated by the department in 1975 and was found to be unsuitable for the installation of an on-site septic system. The fill that has been placed through the years also makes the area unusable for the placement of a new drainfield.

2. Addressing the Septic System Failure

As noted in the letter from DHHS, OAR 340-071-0160 requires connection to sanitary sewer if the property lies within 300 feet of a sanitary sewer line if it is determined to be legally and physically available and there is no location on site for a replacement drainfield. Metro Code Section 3.09.090 prohibits a city or a district from extending water or sewer service from inside a UGB to territory that lies outside the UGB. There are two City of Hillsboro sanitary sewer mains, approximately 270 feet and 500 feet from the subject property and the city is willing to provide sanitary sewer services to the property. It is the City of Hillsboro's policy that any property that receives services from the city, such as sanitary sewer, must be within the city, which is consistent with Metro code noted above. Thus the property would need to be annexed to the city in order to provide sanitary sewer services, which requires the land be within the UGB.

Title 14 of Metro's Urban Growth Management Functional Plan provides the procedures and requirements for adding land to the UGB. This situation does not fit the normal procedures for adding land to the UGB as there is no specific land use need that is being addressed. Metro staff determined the most efficient and timely way to address the public health hazard was to include this 4.8-acre parcel as an administrative amendment to the UGB as part of the Metro Council's 2018 Growth Management Decision.

Metro and the City of Hillsboro agree that the land may be added to the UGB and sewer service provided that no change of use or intensification of individual uses will occur on the property until after the entire urban reserve area is planned for urbanization and brought into the UGB. Metro proposes adding a condition to the administrative amendment providing that "there shall be no change of use or intensification of individual uses on any portion of the 4.88-acre property until Urban Reserve Area 8F has been brought into the UGB and the City of Hillsboro has adopted comprehensive plan amendments for the surrounding urban reserve land." The City of Hillsboro will include the same language in an annexation agreement that the property owner will sign prior to sanitary sewer services being provided.

3. Public Outreach

At the request of Metro and the City of Hillsboro, the property owner invited 22 nearby rural property owners to an open house meeting on July 10, 2018 to explain the septic system situation and the potential for a UGB expansion to address the issue. Three people attended the meeting and did not raise any concerns. The property owner also presented the information at the Washington County CPO 8 meeting on July 12, 2018. Planning staff from Metro and Washington County attended the meeting and the CPO voted unanimously to support the property being added to the UGB to address the failing septic system.

F. Statewide Planning Goals

Goal 1 (Citizen Involvement): See findings in Section C above.

Goal 2 (Adequate Factual Base): Findings regarding the coordination element of Goal 2 are set forth above in Section B. The Metro Council finds that the UGR and the information it relies upon provide an adequate factual base for these findings and the adoption of the UGR. The Metro Council concludes that adoption of Ordinance No. 18-1427 complies with Goal 2.

Goal 3 (Farmland): Under OAR 660-024-0020(1) Goal 3 is not applicable.

Goal 4 (Forestland): Under OAR 660-024-0020(1) Goal 4 is not applicable.

Goal 5 (Natural Resources): The Metro Council finds that adoption of Ordinance No. 18-1427 does not impact any inventoried Goal 5 resources and is therefore consistent with Goal 5 and its implementing rules.

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Goal 6 (Air, Water and Land Quality): The Metro Council finds that the adoption of Ordinance No. 18-1427 does not impact any comprehensive plan designations or land use regulations that relate to protection of air, water and land quality. Ordinance No. 18-1427 does not authorize any particular uses of property with environmental impacts, and therefore does not implicate Goal 6.

Goal 7 (Natural Hazards): The Metro Council finds that adoption of Ordinance No. 18-1427 does not impact any existing local plans, policies, or inventories regarding natural hazards and does not authorize any particular uses of property in natural hazard areas; therefore, this decision does not implicate Goal 7.

Goal 8 (Recreation): The Metro Council finds that adoption of Ordinance No. 18-1427 does not involve recreation planning or destination resort siting; therefore, this decision does not implicate Goal 8.

Goal 9 (Economy): Although Goal 9 does not apply to Metro, the Metro Council concludes that adoption of Ordinance No. 18-1427 does not impact local comprehensive plans, policies or inventories regarding economic development.

Goal 10 (Housing): See findings in Section D above.

Goal 11 (Public Facilities and Services): Metro does not provide public facilities or services and does not adopt public facility plans; Metro is responsible for coordinating public facility planning by cities and counties. The Metro Council finds that adoption of Ordinance No. 18-1427 does not impact the planning for or provision of public facilities and services; therefore, this decision does not implicate Goal 11.

Goal 12 (Transportation): Under OAR 660-024-0020(1) the Goal 12 requirements in the Transportation Planning Rule do not apply to a UGB amendment that does not involve amendment of the local planning designation for the expansion areas allowing development.

Goal 13 (Energy): The Metro Council finds that the adoption of Ordinance No. 18-1427 promotes a compact urban form and the efficient use of energy within the UGB. To the extent Goal 13 applies, the Metro Council concludes that this decision is consistent with Goal 13.

Goal 14 (Urbanization): See findings in Section D above.

Goal 15 (Willamette River Greenway): The Metro Council finds that adoption of Ordinance No. 15-1361 has no impact on the Willamette River Greenway; therefore, this decision does not implicate Goal 15.