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Urban Growth Management in Portland, Oregon

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Oregon's urban growth management experience sets it apart from other land use planning and regulatory programs in the United States. The Oregon land use program has endured for more than forty years, suffering the vicissitudes of multiple constitutional attacks and legislative adjustments.[1] Oregon's policy protects most rural lands suitable for farm or forest use.[2] It also seeks to be efficient in spending limited public funds to expand public facilities and services when lands are urbanized.[3] This Article examines one aspect of Oregon's program in one area of the state—growth management in the Portland Metropolitan Area, the state's most populous region.[4]

This Article begins with a brief description of the Oregon planning system and of the Portland metropolitan region, followed by a discussion of the evolution of the regional planning system, the current regional and state agency review of growth management policy for the Portland region, a discussion of the principal

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[1] *See* Edward J. Sullivan, *The Quiet Revolution Goes West: The Oregon Planning Program 1961-2011*, 45 J. MARSHALL L. REV. 357, 372–74 (2012) [hereinafter Sullivan, *Quiet Revolution*] (providing a historical account of the development of the Oregon land use program and some of the difficulties it faced).

[2] *See* Edward Sullivan & Ronald Eber, *The Long and Winding Road: Farmland Protection in Oregon 1961–2009*, 18 SAN JOAQUIN AGRIC. L. REV. 1, 2 (2008–2009); Edward J. Sullivan & Alexia Solomou, *"Preserving Forest Lands for Forest Uses"—Land Use Policies for Oregon Forest Lands*, 26 J. ENVTL. L. & LITIG. 179, 181 (2011).

[3] *See* Edward J. Sullivan & Benjamin H. Clark, *A Timely, Orderly, and Efficient Arrangement of Public Facilities and Services—The Oregon Approach*, 49 WILLAMETTE L. REV. 411, 413 (2013) (discussing Oregon's goal to be efficient in its planning of public facilities).

[4] As of April 2010, the population of the standard statistical region was 2,226,009. David Horowitz, *Metropolitan Statistical Area Population Data-1990, 2000, and 2010 Census Totals Compared*, http://library.oregonmetro.gov/files//msa_popdata1990_2010.pdf (last updated Feb. 2012). This larger region includes the three Oregon counties in

administrative and judicial decisions to date assessing that policy, and concludes with an evaluation of that policy.

I
BACKGROUND: THE OREGON LAND USE SYSTEM AND THE PORTLAND REGION

A. The Oregon Planning System

This Article provides only the briefest of descriptions of the Oregon land use system.[5] A statewide body, the Land Conservation and Development Commission (LCDC), has the responsibility to, among other things, adopt and enforce binding land use policies (hereinafter "Goals"), administrative rules, and planning procedures for the state and its component parts.[6] In practice, the policies of LCDC fall into five categories: the planning process (Goals 1 and 2), resource lands protection (Goals 3–5), human interaction with the environment (Goals 6–8 and 13), urbanization (Goals 9–12 and 14), and Goals relating to special areas (Goals 15–19).[7] The most noteworthy planning tool of the Oregon program is the urban growth boundary (UGB), a legally binding, legislatively-created line that separates "rural land"[8] from "urban land."[9]

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[5] For a more complete description of the Oregon land use system, see generally Sullivan, *Quiet Revolution*, *supra* note 1, at 357–72.

[6] OR. REV. STAT. § 197.040 (2013); *see generally* OR. REV. STAT. §§ 197.030–.070 (2013) (providing the statutory scheme for LCDC).

[7] Sullivan & Clark, *supra* note 3, at 414.

[8] The Goals define "rural land" as "[l]and outside urban growth boundaries that is: (a) [n]on-urban agricultural, forest or open space, (b) [s]uitable for sparse settlement, small farms or acreage homesites with no or minimal public services, and not suitable, necessary or intended for urban use, or (c) [i]n an unincorporated community." DEP'T OF LAND CONSERVATION & DEV., OREGON'S STATEWIDE PLANNING GOALS & GUIDELINES, Definitions, at 7 (2010) [hereinafter DLCD GOALS], *available at* http://www.oregon.gov/lcd/docs/goals/compilation_of_statewide_planning_goals.pdf.

[9] The Goals define "urban land" as: "[l]and inside an urban growth boundary." *Id.* Definitions, at 8. Except for the Metro UGB, which is regionally drafted by the Metropolitan Service District (Metro), the determination of the location of the boundary is made by cities in concert with surrounding counties. *Id.* Goal 14, at 1 ("An urban growth boundary and amendments to the boundary shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located."). A city typically enters into agreements with the county or counties that surround it and also with special districts with respect to land use issues regarding land that is not yet part of the city. *See* OR. REV. STAT. §§ 195.020, .065 (2013) (providing requirements for coordination agreements between cities, counties, and special districts). This makes

The distinction is profound: land outside the UGB cannot be developed for urban uses, absent a goal exception.[10] Land within the UGB must be sufficient to accommodate urban needs and populations and must also be used efficiently.[11]

To assure compliance with the Goals, the state has established a process that requires local governments to adopt binding comprehensive plans and implement those plans with land use regulations that are consistent with the local governments' plans.[12] State agencies are generally required to make their programs and actions consistent to those local plans that have been "acknowledged" or certified by LCDC as complying with the Goals.[13] All of Oregon's 242 cities and 36 counties[14] have had their plans and regulations "acknowledged" by LCDC.[15] Once these local plans have been "acknowledged," the statewide planning goals drop out as independent criteria for local regulations and actions because they are incorporated in the binding comprehensive plans.[16] The state system, however, has been modified to meet the special needs of its largest population center.

B. The Portland Metropolitan Region

Understanding the evolution of the Metropolitan Service District (Metro) as a policy-making entity is important in order to understand growth management in the Portland metropolitan area. Metro stands

("Establishment and change of urban growth boundaries shall be a cooperative process among cities, counties and, where applicable, regional governments.").

[10] *See* DLCD GOALS, *supra* note 8, Goal 14, at I–2; *see also* OR. REV. STAT. § 197.732 (2013) (providing criteria and rules for goal exceptions); OR. ADMIN. R. 660-014-0040 (2014) (allowing for development on undeveloped rural land outside of the UGB when an exception to Goal 14 is justified); DLCD GOALS, *supra* note 8, Goal 2, at 2 (explaining when a local government may adopt an exception to a goal).

[11] DLCD GOALS, *supra* note 8, Goal 14, at 1–2. Among other things, the Goal itself requires that one function of a UGB is "to provide land for urban development needs" and one of the factors used in establishing or changing a UGB is "[e]fficient accommodation of identified land needs." *Id.* Goal 14, at 1. The current version of Goal 14 requires a twenty-year land supply for all urban uses. *Id.* Prior to 2006, the twenty-year land supply was likely the expected outcome, but was not present in the Goal itself.

[12] OR. REV. STAT. § 197.175(1)–(2).

[13] *Id.* § 197.180.

[14] *See Incorporated Cities: Arranged by County*, OR. BLUE BOOK, http://bluebook.state.or.us/local/cities/bycounty.htm (last visited Oct. 25, 2014) (providing a comprehensive list of Oregon's cities and counties).

[15] *See* DEP'T OF LAND CONSERVATION & DEV., ACKNOWLEDGEMENT SCOREBOARD

in a unique place among planning regimes in Oregon and the nation. With its population, economic domination, and the sheer size of its landmass,[17] Metro is unique; it is currently the only democratically-elected regional government in the United States with power to influence or decide significant land use and transportation planning issues.[18] Today, Metro encompasses twenty-five cities and the urbanizable portions of three counties on the Oregon side of the Columbia River; the City of Vancouver and Clark County, Washington, are also part of the larger metropolitan area and lie across the river and are thus outside the jurisdiction of both Metro and the State of Oregon.[19] The task of determining the extent that urban growth should be permitted in the Metro area is made particularly difficult by the fact that the same land in the Willamette Valley is usable for both agriculture and urban development.

As described below, Metro's power has evolved remarkably, beginning with the establishment of a unique, voluntary regional planning agency in 1966—the Columbia Region Association of Governments (CRAG).[20] CRAG was designated as the planning

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[17] *See Regional Leadership*, METRO, http://www.oregonmetro.gov/index.cfm/go/by.web/id=24201 (last visited Oct. 25, 2014) (stating that Metro serves more than 1.5 million people within its boundaries). The area within the Portland Metropolitan UGB is over 400 square miles. *See Urban Growth Boundary*, METRO, http://www.oregonmetro.gov/index.cfm/go/by.web/id=277 (last visited Oct. 25, 2014) (providing a map of the current Metro UGB).

[18] *See* CARL ABBOTT & MARGERY POST ABBOTT, ABBOTT: A HISTORY OF METRO, MAY 1991 (1991) [hereinafter METRO HISTORY], *available at* http://library.oregonmetro.gov/files//abbott-a_history_of_metro_may_1991.pdf; *see also Urban Growth Boundary*, *supra* note 17.

[19] *Regional Leadership*, *supra* note 17.

[20] Carl Abbott, *Columbia Region Association of Governments (CRAG)*, THE OR. ENCYCLOPEDIA (2014), http://oregonencyclopedia.org/articles/columbia_region_association_of_governments_crag_/#.VDF2aBaGe2V. According to Abbott:

> The organization succeeded the Metropolitan Planning Commission (MPC), which had been created in 1958 to use federal funds available for regional planning under Section 701 of the Housing Act of 1954. The four-member MPC board represented Portland . . . and the three metropolitan counties in Oregon. Until CRAG replaced it in 1966, the MPC compiled demographic and land-use data and offered a venue where elected officials could discuss regional issues.
>
> CRAG was a response to requirements of the Federal Highway Administration and the Department of Housing and Urban Development that 90 percent of the metropolitan area population be represented in a voluntary association of local officials. CRAG extended to include Columbia County, allowed participation of Clark County, and gave representation to suburban municipalities as well as counties. Local officials formally launched CRAG in October 1966.

agency for the entire Portland region (i.e., the three Oregon counties of the region—Multnomah, Clackamas, and Washington—as well as Clark County, Washington) until 1978, and it existed as a voluntary association, rather than by statute, from its formation in 1966 through 1978.[21]

II
LEGISLATION FOR METROPOLITAN GROWTH MANAGEMENT–DELEGATIONS AND EXPECTATIONS

A. Beginnings–The 1969 and 1973 Legislation

The regional planning picture began to change in 1969 when the Oregon Legislature authorized the formation of Metro to deal with metropolitan-wide aspects of certain public works.[22] Then in 1973, the Oregon Legislature gave CRAG certain regional planning authority under S.B. 769.[23] This legislation was parallel to, and in the

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served as the umbrella for the Portland-Vancouver Metropolitan Area Transportation Study (P-VMATS), fulfilling the federal requirement that there be a metropolitan planning organization to sign off on regional transportation plans.

Id.; *see also* METRO HISTORY, *supra* note 18 (describing Metro's evolution from CRAG and exploring its role in land use planning).

[21] Abbott, *supra* note 20; METRO HISTORY, *supra* note 18, at 9. CRAG was the agency that received and distributed federal planning, transportation, and other funds and undertook the generally nonbinding regional planning function. Abbott, *supra* note 20.

[22] Metropolitan Service District Act of 1969, ch. 700, 1969 Or. Laws 1900 (1969) (generally codified as amended and revised at OR. REV. STAT. ch. 268 (2013)). More properly, the legislation did not establish the district, but provided for the manner in which it could be established and have funding, through approval of the voters of the Oregon portions of the Metropolitan Statistical Area (i.e., not including Clark County, Washington). Section 3(3) of the legislation allowed the new district to provide for metropolitan aspects of sewerage, solid and liquid waste disposal, control of surface water and public transportation, and to contract with other public and semipublic agencies to undertake those services. *Id.* § 3(3) (codified as amended and revised at OR. REV. STAT. § 268.030(3) (1975)). In 1975 additional functions were added to Metro's responsibilities. Act of June 30, 1975, ch. 510, § 2, 1975 Or. Laws 1096 (1975) (adding zoo facilities responsibilities) (codified as amended at OR. REV. STAT. § 268.310(3) (1975)). The legislature later authorized the District to operate major convention, cultural, entertainment, and sports facilities. Act of July 26, 1977, ch. 782, § 5, 1977 Or. Laws 769 (1977) (codified as amended at OR. REV. STAT. § 268.310(4) and (5)). In 1997, the Oregon Legislature gave Metro the authority to exercise jurisdiction over "matters of metropolitan concern," if authorized by its charter. Act of August 11, 1997, ch. 833, § 8, 1997 Or. Laws 2386–87 (1997).

[23] Act of July 20, 1973, ch. 482, 1973 Or. Laws 1003 (1973). The legislation provided the process for the formation of a regional planning district; the nature, powers, and finances of the district; and the composition of its governing body (which was to be

same year as, Oregon's landmark S.B. 100, which established the statewide planning program.[24] S.B. 769 authorized, and required, CRAG to undertake the following:

* Coordinate all planning activities of city and county members, special districts and state agencies.
* Review all comprehensive plans to determine conformity with statewide planning goals.
* Adopt regional goals and objectives.
* Prepare a plan for the region in accordance with statewide and regional planning goals.
* Designate areas and activities having significant impact on the region and establish rules and regulations for them.
* Review plans adopted by members of CRAG and recommend or require changes to assure the plans conform to the regional goals and objectives.[25]

CRAG thus possessed legal powers to affect the plans, regulations, and actions of the cities and counties within its boundaries. However, its governing body reflected the political desires of those local governments as well, which would pose much future difficulty. In contrast, Metro confined itself to public works, which greatly affected regional planning.[26] Over time, it became clear that there could only be one authoritative regional agency.

B. The Struggle for Regional Planning Primacy

CRAG was disliked for its seldom-used planning enforcement powers and the perception that it was dominated by Portland.[27] On

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to combine planning, and public works functions. *See* Act of July 26, 1977, ch. 665, 1977 Or. Laws 607 (1977).

[24] *See* Sullivan, *Quiet Revolution*, *supra* note 1, at 367–69.

[25] MICHAEL HUSTON, THE COLUMBIA REGION ASSOCIATION OF GOVERNMENTS ii (Larry Rice ed., 1977), *available at* http://rim.metro-region.org/WEBDRAWER/webdrawer.dll/webdrawer/rec/158159/view/.

[26] § 3(3), 1969 Or. Laws at 1900 (allows the District, subject to limitations of state law, to provide for "Metropolitan aspects of sewerage, solid and liquid waste disposal, control of surface water, and public transportation" and local aspects of those services transferred to the District by public agencies).

[27] *Id.* § 9, at 1903. (provided for District governance, giving each of the three constituent counties a vote, as well as a single vote to the cities in each county, and a single vote to the City of Portland). Even with only a single vote for itself and its numerical superiority in Multnomah County, Portland was able to influence the agenda

the other hand, Metro may have had a better image because it dealt with regional public works matters, including the popular Portland zoo.[28] In 1977, the Oregon Legislature responded to a "blue ribbon committee"[29] report on metropolitan government and made the

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Its Thriving, Civil Core, ATLANTIC (Nov. 1, 1992), http://www.theatlantic.com/magazine/archive/1992/11/how-portland-does-it/306243/.

[28] Initially, Metro took on three tasks: a solid waste disposal site, the regional transportation agency, and the Portland zoo. Dealing with these functions reasonably well enhanced the District's credibility in the region. *See* METRO HISTORY, *supra* note 18, at 4–8.

[29] The "blue ribbon committee" was the Tri-County Local Government Commission, funded largely by a $100,000 grant from the National Academy for Public Administration which was supplemented by another $50,000 from public and private sources. METRO HISTORY, *supra* note 18, at 10. According to the Abbotts, a number of Commission concepts found their way into proposed legislation:

> The Commission made a series of key decisions in the middle months of 1976. These decisions became part of a formal proposal to reorganize and reconstitute the Metropolitan Service District.
>
> 1. The Commission decided that regional government could most readily be strengthened by combining the planning functions of CRAG with the regional service functions of MSD. It agreed early on that MSD was the proper foundation on which to build. Its legal status was firmly fixed by statute and by popular approval in 1970. It had also aroused less antagonism than CRAG.
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> 2. The Commission also decided in its early deliberations to favor the direct election of regional policy makers. It took very seriously the complaint that local officials who also serve at the area-wide level are forced to walk an impossibly narrow line between regional solutions and the demands of the local community that they were elected to represent. Direct election of a regional governing body was proposed as "the best, and perhaps only, way to secure a democratic, responsive, responsible and effective area-wide government."
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> 3. In arguing for a directly elected metropolitan government, the Commission drew an analogy from earlier American history. The CRAG and MSD boards of the mid-1970s were similar to the ineffectual national Congress under the Articles of Confederation of 1778-89. Congressional delegates under the Articles represented states rather than citizens. The failure of the Articles had led to the adoption of the federal Constitution, under which the members of Congress directly represent the individual citizens. Direct election of an MSD Council was presented as a similar sort of forward-looking reform.
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> 4. The Commission preferred a relatively large number of councilors to be elected from relatively small districts, settling on 15 in the proposal submitted to the legislature. One practical consequence was to make the districts smaller than State Senate districts, reducing the perceived threat to incumbents. Districts were to coincide with historic and traditional communities rather than adhering to current political boundaries. It was hoped that voters would come to perceive each MSD Council district as a natural community of interest.
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> 5. The Commission initially split on the question of an appointed vs. elected executive. The two city managers on the Commission advocated strongly for the [illegible] argued that an appointed official (a "super city

political calculation that Metro, rather than CRAG, would be the better vehicle for a revamped metropolitan government.[30] The Oregon Legislature, citing the dangers of public confusion over the proliferation of regional governments and duplication of public services, declared that it wished to consolidate regional governments in such a way as to make them more accountable and responsible to the voters of the region.[31] The statutory changes were made to the enabling legislation for Metro,[32] including giving and enhancing that district with the regional planning functions CRAG then possessed.[33] Three aspects of this legislation are worth noting:

1. Section seventeen allowed Metro to: adopt regional goals and objectives consistent with the statewide planning goals; "recommend or require" local governments to make changes in their plans to conform to the same; and coordinate urban land

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constitutional experience, declaring that "separating the legislative and executive powers with corresponding checks and balances is in keeping with the American system of distinguishing between the policy-makers who flesh out and adopt the laws and the chief executive who proposes and enforces laws. A hired chief-administrator, lacking both a political base and a direct line of accountability to the citizens, simply could not survive in a unit the size of the revised Metropolitan Service District."

6. The Commission preserved MSD's statutory authority to absorb Tri-Met. However, the Port of Portland, the other large agency that operates on a regional scale, elicited sharper debate. Many Commission members argued that its distinct mission made it a poor match with an agency that would be furnishing services directly to citizens. Nevertheless, the Port was included in the Commission's list of services that the new MSD might assume.

Id. at 10–11. The purpose of the Commission was to explore new approaches of regional governance. The region already had a Council of Governments to plan and deal with federal fund allocations and Metro for regional facilities, so the project focused on a directly-elected regional governing body. Interview with Ethan Seltzer, Professor, Nohad A. Toulan School of Urban Studies and Planning, Portland State University, in Portland, Or. (Apr. 10, 2014) [hereinafter Seltzer Communication] (Seltzer is a former land use supervisor for Metro) (on file with author).

30 *See* METRO HISTORY, *supra* note 18, at 11 (noting the positive public response to the end of CRAG). CRAG had riled up local governments in the region, whereas Metro did not have that baggage. Seltzer Communication, *supra* note 29.

31 Act of July 26, 1977, ch. 665, § 1, 1977 Or. Laws 608 (1977) (substantially repealed by Act of August 11, 1997, ch. 833, § 27, 1997 Or. Laws 2394 (1997)).

32 The legislation amended Metro statutes in chapter 268 of the Oregon Revised Statutes, while providing for the repeal of sections 197.705 through 197.795, which provided for the regional planning district authorized by the legislature in 1973. § 24, 1997 Or. Laws at 620; *see also supra* note 23 and accompanying text. These actions were subject to voter approval at the primary election in May 1978. *See id.* § 31.

use planning activities of local governments within the district, along with other federal, state, and local governments.[34]

2. Section eighteen allowed Metro to: identify and designate areas and activities that have significant impact on the region, specifically enumerating transportation and air and water quality as examples, but allowing other such designations; prepare and enforce "functional plans" for these and other development activities identified by its governing body; and review city and county plans for conformity with its functional plans.[35]
3. Section nineteen made Metro the planning coordinator for the urban portions of the Portland region for purposes of S.B. 100 coordination.[36]

Together, these provisions gave Metro the ability to "make things happen" and to provide a more substantial, regional perspective in local planning and land use regulation.

C. A New Metropolitan Planning Paradigm

In May of 1978, the voters of the Portland urban region abolished CRAG and approved the foundation of the new "Metro" (the former Metropolitan Service District) with an elected governing body and enhanced planning powers.[37] In 1979, Metro was given the specific power and task to establish and amend as necessary a regional UGB.[38]

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[34] *Id.* § 17, 1977 Or. Laws at 619 (codified as amended at OR. REV. STAT. § 268.380(1) (2013)).

[35] *Id.* § 18, 1977 Or. Laws at 619 (codified as amended at OR. REV. STAT. § 268.390(1)–(3) (2013)). This power to require that local plans conform to a regional plan, as well as to require consistency with local plans conforming to regional standards, is unique in the United States. Seltzer Communication, *supra* note 29.

[36] § 19, 1977 Or. Laws at 619 (codified at OR. REV. STAT. § 268.385 (2013)); *see also* OR. REV. STAT. § 195.025 (2013); *see generally* OR. REV. STAT. ch. 195 (2013) (discussing the encouragement of planning coordination among various governmental entities). Requiring and enforcing such efforts has, however, left much to be desired and is not emphasized in this Article.

[37] METRO HISTORY, *supra* note 18, at 1, 11–12.

[38] Act of July 15, 1979, ch. 402, § 1, 1979 Or. Laws 491 (1979) (codified as amended at OR. REV. STAT. § 268.390(3)); Act of June 2, 2009, ch. 216, § 3, 2009 Or. Laws 725 (2009) (allowing Metro to expand its own boundaries by Council action, so that when urban land is added to the regional UGB, Metro's boundaries expand as well) (codified as amended at OR. REV. STAT. §§ 268.347, .354, and .390 (2013)); URBAN GROWTH BOUNDARY FINDINGS pt. 2, at 1, *available at* http://digital.lib.pdx.edu/oscdl/files/seltzer

Metro thus derives its land use planning power from statutes,[39] the Oregon Constitution,[40] and a charter approved by regional voters in 1992.[41] The charter considerably enhanced the ambit of Metro's power by exercising its home rule self-governance powers under the Oregon Constitution and defining Metro's mission as "planning and policy making to preserve and enhance the quality of life and the environment."[42] Furthermore, the Metro charter placed the burden on Metro to develop and adopt ordinances that require coordination of local comprehensive plans that must "substantially comply" with a Regional Framework Plan (RFP),[43] necessitating that every local plan

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[39] *See generally* OR. REV. STAT. §§ 268.010–.990 (covering chapter 268 of the Oregon Revised Statutes, which is titled "Metropolitan Service Districts").

[40] OR. CONST. art. XI, § 14.

[41] METRO CHARTER, Jan. 6, 2003, *available at* http://library.oregonmetro.gov/files/charter.pdf (approved by voters in the November 7, 1992, general election and thereafter amended; it gives Metro power over matters of metropolitan concern); *see generally* Act of Aug. 11, 1997, ch. 833, §§ 1, 7–8, 1997 Or. Laws 2385–86, 2388 (1997) (reconciling Metro's statutory and charter authority, especially with respect to planning) (codified as amended and revised at OR. REV. STAT. §§ 268.300 and .310). For planning purposes, Metro acts as both a planning coordinator under state law and planning actor with a regional view under its charter. OR. REV. STAT. §§ 195.025, .143, 268.380–.390.

[42] METRO CHARTER, *supra* note 41, at pmbl. The Oregon Constitution permits cities and counties to engage in substantive policymaking over matters of local concern by adopting charters, best analogized as "local constitutions," through these so-called "home rule" provisions. *See* OR. CONST. art. XI, § 2 (for cities); OR. CONST. art. VI, § 10 (for counties). The passage of Article XI, section 14 of the Oregon Constitution gave Metro similar powers over matters of metropolitan concern. OR. CONST. art. XI, § 14.

[43] OR. REV. STAT. §§ 268.380 and .390(4) (allows Metro to require city and county plans to conform to its "functional plans," one of which is the Urban Growth Functional Plan (UGFP)); *id.* § 268.390(7)(a) (giving Metro the ability to require individual land use decisions to conform to the UGFP). However, the UGFP had to be acknowledged by LCDC before it was enforceable. *See* Seltzer Communication, *supra* note 29. As described in section 5, subsection 2, subsection b of the Metro Charter, the framework plan must address:

> (1) regional transportation and mass transit systems; (2) management and amendment of the urban growth boundary; (3) protection of lands outside the urban growth boundary for natural resource, future urban or other uses; (4) housing densities, (5) urban design and settlement patterns; (6) parks, open spaces and recreational facilities; (7) water sources and storage; (8) coordination, to the extent feasible, of Metro growth management and land use planning policies with those of Clark County, Washington; and (9) planning responsibilities mandated by state law. The regional framework plan shall also address other growth management and land use planning matters which the Council . . . determines are of metropolitan concern and will benefit from regional planning. To encourage regional uniformity, the regional framework plan shall also contain model terminology, standards and procedures for local land use decision making that may be adopted by local governments. As used in

and land use regulation also comply with the RFP within two years.[44] State law gave Metro the authority to review city and county plans and land use regulations to ensure their compliance with the RFP, as well as the ability to remedy any inconsistencies between local plans and the RFP.[45]

Metro's regional framework plan and decisions on local comprehensive plans also must go through a similar process of acknowledgment or review. The plan, implementing ordinances, and land use decisions must be consistent with statewide planning goals, as are any decisions by Metro on city or county plans, regulations, and actions; each process is subject to review.[46] The original RFP is

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METRO CHARTER, *supra* note 41, § 5(2)(b). The Regional Framework Plan was required to meet the statewide planning goals. OR. REV. STAT. § 268.380(2).

[44] Under section 5, subsection 2, subsection e of the Metro Charter, the elected Metro Council has sweeping powers over land use plans, regulations, and decisions in the region: To the maximum extent allowed by law, the Council shall adopt ordinances:

> (1) requiring local comprehensive plans and implementing regulations to comply with the regional framework plan within three years after adoption of the entire regional framework plan. If the regional framework plan is subject to compliance acknowledgment, local plans and implementing regulations shall be required to comply with the regional framework plan within two years of compliance acknowledgment; (2) requiring the Council to adjudicate and determine the consistency of local comprehensive plans with the regional framework plan; (3) requiring each city and county within the jurisdiction of Metro to make local land use decisions consistent with the regional framework plan until its comprehensive plan has been determined to be consistent with the regional framework plan. The obligation to apply the regional framework plan to local land use decisions shall not begin until one year after adoption and compliance acknowledgment of the regional framework plan; and (4) allowing the Council to require changes in local land use standards and procedures if the Council determines changes are necessary to remedy a pattern or practice of decision making inconsistent with the regional framework plan.

METRO CHARTER, *supra* note 41, § 5(2)(e).

[45] METRO CHARTER, *supra* note 41, § 5(2)(e); *supra* text accompanying note 44; *see also* OR. REV. STAT. § 268.390; City of Sandy v. Metro, 115 P.3d 960, 963–64 (Or. Ct. App. 2005) (upholding Metro's required limitations on large retail, commercial, and medical facilities; limitations on the size of other nonindustrial uses; and limitations on land divisions on designated "Regionally Significant Industrial Areas").

[46] *See* OR. REV. STAT. §§ 197.015(1), (16), and .820–.850 (2013). More specifically, section 197.274 provides:

> (1) The Metro regional framework plan, its separate components and amendments to the regional framework plan or to its separate components are subject to review:
>
> (a) For compliance with land use planning statutes, statewide land use planning goals and administrative rules corresponding to the statutes and goals, in the same manner as a comprehensive plan for purposes of:

described by law[47] and was acknowledged by LCDC in 2000.[48] However, the RFP is not the kind of comprehensive planning function undertaken by local governments.[49] Rather, it deals with regional issues,[50] including the establishment and change of a regional UGB.[51]

The RFP sets forth the responsibilities of Metro and those cities and counties within its jurisdictional boundaries.[52] It includes various functional plans that deal with diverse matters such as transportation and air and water quality.[53] The text of the functional plans determines how it binds local comprehensive plans and implements

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(B) Post-acknowledgment procedures under ORS 197.610 to 197.651; and

(b) As a land use decision under ORS 197.805 to 197.855 and 197.860.

(2) With the prior consent of the Land Conservation and Development Commission, Metro may submit to the Department of Land Conservation and Development an amendment to the Metro regional framework plan or to a component of the regional framework plan in the manner provided for periodic review under ORS 197.628 to 197.651, if the amendment implements a program to meet the requirements of a land use planning statute, a statewide land use planning goal or an administrative rule corresponding to a statute or goal.

Id. § 197.274 (2013).

47 *See* OR. REV. STAT. § 197.015(16) (describing the plan as that "required by the 1992 Metro Charter or its separate components"); *see also id.* § 268.020(7) (stating that the plan means that which is defined in section 197.015).

48 *See* OR. REV. STAT. § 197.274; *see also supra* text accompanying note 46.

49 OR. REV. STAT. § 197.015(16) (stating that "[n]either the regional framework plan nor its individual components constitute a comprehensive plan").

50 *Id.* § 268.380(2) (A regional plan must be consistent with regional land use planning goals and objectives adopted by the Metro Council.).

51 *See e.g.*, Benjfran Dev., Inc. v. Metro. Serv. Dist., 767 P.2d 467 (Or. Ct. App. 1989) (helping establish Metro's primacy in the forming or change of a UGB). Even if Metro does not undertake the initial planning effort at the local level, its approval is necessary for an amendment to be lawful. Because the Metro UGB was acknowledged, any change to that boundary must proceed either as a post-acknowledgment plan amendment subject to review by the Oregon Land Use Board of Appeals under sections 197.610 through 197.625, which is an adjudicative tribunal that judges change for compliance with legal standards, or by periodic review of the boundary under sections 197.626 through 197.644, which is reviewed by LCDC. LCDC tends to judge on policy grounds and is likely to be more sympathetic to the change. *See* OR. REV. STAT. §§ 197.610–.644. Moreover, any UGB change to the Metro boundary of one hundred acres is reviewed by LCDC. *Id.* § 197.626(1)(a).

52 *See e.g.*, METRO'S REGIONAL FRAMEWORK PLAN SUMMARY OF 2040 GROWTH CONCEPT (2011), *available at* http://library.oregonmetro.gov/files//rfp.00_summary_2040_growth_concept_011311.pdf; METRO'S REGIONAL FRAMEWORK PLAN: CHAPTER 8 IMPLEMENTATION (2011) [hereinafter CHAPTER 8 IMPLEMENTATION], *available at*

regulations.[54] Much like the RFP itself, these functional plans are also subject to both acknowledgement and periodic review.[55] One of those functional plans, the Urban Growth Functional Plan, requires Metro to adopt a UGB in compliance with the statewide planning goals.[56] As noted above, while Metro itself does not have a "comprehensive plan"[57] as other local governments such as cities and counties do,[58] the UGB for the area must be incorporated into the comprehensive plans of the cities and counties that comprise the region.[59] The cities and counties in the region are responsible for adopting and enforcing plans and land use regulations that meet the statewide planning goals. Metro has the authority to coordinate those plans and to deal with specific regional planning issues. Thus, the statewide planning goals apply differently to Metro, as compared with other Oregon cities and counties. For example, certain economic planning requirements do not apply to Metro, but instead apply only to cities and counties.[60] However, Metro coordinates those efforts and is responsible for providing a long-term supply of land for employment use that derives from statewide planning Goal 14 (Urbanization) rather than Goal 9 (Economic Development).[61] Similarly, notwithstanding Metro's

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[54] *Id.* at 3–4. The functional plans give Metro the authority, for example, to require local governments to plan and regulate land use so that residential growth may be channeled into more intense development, as opposed to expanding the regional UGB. *Id.* That call, however, is a political one.

[55] OR. REV. STAT. § 268.390(4).

[56] *See supra* notes 8–11.

[57] OR. REV. STAT. § 197.015(5) (defining "comprehensive plan" as a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including . . . sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs).

[58] *See id.* §§ 268.380–.393. Metro's statutory authority in the land use planning and regulatory area is found in sections 268.380 through 268.393 of the Oregon Revised Statutes and does not require the full range of planning responsibilities of local governments. *Id.* Instead, Metro undertakes plan coordination, the adoption, and implementation of functional plans and of the regional UGB.

[59] Metro's unique status as planning overseer, rather than as a direct planner, is shown in section 197.015, subsection 16 of the Oregon Revised Statutes, which defines "metro framework plan" and states: "[n]either the regional framework plan nor its individual components constitute a comprehensive plan." OR. REV. STAT. § 197.015(16).

[60] *See, e.g.*, *id.* § 197.712; DLCD GOALS, *supra* note 8, Goal 9, at 1–2.

[61] *Compare* 1000 Friends of Or. v. Land Conservation & Dev. Comm'n, 239 P.3d 272 (Or. Ct. App. 2010) (certain standards, such as those in Goal 9, are administered by cities [illegible] *with* OR. REV. STAT. § 268.390(3)–(4) (Metro has the

regular periodic review obligations,[62] it must also resubmit to the periodic review process before LCDC any time it seeks to add more than one hundred acres to its UGB or establish an urban reserve.[63]

III
GROWTH MANAGEMENT AND URBAN GROWTH BOUNDARY CHANGES

A. Growth Management Growing Pains

By statute, Metro must review its UGB every five years[64] to ensure it has twenty years of available buildable residential lands.[65] If there is a deficit in the available buildable land from the land needed for the twenty-year period, Metro must take steps to meet that deficit within two years following this analysis,[66] which includes implementing performance measures to increase land use efficiency within the UGB.[67] These performance measures must be identified and reported to LCDC every two years.[68]

In recent years, Metro has complained that this five-year review is a heavy burden and untenable because of the relatively short time for

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http://www.oregon.gov/LCD/docs/murr/MURR_LCDC_12-ACK-001819Attch3_MetroRes09-4094_081412.pdf.

[62] *See* OR. REV. STAT. §§ 197.296, .299, .302, and .626.

[63] *Id.* § 197.626(1). Of course, LCDC is probably a friendlier forum for Metro than the alternative of LUBA, which is less policy-oriented and more interested in correct application of the law. *See infra* Part IV.A; *see also* note 121 and accompanying text (discussing LUBA).

[64] OR. REV. STAT. § 197.299(1) (amended to six years by H.B. 4078-A, 77th Leg. Assemb., Reg. Sess. (Or. 2014)).

[65] OR. REV. STAT. § 197.296(2), (5)(a) (forcing Metro to analyze its inventory stock of such land five years from the last periodic review or from when it completed the last buildable lands inventory, whichever is greater).

[66] *Id.* § 197.296(6). If existing housing patterns do not meet projected needs, Metro is obliged to take certain measures that will "demonstrably increase" the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs. *Id.* § 197.296(7), (9); *see also id.* § 297.299(2)(b).

[67] *See* Homebuilders Ass'n of Metro. Portland v. Metro, 57 P.3d 204 (Or. Ct. App. 2002).

[68] OR. REV. STAT. §§ 197.299(2)(b), .301(1). Performance measures must include an analysis of the rate of conversion of vacant land to improved land; density and price range of residential development; level of employment creation within both individual cities and the counties; number of residential units that can be further developed more compactly without demolition of preexisting units; amounts of land with environmental worth. both

completion and the significant cost of the analysis. Metro has insisted that as it completes one such analysis, it must immediately begin another. In response to these complaints, in 2007, Metro received an additional two-year extension on its original two-year analysis requirement in order to work on its urban and rural reserves.[69] A six-year analysis requirement is now provided.[70] As described below, the Oregon Legislature has imposed multiple reviews on Metro to assure there is an adequate supply of residential, commercial, industrial, and employment land available for the region.

B. Required Reviews of the Metro Urban Growth Boundary

Beginning in 1995, the Oregon Legislature has enacted mechanisms to assure that certain UGBs are more rigorously reviewed than others and that Metro in particular has sufficient buildable land to meet regional residential needs. One of these efforts, applicable only to Metro and other cities with a UGB of 25,000 or more,[71] requires Metro, or a covered city at any periodic or other "legislative" review of its plan involving its UGB and the state's housing goal,[72] to demonstrate that its plan "provides sufficient buildable lands within the urban growth boundary . . . to accommodate estimated housing needs for 20 years."[73] The analysis of the sufficiency of the existing UGB and sufficiency of buildable lands is fairly detailed with respect to the methodology used[74] and required data.[75] If the analysis shows the housing need is greater than

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[69] Act of June 13, 2007, ch. 398, § 1, 2007 Or. Laws 1075 (2007).

[70] *See* Act of April 1, 2014, ch. 92, § 5(1), 2014 Or. Laws 255 (2014) (revising OR. REV. STAT. § 197.299 and providing for the new six-year timeline).

[71] *See* OR. REV. STAT. § 197.296. LCDC may choose other cities to be subject to similar expectations. *Id.* § 197.296(1)(b).

[72] OR. ADMIN. R. 660-015-0000(10) (2014) (Statewide Housing Goal 10).

[73] OR. REV. STAT. § 197.296(2). Metro, or the covered city, must inventory the supply of buildable lands within its UGB to "determine the housing capacity of the buildable lands" and to "[c]onduct an analysis of housing need by type and density range . . . to determine the number of units and amount of land needed for each housing type for a twenty-year period." *Id.* § 197.296(3).

[74] *See id.* § 197.296. For example, subsection five of the statute requires that data used must be collected either since the last periodic review or five years, whichever is greater, but allows a shorter time if more reliable data on housing capacity and need may be provided. *Id.* § 197.296(5)(a)–(b).

[75] *Id.* § 197.296. Subsection four of this statute requires the buildable lands inventory and housing capacity analysis to adhere to specific definitions of buildable lands—dealing [illegible] partially vacant lands in these categories.

the housing capacity, Metro, or the local government, must undertake remedial actions to amend its UGB, attempt to use land within its existing UGB more efficiently, or both.[76] Similarly, after using the analysis, Metro or the covered city must determine the overall average density and mix of housing types for residential development of needed housing types to occur to meet housing needs over the next twenty years. If that density is greater than the actual density of development, or if that mix is different from the actual mix of housing types under the analysis, the local government, as part of its periodic review, must adopt measures that "demonstrably increase the likelihood that residential development will occur at the housing types and density and at the mix of housing types required to meet housing needs over the next 20 years."[77]

While the foregoing apply to Metro and larger cities outside the Portland region, beginning in 1997,[78] the Oregon Legislature has enhanced its expectations of Metro by requiring that the regional government undertake other specific tasks:

1. The region must undertake the analysis of its UGB and buildable lands analysis every six years;[79]

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actual density mixes, residential, demographic, population, and economic trends. *Id.* § 197.296(5).

[76] *Id.* § 197.296(6).

[77] *Id.* § 197.296(7). Under section nine of this statute, Metro and covered cities may undertake some or all of the following measures in order to achieve this outcome:

(a) Increases in the permitted density on existing residential land;

(b) Financial incentives for higher density housing;

(c) Provisions permitting additional density beyond that generally allowed in the zoning district in exchange for amenities and features provided by the developer;

(d) Removal or easing of approval standards or procedures;

(e) Minimum density ranges;

(f) Redevelopment and infill strategies;

(g) Authorization of housing types not previously allowed by the plan or regulations;

(h) Adoption of an average residential density standard; and

(i) Rezoning or redesignation of nonresidential land.

Id. § 197.296(9).

[78] *See* Act of Aug. 5, 1997, ch. 763, 1997 Or. Laws 2071–73 (1997) (illustrating that many of the tasks required of Metro originated in 1997) (amending OR. REV. STAT. §§ 197.299, .301, and .302, as later revised).

[79] OR. REV. STAT. § 197.299(1)–(2); *see supra* note 64 (discussing the amendment to

2. If the housing capacity of the regional UGB is less than the need shown in the analysis, Metro must take necessary action to remedy one-half of this deficiency within one year of completing the analysis;[80]
3. Every two years Metro is required to "compile and report" to DLCD regarding certain "performance measures" including:
   (a) The rate of conversion of vacant land to improved land;
   (b) The density and price ranges of residential development, including both single family and multifamily residential units;
   (c) The level of job creation within individual cities and the urban areas of a county inside the metropolitan service district;
   (d) The number of residential units added to small sites assumed to be developed in the metropolitan service district's inventory of available lands but which can be further developed, and the conversion of existing spaces into more compact units with or without the demolition of existing buildings;
   (e) The amount of environmentally sensitive land that is protected and the amount of environmentally sensitive land that is developed;
   (f) The sales price of vacant land;
   (g) Residential vacancy rates;
   (h) Public access to open spaces; and
   (i) Transportation measures including mobility, accessibility, and air quality indicators.[81]

   These performance measures are, on their face, "informational," but are presumably used to evaluate how well Metro will respond to any of its self-reported deficiencies in housing needs for the twenty-year period going forward.
4. Metro has unique responsibilities to remedy, as opposed to report, insufficient buildable land capacity. Before the regional agency undertakes its reporting on performance measures, it must determine whether any necessary remedial actions to amend its UGB, attempt to use land within its existing UGB more efficiently, or both, are sufficient to meet that

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[80] See Or. Rev. Stat. § 197.299(2)(a). The deficiency must be made up entirely within two

> deficiency—if not, Metro must undertake "corrective action," including a corrective plan and schedule for action to be submitted with its performance measures report.[82] Following submission of the plan and schedule, Metro has two years to meet the identified housing needs under penalty of LCDC issuance of an enforcement order.[83]

Metro's analysis, reporting, and remedial requirements make it important that it use the best data, analyze that data well, and assure that its UGB contains sufficient buildable land for a rolling twenty-year period. Although the tasks are arduous,[84] the potential penalties for failure, both political and economic, have served to keep Metro responsive in administering its urban growth policies. As demonstrated below, now that the initial UGB has been acknowledged, these policies are most vulnerable in dealing with amendments to that boundary and in designating urban and rural reserve lands.

C. Major and Minor UGB Amendments

In addition to this quinquennial review process, Metro uses two alternative procedures to deal with a shortfall in lands needed for

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[82] *See id.* § 197.302(1) (stating that "[c]orrective action under this section may include amendment of the urban growth boundary, comprehensive plan, regional framework plan, functional plan or land use regulations as described in [section 197.296]").

[83] *Id.* § 197.319. LCDC has the power to order the issuance or withholding of building or other development permits and the withholding of state-shared revenues. *Id.* §§ 197.319–.353. This is not a power invoked often, but would be significant for Metro, which derives much of its funding through direct state payments or through the state acting as a conduit for federal funding. *Id.* § 197.302(3).

[84] Ethan Seltzer, who was the land use supervisor at Metro, suggests the arduous nature of changes is a good thing; once the property is urban, the market makes that change irreversible. Seltzer Communication, *supra* note 29. At one time Metro had, in addition to generally applicable state procedures for UGB changes, its own distinguishing code provisions for land use planning not found within Oregon statutory law. However, that process has been superseded so that the distinction is no longer significant. Sections 3.01.012 through 3.01.035 of the Metro Code dealt with Metro's amendment of a UGB. METRO CODE §§ 3.01.012–.035 (2014) (repealed by METRO ORDINANCE 10-1244B § 11 (2010)), *available at* http://www.oregonmetro.gov/metro-code). This procedure was compatible with the statewide planning goals and was acknowledged by LCDC by operation of law. *See* OR. REV. STAT. § 197.625. Although Metro's UGB criteria and Goal 14 are nearly identical now, in the past, their distinctness required each to be addressed separately. *See* City of West Linn v. Land Conservation & Dev. Comm'n, 119 P.3d 285

particular uses or for accommodating other regional needs—one for Major Amendments and another for Minor Amendments.[85]

The Major Amendments Procedure allows Metro to amend its UGB to provide land for public facilities, public schools, natural areas, land trades, and other *non-housing* needs. The purpose of this procedure is to allow Metro to address land needs that were not "anticipated in the last analysis of buildable land supply under ORS 197.299(1) and cannot wait until the next analysis."[86] This procedure may be initiated by local government or property owners by filing an application between February 1 and March 15 of any year in which an analysis of the buildable land supply is not taking place.[87] Approval criteria are extensive, but they follow Goal 14 and state growth management statutes.[88] An expedited process is also provided to add land to the UGB for industrial use.[89]

The Minor Adjustment Process is significantly different. This section only comes into play for minor changes necessary to make a UGB "function[] more efficiently and effectively" and may be initiated by a local government or property owner.[90] This section cannot be used to add land to satisfy those needs found under Goal 14, but rather only for things such as making boundary lines contiguous, placing utility lines for public services, or swapping land inside the UGB with land outside of it.[91] As with Major Adjustments, the Metro Council is permitted to impose conditions on adjustments to meet regional planning concerns.[92]

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[85] METRO CODE §§ 3.07.1430–.1465 (2014). Enforcement is statutorily authorized and limited by section 268.390, subsections 6 through 8 of the Oregon Revised Statutes. *See* Act of May 25, 2007, ch. 176, § 1, 2007 Or. Laws 587 (2007) (amending OR. REV. STAT. § 268.390).

[86] METRO CODE § 3.01.030(a) (repealed by METRO ORDINANCE 10-1244B § 11 (2010)). Except for industrial land needs, noted below, the land added must be "only for public facilities and services, public schools, natural areas and other [non-housing] needs and as part of a land trade." METRO CODE § 3.07.1440(A) (2014).

[87] METRO CODE § 3.07.1430(A).

[88] *Id.* § 3.07.1440(B).

[89] *Id.* § 3.07.1435. In such a case, the applicant must also show that the amendment is consistent with a "concept plan" for an urban reserve area and that it is required for any such amendment to the UGB under section 3.07.1110 to deal with land use, transportation, environmental, and other planning concerns. *Id.* § 3.07.1110.

[90] METRO CODE § 3.07.1445(A).

D. Urban and Rural Reserves

In 1993, the Oregon Legislature overhauled legislation dealing with the requirements and methods of providing urban services by special districts and local governments.[93] As further revised in 1997, this legislation authorized cities in all parts of the state, in conjunction with the relevant county, to establish "urban reserve" areas outside existing UGBs, and it also allowed LCDC to require the designation of urban reserves in certain cases.[94] Urban reserves were designed to be areas into which a UGB would expand, if a need existed, beyond the twenty-year UGB period. The concept was to provide certainty to both urban service providers and to the agricultural industry by setting out where urbanization would and would not extend.

This legislation followed LCDC's 1992 adoption of rules for designating urban reserves.[95] In 1995, the Oregon Legislature provided that urban reserves, if any had been designated, were the presumptive candidate lands for inclusion if and when the Metro UGB was expanded, thus reducing the speculation every two to five years over which particular areas might be added to the UGB.[96] This

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[93] *See* Act of Sept. 10, 1993, ch. 804, 1993 Or. Laws 2530–37 (1993) (generally codified as amended and revised at OR REV. STAT. §§ 195.020–.085, .145, and .210–.235).

[94] *Id.* The legislation defined "urban reserve areas" to be lands outside UGBs that will provide for: "(a) [f]uture expansion over a long-term period; and (b) [t]he cost-effective provision of public facilities and service within the area when the lands are included within the urban growth boundary." Act of June 28, 2007, ch. 723, § 1(2), 2007 Or. Laws 1885 (2007).

[95] OR. ADMIN. R. 660, div. 21 (1992). These rules implemented Metro's first attempt at urban reserves. D.S. Parklane Dev., Inc. v. Metro, 994 P.2d 1205 (Or. Ct. App. 2000); *see infra* Part IV.B.

[96] Act of July 13, 1995, ch. 547, § 5, 1995 Or. Laws 1399 (1995) (codified at OR. REV. STAT. § 197.298). Section 197.298 now provides:

> (1) In addition to any requirements established by rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities:
>
> (a) First priority is land that is designated urban reserve land under ORS 195.145, rule or metropolitan service district action plan.
>
> (b) If land under paragraph (a) of this subsection is inadequate to accommodate the amount of land needed, second priority is land adjacent to an urban growth boundary that is identified in an acknowledged comprehensive plan as an exception area or nonresource land. Second priority may include resource land that is completely surrounded by exception areas unless such resource land is high-value farmland as described in ORS 215.710.
>
> (c) If land under paragraphs (a) and (b) of this subsection is inadequate to

"priorities statute" became a critical factor in the location of UGBs, once the need for expansion was established.[97]

Following Metro's remand in its first (unsuccessful) effort to designate urban reserves,[98] the Oregon Legislature enacted S.B. 1011 in 2007 to provide additional authority and flexibility to the urban reserve process; the authority and flexibility was particularly for the benefit of Metro and to allow designation of urban reserves for a twenty- to thirty-year period (i.e., lands for an additional period beyond the twenty-year period used to assure sufficient lands within a UGB).[99] S.B. 1011 also provided for "rural reserves," or lands that would not be included within the UGB for the same period for which urban reserves were designated.[100] Metro was the driving force behind the adoption of this legislation.

At Metro's behest, S.B. 1011 authorized LCDC to adopt a special set of rules for Metro to follow in carrying out this legislation. Metro had claimed that both the UGB's initial allocation and subsequent

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(d) If land under paragraphs (a) to (c) of this subsection is inadequate to accommodate the amount of land needed, fourth priority is land designated in an acknowledged comprehensive plan for agriculture or forestry, or both.

(2) Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

(3) Land of lower priority under subsection (1) of this section may be included in an urban growth boundary if land of higher priority is found to be inadequate to accommodate the amount of land estimated in subsection (1) of this section for one or more of the following reasons:

(a) Specific types of identified land needs cannot be reasonably accommodated on higher priority lands;

(b) Future urban services could not reasonably be provided to the higher priority lands due to topographical or other physical constraints; or

(c) Maximum efficiency of land uses within a proposed urban growth boundary requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

OR. REV. STAT. § 197.298. Section 4, which becomes operative on and after January 1, 2016, reads: "(4) When a city includes land within the urban growth boundary of the city pursuant to ORS 197.295 to 197.314, the city shall prioritize lands for inclusion as provided in ORS 197A.320." *Id.* § 197.298(4) (effective July 1, 2016).

97 *See infra* note 180 (discussing the relationship in *1000 Friends v. City of McMinnville*).

98 *See D.S. Parklane*, 994 P.2d 1205.

99 *See* Act of June 28, 2007, ch. 723, § 1, 2007 Or. Laws 1885 (2007) (codified as amended and revised at OR. REV. STAT. § 195.145(4)).

100 *See id.* (defining rural reserves as "land reserved to provide long-term protection for [illegible] natural landscape features that limit urban development

amendment processes were exceedingly complicated, time consuming, and did not meet regional needs, noting that the regional agency was mandated to review its UGB every five years.[101] Although this five-year review requirement is focused only on residential review, Metro took it upon itself to conduct a comprehensive review of all urban land needs.[102] During the process, S.B. 1011 allowed the three counties in the Metro region to enter into an intergovernmental agreement to designate both urban and rural reserves in order to preemptively select lands where future urbanization was very likely to occur (urban reserves) and where urbanization would be held back for up to forty to fifty years (rural reserves).[103] Proponents of the system claimed that designation of these lands would allow local governments an added flexibility in planning for future growth, while at the same time giving the agricultural industry and natural resource areas an additional protection beyond the existing legislation that provided an alternative method to designate urban reserves found in existing rules.[104]

Administrative rules filled in the gaps of the legislation. LCDC granted Metro the regulatory authority to designate both urban and rural reserves in a new and alternative process that would apply only to Metro, an authority reflected in the rules.[105] In the alternative

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101 OR. REV. STAT. § 197.299.

102 *See* § 3(1), 2007 Or. Laws at 1885 (codified at OR. REV. STAT. § 195.141(1) (2013)).

103 *Id.*

104 *Id.* § 6, 2007 Or. Laws at 1886–87 (codified at OR. REV. STAT. § 197.145). Subsection 5 of this statute sets out those urban reserve factors; they require consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

> (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
>
> (b) Includes sufficient development capacity to support a healthy urban economy;
>
> (c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
>
> (d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
>
> (e) Can be designed to preserve and enhance natural ecological systems; and
>
> (f) Includes sufficient land suitable for a range of housing types.

OR. REV. STAT. § 195.145(5).

105 *Compare* OR. ADMIN. R. 660-027-0005 to -0080 (2014), *with* OR. ADMIN R. 660-

process, urban reserves may be selected only by Metro through intergovernmental agreements with the affected counties. In contrast, rural reserves may be selected by the counties through intergovernmental agreements with Metro.[106] Moreover, both Metro and the counties involved must undertake citizen involvement[107] and coordinate with affected cities in the area, as well as school districts and other state agencies.[108]

S.B. 1011, and the administrative rules[109] subsequently adopted by LCDC to implement it, provided a significantly different process to designate urban reserves in the Portland region from other areas of the state.[110] Whereas in the rules adopted under the 1993 legislation, an urban reserve designation is based on the 1995 statutory priorities for adding land to a UGB,[111] the rules specifically applicable to the Metro region appear to allow for a more subjective process. Metro must base its urban reserve decisions on consideration of eight factors,[112] and Metro has a similarly detailed system for designation of rural reserves.[113]

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[106] *Id.* 660-027-0020(1)–(2) to -0030.

[107] *Id.* 660-027-0030(2).

[108] *Id.* 660-027-0040(8)–(9). In addition, section 660-027-0070, subsection 8 provides:

> Counties, cities and Metro may adopt and amend conceptual plans for the eventual urbanization of urban reserves designated under this division, including plans for eventual provision of public facilities and services, roads, highways and other transportation facilities, and may enter into urban service agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area.

Id. 660-027-0070(8).

[109] OR. ADMIN. R. 660-021-0000 to -0100 (1999).

[110] OR. ADMIN. R. 660-027-0005 to -0080 (2014) (applying only to Metro).

[111] *See supra* note 96 (discussing section 197.298, subsection 1 of the Oregon Revised Statutes with the exception of urban reserve land itself).

[112] OR. ADMIN. R. 660-027-0050. Specifically, the rule states:

> Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:
>
> (1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
>
> (2) Includes sufficient development capacity to support a healthy economy;
>
> (3) Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers;
>
> (4) Can be designed to be walkable and served with a well-connected system of

The reason for the differences in the two reserve regimes was a perceived need to give Metro additional flexibility in its designations, as the region had to deal with twenty-five cities and three counties, all of which had different objectives and needs. Metro must enter into an agreement with each of the three counties in the region to establish a simultaneous, concurrent, and coordinated urban and rural reserves process.[114] However, as shown below, a 2014 decision by the Oregon Court of Appeals put Metro in no better position under the new rules than the region had fared in 2000 under the former system.[115]

IV
CASES TESTING METRO URBAN GROWTH BOUNDARY AND RESERVES PROCESSES

Metro has also undergone trials over its special process, as shown in the cases below illustrating the problems in establishing and changing the largest UGB in the state and in designating urban and rural reserves.

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(5) Can be designed to preserve and enhance natural ecological systems;

(6) Includes sufficient land suitable for a range of needed housing types;

(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and

(8) Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.

Id. These rules reflect use of statutory "factors," in lieu of criteria, under OR. REV. STAT. § 195.145(5) and set out in note 104, *supra*.

113 *See* OR. ADMIN. R. 660-027-0060. The process of designating rural reserves appears less subjective. A rural reserve must fall within specific statutory parameters. *Id.* Without their designation as a rural reserve, these lands might be seen to have the potential for inclusion within the UGB and must be worth more to developers seeking to urbanize than it is for those in the agricultural industry. *See id.* 660-027-0060(2)(a). The viability of this land must be such that it can sustain "long-term agricultural operations," including the need for high soil class and appropriate water access. *Id.* 660-027-0060(2)(c). In addition, the rules require Metro to consider its February 2007 "Natural Landscape Features Inventory," *id.* 660-027-0060(3), and a January 2007 Report on "Foundation Agricultural Lands" provided to Metro by the Oregon Department of Agriculture, *see id.* 660-027-0060(4).

114 OR. REV. STAT. § 195.143; *see also id.* § 195.145(1)(b).

A. Early Skirmishes

Metro is a unique creation since its current incarnation in 1979.[116] The regional agency did not have the current range of general planning and land use regulatory powers, but it did have the power to adopt and enforce a regional UGB.[117] Its original UGB, adopted in December of 1979, was successfully challenged because Metro could not justify the extent of its UGB under Goal 14.[118] However, Metro subsequently revised its findings, and its UGB was acknowledged in 1986.[119] From then until 2000, Metro was engaged in multiple skirmishes, which did not involve any substantial change to its UGB. Some of those cases did not directly involve Metro, but rather the application of that boundary by other agencies.[120] In two instances, Metro's efforts to enforce the boundary by appealing local plans to

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116 *See* Act of July 25, 1979, ch. 804, 1979 Or. Laws 1095–98 (1979); *see also* Urban Growth Boundary: Periodic Review Workplan, Metro. Serv. Dist. Planning & Dev. Dep't, Council Res. 88-1021, at 1–5 (1988) [hereinafter Metro UGB History].

117 OR. REV. STAT. § 268.390(3)–(4).

118 1000 Friends of Or. v. Land Conservation & Dev. Comm'n, No. 118213 (Or. Marion Cnty. Cir. Ct. July 22, 1985) (on file with author); Metro UGB History, *supra* note 116, at 5. There was much confusion over how LCDC orders, the vehicle for acknowledgment decisions, were subject to review. The Oregon Supreme Court resolved the matter in *Oregon Business Planning Council v. LCDC*: the circuit court had jurisdiction, with review by the Oregon Court of Appeals. 626 P.2d 350 (Or. 1981) (en banc). The Metro acknowledgment, as well as other such challenges to LCDC orders, was then to be taken to those courts; however, the legislature intervened by passing section 197.650, which gave jurisdiction to the Oregon Court of Appeals. *See* OR. REV. STAT. § 197.650. In the meantime, the Metro acknowledgment order was remanded for insufficient findings, and Metro responded with a revised order in 1985. 1000 Friends of Or. v. Land Conservation & Dev. Comm'n, 259 P.3d 1021, 1048 (Or. Ct. App. 2011); *1000 Friends of Or.*, No. 118213; Metro UGB History, *supra* note 116, at 5.

119 Metro UGB History, *supra* note 116, at 5. This later acknowledgment still contained a "market factor," however, it was not appealed. Seltzer Communication, *supra* note 29.

120 In *Fujimoto v. City of Happy Valley*, a landowner successfully challenged LUBA's determination that its plan did not meet Metro's UGB assumptions on acknowledgment under Goal 2 (Plan Consistency). 640 P.2d 656, 659 (Or. Ct. App. 1982). The Oregon Court of Appeals reversed LUBA's order, finding no direct violation of the boundary and refusing to infer any violation from LCDC's acknowledgment of the Metro UGB. *Id.* In *1000 Friends of Oregon v. Washington County*, petitioners challenged an LCDC acknowledgment order approving an aspect of the county's plan. 696 P.2d 554, 554 (Or. Ct. App. 1985). The order did not follow a controversial aspect of the 1979 Metro UGB acknowledgment, and the 1979 Metro UGB acknowledgement was on appeal separately. *Id.* at 554–55. The court affirmed the county acknowledgment, finding that it must be [illegible] applicable criteria, and LCDC was not required to

LUBA[121] were successful.[122] The other pre-2000 cases dealt with proposed amendments to the Metro UGB—one challenge to the evidentiary basis for the boundary was rejected,[123] one UGB amendment denial was upheld,[124] and two challenges in which Metro's findings justified a UGB expansion were found insufficient.[125] For almost fifteen years, the boundary did not move much, and there was pent-up demand asserted by development and local government interests to revise the boundary and to use the urban reserve process to determine where the boundary would presumably be moved.[126]

B. D.S. Parklane Development v. Metro *(2000)*

In 2000, the Oregon Court of Appeals heard the first of many complicated, contested decisions involving urbanization in the Portland metropolitan area. In *D.S. Parklane v. Metro*, Metro attempted to add 18,579 acres of urban reserves without immediately amending the UGB.[127] Those reserves were the presumptive first priority additions to the UGB when the region fell below a twenty-year supply of urban land.[128] Previously before LUBA, the petitioners

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[121] *See* OR. REV. STAT. § 197.825. LUBA is a state administrative agency, initially established in 1979, that has "exclusive jurisdiction" over "land use decision[s]" subject to appellate court review. *Id.* § 197.825(1), (2)(b). In the case of Metro, the legislature has classified which growth management decisions will be heard by LUBA, by LCDC, or by the appellate courts. *See* Edward J. Sullivan, *Reviewing the Reviewer: The Impact of the Land Use Board of Appeals on the Oregon Land Use Program, 1979–1999*, 36 WILLAMETTE L. REV. 441, 442 (2000).

[122] *See* Metro. Serv. Dist. v. Clackamas Cnty, 2 Or LUBA 139, 143 (1980); Metro. Serv. Dist. v. Bd. of Cnty. Comm'rs for Wash. Cnty, 1 Or LUBA 282, 293 (1980).

[123] Home Builders Ass'n of Metro. Portland v. Metro. Serv. Dist., 633 P.2d 1320, 1321 (Or. Ct. App. 1981). The issue was which set of expert population projections should be accepted. *Id.* at 1320–21. The court affirmed LUBA's view that, if there were substantial evidence to support Metro's figures, the decision would stand. *Id.* at 1321.

[124] Benjfran Dev., Inc. v. Metro. Serv. Dist., 767 P.2d 467, 467–68 (Or. Ct. App. 1989).

[125] *See* League of Women Voters of W. Clackamas Cnty. v. Metro. Serv. Dist., 781 P.2d 1256 (Or. Ct. App. 1989); 1000 Friends of Or. v. Metro. Serv. Dist, 38 Or LUBA 565 (2000).

[126] Metro UGB History, *supra* note 116. This refers to the 1986 acknowledgment of the Metro UGB; almost fifteen years would pass before *D.S. Parklane* was decided by the Oregon Court of Appeals.

[127] D.S. Parklane Dev., Inc. v. Metro, 994 P.2d 1205, 1211 (Or. Ct. App. 2000). Note that throughout this Article, citations to "D.S. Parklane" will be in reference to the 2000 Oregon Court of Appeals decision, while citations to "Parklane" will be in reference to the 1999 LUBA decision.

successfully challenged the Metro ordinance allowing inclusion of these lands into urban reserves.[129] The question put forward to the court on review was the proper interpretation of administrative rules relating to the designation of urban reserves.[130] Both LUBA and the Oregon Court of Appeals found that Metro did not err in determining the amount of land needed,[131] but they faulted Metro's subsequent steps based on the urban reserves rules.[132] At that time, land proposed to be included within an urban reserve had to be based upon the "locational" factors "of Goal 14 and the criteria for exceptions."[133] The rules required Metro and local governments to first study lands adjacent to or near the UGB to determine their suitability for inclusion within urban reserves. Local governments had to then designate land suitable for inclusion within urban reserves under the priorities set out by the rule, which emphasized the use of parcelized or less productive land over better resource lands.[134] The rule also

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Oregon Administrate Rules as follows: "[u]rban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the time frame used to establish the urban growth boundary." OR. ADMIN. R. 660-021-0030(1) (1999).

[129] *See* D.S. Parklane Dev., Inc. v. Metro, 35 Or LUBA 516 (1999). The court described LUBA's 152-page opinion as "cogent and thorough." *D.S. Parklane*, 994 P.2d at 1211.

[130] *See* OR. ADMIN. R. 660-021-0000 to -0100.

[131] *D.S. Parklane*, 994 P.2d at 1211; *see* DLCD GOALS, *supra* note 8, Goal 14, at 1–2.

[132] *Parklane*, 35 Or LUBA at 551–70; *D.S. Parklane*, 994 P.2d at 1216–18.

[133] OR. ADMIN. R. 660-021-0030(2) (1999) (The exceptions criteria have since been deleted.).

[134] *Id.* 660-021-0030(3). This rule provided:

> Land found suitable for an urban reserve may be included within an urban reserve area only according to the following priorities:
>
> (a) First priority goes to lands adjacent to an urban growth boundary which are identified in an acknowledged comprehensive plan as exception areas or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;
>
> (b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to ORS 197.247;
>
> (c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated as secondary if such category is defined by Land Conservation and Development Commission rule or by the legislature;
>
> [illegible] the amount of land

provided for instances in which "lower priority" resource lands may be used to accommodate particular growth needs.[135]

In applying these rules, both LUBA and the Oregon Court of Appeals found Metro erred[136] by using a system outside the rules to compare various Urban Reserve Study Areas (URSA) in order to prioritize among them for inclusion in the urban reserves, a process Metro called "URSA-matic."[137] But the court quoted with approval from the LUBA decision that:

> [C]orrect application of Subsection 4 requires the local government to categorize the inventory of suitable lands according to their Subsection 3 priorities and subpriorities, and then, in considering a specific site under one of the Subsection 4 exceptions, determine that no higher priority land is adequate to meet the particular subsection 4 need. As noted elsewhere, in the present case Metro

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> priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.

Id. These criteria were revised by the enactment of section 197.298, subsection 1 of the Oregon Revised Statutes. OR. REV. STAT. § 197.298(1). The Oregon Legislature has also since provided that when a district includes land designated as an urban reserve within a UGB pursuant to section 197.298, subsection 1, "the district is not required to consider the capability classification system or the cubic foot site class of the land as described in ORS 197.298(2)." Act of June 24, 2009, ch. 497, § 1, 2009 Or. Laws 1274-75 (2009). Presumably, this action releases Metro from considering soil classifications as a "locational factor."

135 OR. ADMIN. R. 660-021-0030(4) (1999). This rule provided:

> Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:
>
> (a) Specific types of identified land needs including the need to meet favorable ratios of jobs to housing for areas of at least 100,000 population served by one or more regional centers designated in the regional goals and objectives for the Portland Metropolitan Service district or in a comprehensive plan for areas outside the Portland area, cannot be reasonably accommodated on higher priority lands; or
>
> (b) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or
>
> (c) Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.

These criteria have since been revised as well. *See* OR. REV. STAT. § 197.298(3).

136 LUBA summarized Metro's approach, and the Oregon Court of Appeals quoted it approvingly, as follows: "[w]e understand Metro to contend that subsection 4 allows Metro to designate any land it chooses without regard to the [s]ubsection 3 priorities, as long as it finds that one of the 'reasons' provided in Subsection 4(a) to (c) is satisfied."

> designated fourth priority lands under Subsection 4(a) and (c) without determining whether higher priority lands, including first priority or lower capability fourth priority lands, are adequate to meet the Subsection 4 need.[138]

In addition to concluding that Metro's designation process was inconsistent with the substantive requirements of subsections two, three, and four, LUBA also determined that Metro's findings were insufficiently explanatory to satisfy subsection five.[139] Among the connections in which LUBA held that Metro's findings were deficient was Metro's failure to sufficiently explain its suitability determinations by reference to the criteria in subsection two, as distinct from the raw "URSA-matic" data.[140]

The court found that the entire urban reserves order must be remanded (i.e., it was not severable) because the entire process used by Metro was inconsistent with the applicable rule.[141]

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[138] *Id.* at 1212.

[139] *Id.*

[140] *Id.* at 1212–13. URSA-matic was the instrument by which Metro considered and compared the Urban Reserve Study Areas. *Id.* at 1210. The court concluded that the LUBA interpretation of the rules was "correct in the relevant respects." *Id.* at 1217. Metro had also included lower priority lands with higher soil classifications before including higher priority exception areas and lands with lower soil classifications. *Id.* at 1211–12.

[141] *Id.* at 1213–15. The court added:

> In essence, LUBA interpreted OAR 660-021-0030(1)–(4) as a series of progressive (if not hierarchical) requirements with interrelated objectives. Under LUBA's view, the correct application of any of the subsections depended on the proper and complete application of the one before it. Hence, the suitability studies under subsection (2) had to be sufficient in their selection and number to make possible the designation of urban reserve areas from the highest possible priorities under subsection (3); and the designation of areas of lower priority pursuant to subsection (4) could not take place until all lands classified as suitable under subsection (2) had been assigned their priorities or subpriorities in the lettered sequences of subsection (3). Many of the assignments of error that the parties, including Metro, make here are directed against that essential view of the rule or LUBA's application of that view. The single aspect of LUBA's interpretation that the parties contest or support most avidly is its conclusion that the lower priority designation provisions of subsection (4) may not be invoked by a planning jurisdiction until all of the lands in question have been classified according to their subsection (3) priorities.

Id. at 1215. In addition to misapplication of the urban reserves rule, the court found that [illegible] and remanded the matter on that ground

C. Residents of Rosemont v. Metro *(2001)*

Metro had not experienced a contested substantial amendment to its UGB since the late 1980s. In the meantime, the Oregon Legislature had tightened the process for UGB amendments by enacting a statute that set "priorities" for candidate lands on top of the Goal 14 amendment process, thereby adding an additional layer of scrutiny to such amendments.[142] The 1995 statute, as amended, established those priorities on soils and parcelization considerations as well as the circumstances when they may be avoided.[143] If these priorities were trumped in those circumstances, the decision had to be supported by findings.[144]

In 1998, Metro commenced amending its UGB to include several urban reserve study areas that it had analyzed.[145] It sought to expand the UGB by 830 acres, which included 762 acres of land in farm use, for which a Goal 3 exception had been taken.[146] The amendment took place while *D.S. Parklane* was on appeal.[147] Petitioners appealed to LUBA claiming, inter alia, that the amendment was inconsistent with Goal 14 because Metro had inappropriately looked at need by focusing solely on one specific subregion.[148] In other words, Metro failed to look beyond the 830 acres to see if the need could be met in other areas within the existing UGB.[149] In addition, petitioners claimed a violation of the statutory priorities.[150] LUBA generally found for the petitioners but denied an assignment of error to Metro's use of "subregional priorities," under which Metro could consider residential land needs for a portion of the region, rather than for the region as a whole.[151]

The Oregon Court of Appeals agreed with LUBA that "subregional need may, in some circumstances, constitute need for the purposes of

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142 OR. REV. STAT. § 197.298 (1995).

143 *Id.*

144 *See id.* § 197.298(3).

145 Residents of Rosemont v. Metro, 38 Or LUBA 199, 202–03 (2000). Note that throughout this Article, citations to "Rosemont" will be in reference to the 2000 LUBA decision while citations to "Residents of Rosemont" will be in reference to the 2001 Oregon Court of Appeals decision.

146 *Id.* at 203.

147 *See id.*

148 *Id.* at 210.

149 *Id.*

satisfying factors 1 and 2 of Goal 14."[152] While a subregional need for housing under the second need factor may be sufficient, it cannot be viewed in isolation, and any subregional need must be considered in relation to the regional context.[153]

The second issue in the case involved Metro's use of the "override" provisions of the priorities statute, which allowed for inclusion of lower priority land inside a UGB before higher priority land.[154] LUBA ruled in favor of Metro, interpreting this section to allow the inclusion of lower priority lands when higher priority lands could not accommodate the specific land needs Metro identified.[155] The Oregon Court of Appeals, however, interpreted this section differently, concluding that the priority scheme under section 197.298 of the Oregon Revised Statutes must be applied sequentially, so that a local government cannot include lands identified in subsection three as an exception, unless it first attempts to satisfy the earlier subsections.[156] The court also determined that the statute and Goal 14 were independent criteria:

> LUBA relied on ORS 197.298(3)(a) and reasoned that "local governments [may] include lower priority lands within the UGB where higher priority lands are unable to accommodate '[s]pecific types of identified land needs,'" such as affordable housing. We do not agree that ORS 197.298(3) has any decisive effect here or that it can independently authorize Metro's action. Subsection (3) simply provides exceptions to the priority requirements of subsection (1). It presupposes that the priority determinations under subsection (1) have been made and that the exceptions it establishes relates only to the inclusion of land that comes within the priority concerns described in subsection (1). . . . Those priority concerns do not purport to be the exclusive considerations governing the location of UGBs, and ORS 197.298(3) does not purport to excuse compliance with Goal 14's requirements for the establishment or change of UGBs. ORS 197.298 specifically provides that the priorities for UGB inclusion that it sets forth are "[i]n addition to any

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[152] Residents of Rosemont v. Metro, 21 P.3d 1108, 1111 (Or. Ct. App. 2001).

[153] *Id.* In effect, need must be assessed on a regional basis, and the locational factors are used to determine where that need may be met among candidate properties for inclusion. *Id.* at 1113. The court added: "[t]he establishment of a need for housing in a particular area under Factor 2 does not, in itself, establish a need to expand the UGB." *Id.* at 1112. The court pointed out that its decision in *Benjfran Development* did not mean that subregional urban levels of service or facilities may be considered a "need" under Goal 14, Factors 1 or 2—only that not every urbanization proposal of a particular kind establishes such a need. *Id.* That need is established under all the circumstances of the case. *Id.*

[154] OR. REV. STAT. § 197.298(3) (2013).

> requirements established by rule addressing urbanization." Metro contends that it is impossible to implement the requirements of ORS 197.296 and ORS 197.298 *and* the requirements of Goal 14. Because of that, it asserts that the provisions must be read together. The problem with that argument, however, is that, because ORS 197.298 specifically provides that its requirements are *in addition* to the urbanization requirements of Goal 14, which are particularly directed to the establishment and change of UGBs, it cannot be said that the statute was intended to supersede Goal 14.[157]

The court avoided Metro's argument that LUBA erred in not allowing Metro to use UGB capacity estimates in its various 1997–98 reports that indicated a greater need for additional urban lands, but were inconsistent with Metro's (acknowledged) Urban Growth Management Functional Plan, as that argument was not made to LUBA.[158] However, the court had spoken definitively on the subregional need issue and the relation of the priorities statute to Goal 14.

D. 1000 Friends v. Metro *(2001)*

Metro amended its UGB to include 109 acres of land owned by Ryland Homes and zoned for exclusive farm use, which petitioners successfully challenged before LUBA.[159] There were two principal issues on appeal: (1) the quality of findings necessary to demonstrate compliance with Goal 14's UGB change factors and (2) Metro's reliance on 1997–98 reports that were allegedly inconsistent with its acknowledged functional plan—the issue not reached in *Rosemont*.[160]

Metro contended that it was merely required to consider the various Goal 14 factors, and that it was not required to provide detailed findings on each factor.[161] The court disagreed, stating:

> We agree with LUBA that Metro's failure to articulate its findings regarding each of the locational factors and its reasons explaining how it balanced the factors makes it impossible to conduct a meaningful review of Metro's decision. Contrary to Ryland Homes's assertion, however, LUBA did not treat the Goal 14 factors as independent approval criteria. Rather, LUBA found that because of Metro's failure to directly *address* certain aspects of factors 5, 6, and 7, it was not able to determine on review whether Metro had fulfilled its responsibility to consider and balance the

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157 *Id.* (internal citation omitted).

158 *Id.* at 1115.

159 1000 Friends of Or. v. Metro, 38 Or LUBA 565 (2000).

> locational factors of Goal 14. The requirement that each factor must be *addressed* does not make the factors independent approval criteria.
>
> Ryland Homes, and perhaps Metro, seems to view the requirement that each of the factors be addressed as one of form over substance. As noted above, Ryland Homes asserts that, even if Metro did not address all of the factors, LUBA and this court can determine how Metro considered and balanced the factors by looking to other portions of Metro's decision and considering Metro's findings "as a whole." The first problem with Ryland Homes's position is that pertinent statutes and rules specifically require a local government to set forth findings of fact and statements of reasons when adopting or amending an urban growth boundary pursuant to Goal 14.[162]

The court proceeded to review the adequacy of Metro's findings under Goal 14 factors five, six, and seven, determining that LUBA had correctly found a deficiency in Metro's analysis.[163] The fact that "factors," rather than "criteria," were utilized did not affect the requirement for adequate analysis and findings that otherwise applied.[164]

Turning to the conflict between the 1997–98 reports Metro relied upon to expand the boundary, which showed a need for more land than Metro's acknowledged functional plan, the court referred to its urban reserves decision in *D.S. Parklane* that the acknowledged functional plan controlled over subsequent informal studies.[165] It was

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[162] *Id.* The court added, "we do not agree that attempting to divine Metro's unexpressed reasoning is an appropriate role for LUBA or this court on review. Our function as a reviewing body in this type of case is to review the local government's action under the scope of review articulated in ORS 197.850." *Id.* at 154.

[163] *Id.* at 154–58.

[164] *Id.*

[165] *Id.* at 158. In *D.S. Parklane*, the Oregon Court of Appeals reversed LUBA's decision that the 1997–98 reports were sufficient. D.S. Parklane Dev., Inc. v. Metro, 994 P.2d 1205, 1217–18 (Or. Ct. App. 2000). In the intervening time, Metro had included those reports in its Regional Framework Plan, and into its various functional plans, including the Urban Growth Management Functional Plan. *1000 Friends of Or.*, 26 P.3d at 159–60. The court found this action was insufficient for purposes of this case:

> The difficulty here is that, under Goal 2, Part I, planning documents and actions must be consistent. In this case, the UGB capacity numbers in the two documents are not the same, and nothing in these or any other planning documents indicates how these capacity determinations interrelate. Ryland Homes and Metro contend that there is nothing inconsistent between the two documents, because the two documents serve completely different functions. They assert that the target capacities in the functional plan are just that—targets—and that they are not

the binding target capacities in Metro's functional plan that represented Metro's assessment of the capacity of the UGB to accommodate growth.[166] This case thus turned on the adequacy of Metro's findings and the paramount status of its acknowledged Framework Plan.[167]

E. Citizens Against Irresponsible Growth v. Metro *(2002)*

Petitioners challenged LUBA's final order affirming Metro's amendment to its UGB to add areas south of the city of Hillsboro, claiming that Metro had incorrectly included lands within its UGB.[168] The court again rejected the notion that the Goal 14 factors were approval standards—rather it found they must be "considered and balanced when amending a UGB."[169] Thus, while the factors must be addressed by adequate findings under *D.S. Parklane*, the evaluation of, and weight attributable to, those factors is left to Metro.[170] Finally,

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> By relying on the lower capacity estimates of the UGR (or its methodology in the RFP) to add land to the UGB without amending the UGM Functional Plan to reflect those numbers, *Metro imposes an inconsistent planning requirement on local governments*. It tells local governments to prepare for one method of accommodating growth (*i.e.*, accommodate more employment and housing inside the existing UGB), while Metro relies on another method to manage the UGB (*i.e.*, add land to accommodate that same projected employment and housing). The two methods are in conflict. Providing additional land for the same projected population will decrease the likelihood that infill and redevelopment will occur inside the UGB, or that higher density housing inside the UGB will be sought after. This is the type of inconsistent, uncoordinated planning that Goal 2 is intended to prevent.

Id. at 161 (internal quotation marks omitted).

166 *Id.* at 161

167 *See id.* at 158–62.

168 Citizens Against Irresponsible Growth v. Metro, 38 P.3d 956, 957–59 (Or. Ct. App. 2002).

169 *Id.* at 959. The court added:

> No single factor is of such importance as to be determinative in an UGB amendment proceeding, nor are the individual factors necessarily thresholds that must be met. As LUBA found, in this case, Metro considered the appropriate Goal 14 factors to decide what land might be included in a new or revised UGB. Metro properly did not apply the factors individually as make-or-break mandatory approval criteria.

Id.

170 *Id.* For example, petitioners contended that urban levels of public services and facilities must be provided before land was added to the UGB. *Id.* The court rejected that view, noting that adding land to the UGB did not convert it to urban use and that petitioners' contention "necessarily elevates one of the Goal 14 factors to prominence

compliance with acknowledged Metro ordinance criteria that follow statewide planning goals is sufficient to show compliance with those goals.[171] The result was a level of deference given to Metro to evaluate and give weight to the Goal 14 factors, assuming adequate findings were made on each of those factors.[172]

F. City of West Linn v. Land Conservation & Development Commission *(2005)*

Metro undertook a reevaluation of its UGB and successfully sought acknowledgment of that boundary before LCDC as a periodic review work task that petitioners challenged in *City of West Linn*.[173] Under the work task, Metro determined the need to add 18,638 acres to the UGB and made choices as to the location of the expansion.[174] Various objections by multiple petitioners challenged both the land need determinations and some of the specific additions to the boundary.[175] LCDC's order affirming Metro's need determinations was upheld based on the substantial evidence in the whole-record standard.[176]

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amendment "significantly affect[s]" a transportation facility. *Id.* at 961–62 (citing OR. ADMIN. R. 660-012-0060(1) (2002)). Because the amendment did not provide for urban uses on any land, it was outside the scope of the rule. *Citizens Against Irresponsible Growth*, 38 P.3d at 961–62. Metro was also authorized to provide additional considerations to the applicable factors and criteria. *Id.* at 960.

171 *Citizens Against Irresponsible Growth*, 38 P.3d at 962.

172 *See id.* In response to a LUBA comment that there was "no statutory, goal, or rule-based requirement that legislative decisions be supported by findings," the court responded:

> We note that there are some instances where controlling statutes, rules, or ordinances specifically require findings to show compliance with applicable criteria. Also, to permit LUBA and us to exercise our review functions, there must be enough in the way of findings or accessible material in the record of the legislative act to show that applicable criteria were applied and that required considerations were indeed considered.

Id. at 958 n.6 (internal quotation marks omitted) (citing Citizens Against Irresponsible Growth v. Metro, 39 Or LUBA 539, 546 n.7 (2001)). The court would return to this statement in a periodic review context. *See* City of West Linn v. Land Conservation & Dev. Comm'n, 119 P.3d 285 (Or. Ct. App. 2005).

173 119 P.3d at 287.

174 *Id.* at 289.

175 *Id.*

176 *Id.* at 292. The court acknowledged that there was evidence in the record that contradicted that of Metro and LCDC, but added:

> [w]hile some of Metro's economist's opinion supports the use of a slightly higher

The more difficult question was over the inclusion, or not, of various candidate "study areas" to the UGB to meet the demonstrated need and the support of those actions by adequate findings.[177] The court generally found the LCDC order adequate, except for two areas.[178] It found that Metro failed to show compliance with its own ordinance that required it to demonstrate "*the recommended site was better than alternative sites*."[179] And as with the statutory priorities in *Residents of Rosemont*, these Metro criteria were in addition to the requirements of Goal 14.[180] This case was centered on the defensibility of Metro's "need" findings to justify any expansion of the UGB, as well as the application of the locational findings under Goal 14 and any further Metro criteria.[181] The court deferred to Metro on its policy determination of need, but found the two specific additions of land deficient based on the findings.[182]

G. Barkers Five, LLC v. Land Conservation & Development Commission *(2014)*

In June of 2010, Metro, in conjunction with the three counties within the Portland region,[183] concluded a lengthy process for adding urban and rural reserves for the area and sought LCDC review and approval of that work, which occurred in August of 2012.[184] LCDC's

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> offer no reason to conclude that LCDC's approval of Metro's use of that evidence was mistaken. Persons of reasonable understanding could—and, in fact, do—differ over the evidence that petitioners offered and that Metro relied upon. Nothing, however, suggests that the conclusions Metro drew from the evidence were unreasonable. We find no error in LCDC's approval of Metro's population estimate.

Id.

[177] *Id.* at 295–300.

[178] *Id.* at 299–300.

[179] *Id.*

[180] *Id.*; Residents of Rosemont v. Metro, 21 P.3d 1108, 1113–14 (Or. Ct. App. 2001). The relationship between the statutory priorities of section 197.298 of the Oregon Revised Statutes and Goal 14 were finally reconciled in the extensive Oregon Court of Appeals decision involving the City of McMinnville, which was not within Metro's boundaries. 1000 Friends v. Land Conservation & Dev. Comm'n, 259 P.3d 1021 (Or. Ct. App. 2011). However, the impact of the decision was limited, as LCDC adopted a revised Goal 14 in 2005 with somewhat different standards. *Id.* at 1024 n.1.

[181] *City of West Linn*, 119 P.3d at 289–91.

[182] *Id.* at 291–300.

[183] *See Regional Leadership*, *supra* note 17.

[184] Barkers Five, LLC v. Land Conservation & Dev. Comm'n, 323 P.3d 368, 374–75

order was appealed to the Oregon Court of Appeals, which handed down its decision on January 16, 2014, reversing and remanding the order on several grounds.[185]

The court upheld LCDC's interpretation of the relevant statutes,[186] as well as their administrative rules[187] implementing those statutes.[188] While none of the rural reserves were remanded, the court found that a portion of the Washington County urban reserves,[189] and smaller portions of those for Multnomah[190] and Clackamas[191] Counties, was insufficiently based.

It was Washington County forming the western edge of the Metro UGB that had the greatest difficulty before the court. This county has highly suitable classes of agricultural soils in the Willamette Valley, but also has seen the fastest growth in jobs and population.[192] Washington County sought to add significant amounts of urban

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while subsection 2 provides for direct review of the Commission's order under sections 197.650 to 197.651. OR. REV. STAT. §§ 197.650–.651 (2013).

185 *Barkers Five*, 323 P.3d at 428–29.

186 *See id.* (discussing OR. REV. STAT. §§ 195.137–.145 (2013)).

187 *See Barkers Five*, 323 P.3d at 428–29 (discussing OR. ADMIN. R. 660-027-0005 to -0080 (2014)).

188 *Barkers Five*, 323 P.3d at 404 (rejecting the notion that the decisions of Metro and the three counties were a "'political' decision materially unconstrained by legal requirements").

189 *Id.* at 404–12.

190 *Id.* at 419 (faulting Multnomah County for inadequate consideration of the rural reserve factors with respect to one area of the county).

191 *Id.* at 423–28. The successful challenge was brought by two cities against the inclusion of 7300 acres in the Stafford Area in an urban reserve; the Regional Transportation Plan showed that transportation facilities to serve this area would be failing in 2035, but still complied with two urban reserve factors in 660-027-0050 of the Oregon Administrative Rules to the effect that the candidate lands: "[c]an be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments" and "[c]an be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers." *Id.* at 382. The court upheld these challenges and also overruled two other challenges—one by a landowner to inclusion of land in a rural reserve, and another by a neighbor objecting to designating other land in an urban reserve, finding the county's application of the rural reserve factors to be sufficient. *Id.* at 421–24.

192 Washington County is at the center of Oregon's "Silicon Forest," and its population grew from 61,269 to 471,537 between 1950 and 2010. *See* Mike Rogoway, *Big-Name Tech Companies Resume Migration Into the Silicon Forest*, OREGONLIVE (July 9, 2011, 10:25 PM), http://www.oregonlive.com/silicon-forest/index.ssf/2011/07/big-name_tech_companies_resume_migration_into_the.html; Webb Sprague & Emily Picha, *Population Dynamics of the Portland-Vancouver MSA*, METRO. KNOWLEDGE NETWORK (May 2010), [illegible] (showing the population

reserve lands to be converted into urban lands as soon as less than a twenty-year supply remained.[193] The deficiency in the county's methodology, which Metro and LCDC had accepted, was its *addition* of factors not contained in the urban reserve statutes or rules, which the court called "pseudo factors,"[194] to evaluate candidate lands for urban reserves, perhaps to manipulate the outcome. In any event, according to the court, this methodological flaw required remand.[195] In contrast, the issues relating to Multnomah and Clackamas Counties related to findings applying the reserves factors to specific areas, rather than to any methodological flaw.[196]

It just so happened that the Oregon Legislature was in session when the *Barkers Five* decision was rendered by the Oregon Court of Appeals.[197] Responding to concerns that the remand would be lengthy, contentious, and expensive,[198] the Oregon Legislature chose

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[193] *See* Sullivan, *Quiet Revolution*, *supra* note 1, at 390–91. A reality of the region is that its western areas have good soils and are a desirable location for high tech industries, whereas the eastern areas have lesser quality soils, and greater incidents of parcelization so that, unless there are urban reserve lands, new expansions would more likely be on the east. Before urban reserves were used, Metro expanded the Damascus area. However, that area incorporated, and the new city has yet to adopt a comprehensive plan and land use regulations that meet the statewide planning goals.

[194] *Barkers Five*, 323 P.3d at 405. In particular, the County gave greater credence to a 1982 soils report over that of a 2007 Oregon Department of Agriculture (ODA) report to Metro titled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands" referred to in 660-027-0040(11) of the Oregon Administrative Rules. *Id.* at 411–12. The rule provided that "if Metro designates such land as urban reserves, the findings and statement of reasons shall explain, by reference to the factors in OAR 660-027-0050 and 660-027-0060(2), why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division." *Id.* at 384 (internal quotation marks omitted).

[195] *Id.* at 428–29. The Court found no flaw with regard to the 151,209 acres of rural reserves designated by Washington County. *See* What's New: Urban and Rural Reserves Designation Process Updates, WASH. CNTY. DEP'T, http://www.co.washington.or.us/LUT/PlanningProjects/reserves/whats-new.cfm (showing the April 29, 2011 update) (last visited Oct. 25, 2014).

[196] *See supra* notes 190–91.

[197] OR. CONST. art. IV, § 10(1) (The Oregon Legislature regular sessions meet for 160 days in odd-numbered years and for 35 days in even-numbered years; the *Barkers Five* decision was rendered during the even-numbered "short" session of the legislature.).

[198] *See, e.g.*, Christian Gaston, *Land-Use 'Grand Bargain' Could Move Quickly Through Oregon Legislature*, OREGONLIVE (Mar. 14, 2014, 3:55 PM), http://www.oregonlive.com/politics/index.ssf/2014/02/land_use_grand_bargain_could_m.html; Christian Gaston, *Land-Use 'Grand Bargain' Gets New Name, Heads to Oregon Senate Floor*, OREGONLIVE (Mar. 14, 2014, 4:01 PM), http://www.oregonlive.com/politics/index.ssf

to step into the role of a settlement mediator. The result was a quickly enacted "grand bargain" that placed a significant amount of the contested land proposed by Washington County for urban reserves into a rural reserve, adjusted other land allocations and the UGB in that county, and effectively nullified some of the more contentious issues that would have been difficult to deal with on remand.[199] While the "quick fix" provided by the legislature dealt with most of the immediate problems, the question of practical precedent for resolution of future land use disputes by the legislature is troubling.[200]

CONCLUSION: METROPOLITAN GROWTH MANAGEMENT–PLANNING FOR CHANGE

The Portland metropolitan area regional planning process has been sanctioned by state law for more than forty years and has transitioned from a voluntary process by delegates of local governments to an elected regional body—planning and administering regional land use, transportation, and air and water quality plans.[201] It also established, maintained, and changed a regional UGB. Several observations may be gleaned from the experience of regional planning in the Portland metropolitan area:

1. Overall, the Regional System Works. Having an elected body[202] to deal with the regional aspects of planning, the provision of public services and facilities, and the establishment and change of a UGB gives legitimacy to that body's actions. Additionally, the election of the councilors by district, excluding the regionally-elected presiding officer,[203] gives the council a perspective from all parts of the region, as well as greater political legitimacy. No other region in the

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http://www.oregonlive.com/politics/index.ssf/2014/02/oregon_house_passes_land_use_g.html.

199 Act of April 1, 2014, ch. 92, 2014 Or. Laws 252–56 (2014). While the Washington County issues were resolved, those in Clackamas and Multnomah Counties were left to Metro and the local governments, as well as the parties.

200 It is not as if the notion of legislative intervention into local land use matters is entirely unprecedented. Oregon has an often-overlooked history of preempting planning by ad hoc siting decisions of particular uses. *See generally* COGAN OWENS COGAN, FINAL REPORT, ENERGY FACILITIES SITING TASK FORCE: REPORT ON LAND USE ISSUES 17–19 (June 20, 1996), *available at* http://www.oregon.gov/energy/Siting/docs/TFR/TFR_T.pdf.

201 *See generally* METRO CHARTER, *supra* note 41; *see also* OR. REV. STAT. ch. 268 (2013) (especially with respect to sections 268.060 and 268.380 through 268.390).

202 METRO CHARTER, *supra* note 41, § 16(1)–(2) (approved pursuant to OR. REV.

country has a comparable (or better) process for urbanization. However, it is true that the Portland metropolitan area has soils suitable for farm and forest use at the periphery of its UGB, but those will inevitably be lost to urbanization once need is shown. The locational factors in the boundary amendment process and the urban reserve factors mitigate both the amount of resource lands lost, as well as diverting boundary changes to lesser quality soils where possible.

2. Regional Planning Is Political. Planning cannot be divorced from the aspirations, proclivities, and prejudices of elected officials and the people they represent. Multnomah County is dominated by urban development, especially in Portland. Washington County to the west is the major growth engine of the region, adding jobs and population, and aggressively asserting its economic and political clout. Clackamas County has also added population and jobs and is in competition with Washington County for growth. Some cities in the region prefer to grow, while others prefer to be left alone. Some rural property owners want to redesignate their lands to facilitate urban uses; others prefer to farm or to enjoy rural peace. Homebuilders, developers, and landowners desire certainty. These attitudes reveal themselves in the oft-contested efforts to add to urban reserves or the UGB. The function of planning law is not to erase these attitudes, but to subordinate them to a common set of criteria or factors by which decisions can be made and evaluated in similar terms. For the system to work, the decisions must be articulated in those same terms.

   Similarly, the attention of the legislature is better suited toward the structure and policy of the urbanization process in the Portland Metro Area, as opposed to the details over the inclusion or exclusion of particular lands as in the recent "grand bargain" affair.[204] While the process is indeed political, these decisions are best made under criteria that go beyond raw political power.

3. Rules Are Better Than Ad-Hocery. Planning law is a branch of administrative law.[205] Courts defer to planning agencies formulating policy or undertaking rulemaking, while the

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[204] *See supra* notes 198–99 and accompanying text.

application of policy, in a contested case or otherwise, is more closely scrutinized to assure that policy is met in the context of the individual decision.[206] Like many states, Oregon has an Administrative Procedures Act applicable to state agencies.[207] In the land use field, Oregon also has detailed requirements for local government land use decision-making.[208] However, in an effort to make it easier for Metro or other local governments to make land use decisions more immune from judicial review, the Oregon Legislature has been known to fiddle with review bodies and standards, with no appreciable results.[209] That fiddling more recently included the use of "factors" for UGB changes, instead of criteria.[210] However, *Barkers Five*[211] indicates the appellate courts will not lessen its scrutiny for that reason.

4. The Process for Changing UGBs Must Be Rationalized. Amending the regional UGB has many moving parts with twenty-five cities and three counties, in addition to Metro, being involved. Goal 14 requires consideration of both the need for additional land, as well as where that additional land may be added.[212] In addition to any other regional or local considerations, the Oregon Legislature has provided priorities for lands to be added to the UGB over and above the Goal 14 requirements.[213] Conflicts between a former version of Goal

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206 *Fasano*, 507 P.2d at 29–30.

207 OR. REV. STAT. §§ 183.310–.502 (2013).

208 *See id.* §§ 215.402–.437, 227.160–.186, and 197.763–.796.

209 In 2007, the Oregon Legislature used a series of "factors" to be applied to urban and rural reserve cases and directed appeals in those cases to the Court of Appeals perhaps to give those decisions a more deferential review and avoid the use of a system in which failure to meet any one criterion would be the basis of remand. *See* Act of June 28, 2007, ch. 723, §§ 3, 6, and 9, 2007 Or. Laws 1885–89 (2007) (codified as amended and revised at OR. REV. STAT. §§ 195.141, .145 and 197.626). The Oregon Legislature made further revisions to this last statute in 2011, so that Metro's UGB decision was subject to LCDC review and then judicial review. *See* Act of June 23, 2011, ch. 469, 2011 Oregon Laws 1384–88 (2011). The *Barkers Five* decision appears, if anything, to make decision-making more complex.

210 *See supra* notes 104 and 112 and accompanying text (relating to the urban reserve factors currently found in section 195.145, subsection 5 of the Oregon Revised Statutes and fully set out in note 104, *supra*).

211 *See* Barkers Five, LLC v. Land Conservation & Dev. Comm'n, 323 P.3d 368 (Or. Ct. App. 2014).

14 and the statutory priorities have led to mind-numbing conflicts.[214] There may be help on the horizon with the passage of legislation allowing LCDC to adopt administrative rules to provide more confidence that additions to UGBs will be upheld in exchange for cities following a more formulaic methodology based on data that takes much of the political pressures out of UGB decisions.[215] Time will tell whether the UGB change process has become more complicated by this legislation.

5. How Often Must Metro Review and Act on Boundary Changes? Metro is obliged to review and respond to its housing capacity, needs analyses, and analysis of residential buildable land supply at least every six years.[216] Metro must also report to LCDC every two years regarding a number of legislatively-designated "performance measures."[217] If Metro determines a deficiency in residential land supply, it must submit a report outlining corrective action, and it must also make an additional report on those actions within two years.[218] These actions are neither easy nor cheap. If contested, the end of one such review may coincide with the beginning of the next, which is wasteful and difficult for all participants. Moreover, it may be questionable from a planning standpoint whether two years or six years is a viable metric for items that deal with many moving parts and vague parameters.
6. More Attention Must Be Given to Conversion of Urbanizable to Urban Land. The Oregon system has never dealt adequately with the conversion of land from urbanizable to urban. Goal 14 defines "urbanizable land" as:

> Urban land that, due to the present unavailability of urban facilities and services, or for other reasons, either:
>
> (a) Retains the zone designations assigned prior to inclusion in the boundary, or

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rule addressing urbanization, land may not be included within an urban growth boundary except under the following priorities." OR. REV. STAT. § 197.298(1).

214 *See* 1000 Friends of Or. v. Land Conservation & Dev. Comm'n, 259 P.3d 1021 (Or. Ct. App. 2011).

215 Act of July 1, 2013, ch. 575, 2013 Or. Laws 1-12 (2013) (amending sections 197.015 and 197.298 of the Oregon Revised Statutes).

216 OR. REV. STAT. § 197.299(2)(b); *see supra* note 67 and accompanying text.

217 OR. REV. STAT. §§ 197.301–.302; *see supra* notes 66–68, 81–82 and accompanying text.

> (b) Is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned.[219]

Over the last twenty years, these lands are best described as those added to a UGB and do not have adequate public facilities and services. The problem is developing a strategy for the urbanization of these lands, particularly as to their allocation of uses and provision of public services and facilities. Goal 14 states blandly:

> Land within urban growth boundaries shall be considered available for urban development consistent with plans for the provision of urban facilities and services. Comprehensive plans and implementing measures shall manage the use and division of urbanizable land to maintain its potential for planned urban development until appropriate public facilities and services are available or planned.[220]

Metro has made provisions for planning for these new areas.[221] The code requires a "concept plan"[222] in advance of annexation of an area to the UGB, which requires coordination with affected local governments and a strategy for bringing urban facilities and services to the area. This appears to be the new frontier of growth management law in the Portland metro area.

Much has been done over the last forty years in growth management in Oregon generally, and the Portland Metro area in particular. Nevertheless, change and the types of growth facing the region will require even bolder steps to meet the demands of the future.

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[219] DLCD GOALS, *supra* note 8, Definitions, at 8.

[220] *Id.* Goal 14, at 2.

[221] METRO CODE §§ 3.07.1105–.1140 (2014). Section 3.07.1105 sets out the purpose of the planning process:

> The Regional Framework Plan calls for long-range planning to ensure that areas brought into the UGB are urbanized efficiently and become or contribute to mixed-use, walkable, transit-friendly communities. It is the purpose of Title 11 to guide such long-range planning for urban reserves and areas added to the UGB. It is also the purpose of Title 11 to provide interim protection for areas added to the UGB until city or county amendments to land use regulations to allow [illegible] become applicable to the areas.