Resolving Urban Land Disputes: Lessons from the Portland, Oregon Region

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Abstract

The Portland Metro area is the largest urban area in Oregon. The Metro planning agency makes binding planning decisions for the region, including establishing an urban growth boundary (UGB) to provide sufficient urban lands for 20 years. After successful challenges to additions to urban lands, the Oregon legislature established new rules for "urban reserves" for 20-50 years. Urban reserves are presumptively the next additions to the UGB. To maximize discretion, the legislature authorized Metro to balance certain unweighted "factors" (instead of fixed criteria) in designating urban reserves.

The paper recounts the controversy that revolved around the attempt by Washington County to add substantial farmland to urban reserves to accommodate employment growth. Resource land preservation is a high value in Oregon's planning system. Opponents suggested that adding a large amount of resource lands could not be justified by the findings purportedly "balancing" these factors. The urban reserves process failed when the Oregon Court of Appeals held that the use of the factors did not obviate justification of addition of resource lands to urban reserves. The legislature intervened, setting the urban growth boundary and most reserve areas by statute.

The paper provides an assessment of this regional urban reserve process – factors in lieu of criteria, temptation to solve UGB problems at the legislature, the need for more predictable "safe harbors" for future urban designations, and accountability through uniform and transparent growth projections. While deference may be given regional planning decisions, those decisions must be coherent and justified by an adequate factual basis.

I. Introduction

Over time, coordinated planning for urban areas has been recognized and encouraged. The federal government has required such planning with regard to transportation and housing funding,[2] and the once-dominant model that planning and land use regulation may be done by public bodies independent of each other[3] has been superseded by a model in which regional impacts must be considered and resolved.[4] Conflict resolution is necessary because of the diverse and strongly held views of citizens, interest groups and public agencies. The resolution of conflicts, given these diverse views over the pace, direction and extent of urban growth, are the subject of this article, which focuses on the recent controversy over urban growth in the Portland, Oregon metropolitan region. It is highly likely that similar conflicts will also arise in other regions; thus this article will deal with the lessons learned from that controversy.

To put the matter into context, a brief description of the legal aspects of the Oregon planning system will be presented, followed by a description of the urban growth management law that applies specifically to the Portland region. The article will then provide a brief history of previous urban growth conflicts between 1979 and 2005 and the legislative response to these conflicts in the enactment of new rules to

deal with perceived shortcomings in the process. Those new rules, as applied to the current controversy (2010-14), will then be examined, followed by a discussion of lessons learned and applicable to similar resolutions of conflicts over urban growth.

A. The Oregon Planning System and Urban Growth Boundaries

Space limitations prohibit a fuller description of the Oregon planning system;[5] however, for purposes of this article, a synopsis, as relevant, will be given. In 1973, the Oregon legislature enacted SB 100, which provided for a new state agency, the Land Conservation and Development Commission (LCDC) to adopt binding standards ("goals") for local plans (which in turn would be binding on local land use regulations and actions).[6] Eventually, there were 19 statewide planning goals addressing a number of planning issues and falling into five categories: Process (Goals 1 and 2), resource lands protection (Goals 3-5), human interaction with the environment (Goals 6-8 and 13), public facilities and urbanization (Goals 9-12 and 14) and specific areas of state interest (Goals 15-19).[7] Local governments were obliged to have their plans formally certified or "acknowledged" by LCDC as complying with the goals by incorporating the goals in their plans, so that state policy, as embodied in the goals, was implemented.

The most familiar component of the Oregon planning system is the urban growth boundary (UGB) that separates "rural" from "urban" land, so as to assure that almost all urban development occurs on urban lands. Whether land is located on one side of the boundary or the other is significant.

In the same session that enacted SB 100, the legislature also recognized the need for regional planning for the Portland metropolitan area that presently includes portions of three counties, 25 cities, and services approximately 1.5 million people. As a result, the legislature delegated to a predecessor agency the powers to:

* Coordinate all planning activities of member cities and counties, 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 its member governments and recommend or require changes to assure the plans conform to the regional goals and objectives.[8]

The current structure of regional government evolved from a legislative determination to reassign regional planning duties and provide for a different regional planning agency (Metro). Following enactment of a state constitutional amendment,[9] an elected regional government with powers to deal with matters of regional concern evolved.[10] Among the powers Metro possessed was that of enacting and amending a regional UGB.[11] For purposes of this article, many of the other powers granted Metro, including those of regional coordination,[12] adopting a Regional Framework Plan[13] and requiring local governments to "substantially comply" with that plan[14] are generally not discussed further; rather, this article focuses on Metro's UGB amendment process.

Under this legislative delegation, Metro establishes and maintains the UGB for the 25 cities and the urban portions of three counties in the region.[15] Thus, unlike most other areas of the state, those cities and counties in the Metro region do not establish their own UGBs; rather, the regional government, which has its own procedures and obligations in addition to those applicable to other local governments, undertakes that task.

The task of establishing, and changing, the UGB is both controversial and complicated. Because plans are dispositive as to how land may be used in Oregon, it makes a great difference to the use, and thus the value, of land. Some farmers desire to continue agricultural operations on good soils on flat lands near the boundary subject to preferential tax rates, while some businesses and industries, as well as cities, view the development potential of that same land in a different way. Conflicts over future urban growth are inevitable. The complicated aspect of the establishment and change of UGBs lie in the multiple factors and criteria involved.

The factors involved in the establishment or change of a UGB are twofold – one set of factors deals with the need for urban land, while the other set deals with the location of the boundary, given that need. Currently, the need factors require showings of:

> (1) Demonstrated need to accommodate long range urban population, consistent with a 20-year population forecast coordinated with affected local governments; and
>
> (2) Demonstrated need for housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space, or any combination of the need categories in this subsection (2).[16]

Significantly however, the need factors must also promote the efficient use of land:

> Prior to expanding an urban growth boundary, local governments shall demonstrate that needs cannot reasonably be accommodated on land already inside the urban growth boundary.

Assuming that the need for the UGB change can be shown, there are additional “locational” factors that apply, namely:

> (1) Efficient accommodation of identified land needs;
>
> (2) Orderly and economic provision of public facilities and services;
>
> (3) Comparative environmental, energy, economic and social consequences; and
>
> (4) Compatibility of the proposed urban uses with nearby agricultural and forest activities occurring on farm and forest land outside the UGB.[17]

In addition to these more flexible factors contained in Goal 14, there are also statutory criteria that apply to the location of a UGB under OR. REV. STAT. sec. 197.298(1), which provides in relevant part:

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 accommodate the amount of land needed, third priority is land designated as marginal land pursuant to ORS 197.247 (1991 Edition).

(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.

These statutory priorities require some explanation. The first priority is given to "urban reserve land," which is land the city or region desires to be first in line for an expanded UGB and has been vetted through the urban reserve process, described below. The second priority relates to lands which are usually committed to urban development, or which have urban uses on them[18] or are lands that have soils with less agricultural or forestry resource value.[19] The third priority also focuses upon soils of lesser resource value within an overall agricultural land use designation.[20] The final category relates to lands that have resource value, but (with some exceptions) are to be included in the UGB if and only if lands of higher priority for inclusion are not available.[21]

Both the Goal 14 factors and statutory priorities for establishment and change of UGBs require a local government to bear the burden of proof to show the need for any additional urban land, and that the location of additional urban lands is done in such a manner so as to promote urban efficiency and avoid unnecessary impacts on resource lands. While flat lands with good soils for farm and forest production may be included within the UGB, the factors and criteria discussed above tend to discourage their consideration. The always-controversial inclusion of those lands in the Portland region now also utilizes an urban reserve process enacted by the 2007 Oregon legislature[22], discussed in more detail below.

B. Portland Regional Planning Obligations and Urban and Rural Reserves

Metro has certain obligations that directly relate to its UGB management duties, as it is obligated to undertake a "legislative review" of its current UGB at least every six years to demonstrate that its regional plan "provides sufficient buildable lands" within the UGB "to accommodate estimated housing needs for the next 20 years."[23] The legislature provides extensive direction over the nature and scope of this review[24] and sets out the consequences of a determination that there is insufficient capacity to meet housing needs for that 20-year period.[25] One of the alternatives to meet a lack of capacity is to expand the

UGB.[26] Metro is also under a specific obligation to accommodate one-half of a buildable lands shortfall within a year of completing its analysis and must either amend its UGB within one year or increase densities within the existing UGB not later than two years after such completion.[27] Finally, Metro is subject to a reporting obligation to LCDC regarding performance measures including housing, conversion of vacant to improved land, and job creation.[28] If Metro determines it does not have a sufficient buildable land supply or housing densities to meet is 20-year housing needs, it is then obligated to adopt and implement a “corrective plan” to assure those ends are met.[29]

Metro is thus under a rigorous regime of reporting and responding to housing needs, and the two-year turnaround on housing capacity analysis results in the amendment of the regional UGB being a continuing point of controversy within the region.

The priority of urban reserve lands as the first resort for meeting residential land needs results in increased attention to the inventory of those lands and their sufficiency in responding to urban land shortfalls. Since 2007, the Oregon legislature has required Metro to adopt urban reserves as well as “rural reserves” simultaneously. Lands lawfully classified as urban reserve jump to the head of the queue and avoid other statutory priority considerations for UGB amendments, so that prime agricultural or forest lands within an urban reserve may more easily come within a UGB, once need is established.[30] “Rural reserves” on the other hand place certain resource lands off-limits for inclusion in the Metro UGB for up to 50 years.[31] This political tradeoff was designed to satisfy both development and conservation communities.

Urban reserve lands are defined lands outside an urban growth boundary that will provide for:

(a) Future expansion over a long-term period; and

(b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.”[32]

Under the statutory scheme applicable to the Portland region, Metro was required to enter into an intergovernmental agreement with any or all of the three counties in the region that had land use authority over candidate lands for urban reserves,[33] so that both Metro and local approval of specific urban reserves were required.

Designating urban reserves is governed by certain “factors,” including whether those lands:

(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.[34]

The factors are unweighted and appear to give wide discretion to Metro and the three urban counties to designate urban reserves so that certain lands may be included within the regional UGB relatively easily, so long as the needs for inclusion were established and the individual county agreed. Given the flexibility of the factors, participants in the urban reserve process turned to the persuasion of local governments and Metro to lobby their own causes. It appeared to onlookers that sufficient findings in the application of the urban reserve factors to justify particular outcomes could easily be attained.

II. Urban Reserves Before 2010

The original UGB for the Portland region was acknowledged in 1986.[35] Since then, Metro has amended that UGB on many occasions.[36] Those amendment actions are outside the scope of this article. It was not until 1999 when under a previous statutory scheme Metro undertook a significant effort to designate 18,579 acres as urban reserves, an effort that was struck down in *D. S. Parklane, Dev., Inc. v. Metro*.[37] While Metro's determination of land need was upheld, Metro's use of decisional criteria outside those contained in applicable state statutes and administrative rules resulted in remand of that decision.[38] That decision led to legislative changes in 2007, resulting in the current reserves scheme, described above.

There were no further cases over reserve decisions until the *Barkers Five* case discussed below. In *D. S. Parklane*, as well as in the UGB amendment cases, the judicial focus was largely over the justification of the decision to amend the UGB in terms of findings. *Barkers Five* would be no different.

III. The *Barkers Five* Urban Reserve Decision

Using the 2007 revisions to the reserves enabling legislation, Metro, along with Clackamas, Washington, and Multnomah Counties concurrently adopted urban and rural reserves in 2010-11, designating respectively lands available for future UGB expansion and lands to be retained as farm and forest land at least until 2060.[39] The result was designation of 28,256 acres of urban reserve lands and 266,628 acres of rural reserves.[40] Under the 2007 legislation establishing the Metro reserves process, the concurrent decisions of these four governmental agencies were submitted to LCDC for acknowledgment.[41] LCDC duly acknowledged the urban reserves jointly submitted in August 2012 and various participants sought review in the Oregon Court of Appeals[42] in *Barkers Five, LLC v. LCDC*.[43]

In an opinion that spanned more than 100 pages and took more than a year to decide, the Court of Appeals remanded LCDC's acknowledgment order on several grounds. The Court upheld LCDC's overall approach to the acknowledgment, as well as deferring to the Commission's interpretation of the urban reserve statutes and rules.[44] Deferral could be justified on both separation of powers and practical political considerations.[45]

However, the Court remanded the acknowledgment, finding some lands in each of the three counties incorrectly justified:

- A 62 acre area designated as "rural reserve" by Multnomah County.[46]
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- A 7,300 acre area designated "urban reserve" in Clackamas County to which a challenge was made to findings that transportation facilities were adequate.[47]
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- A 171,000 acre area designated "urban reserve" by Washington County by using additional factors not provided by law.[48]

The impact of the court's decision was immediate and electrifying. The prospect was that the reserves decision would take many more years and be made by elected officials with different views and priorities than those officials who passed on the original designations. Landowners and local governments were concerned over not being able to plan sufficiently for the future and Metro worried over the credibility of its planning process. Enter the Oregon Legislature.

IV. Planning by Fiat

The decision in *Barkers Five* was handed down in January 2014, while the Oregon Legislature was in session. To alleviate the concerns of multiple parties to the litigation, the Legislature adopted a "Grand Bargain," that resolved only the Washington County disputes, leaving the issues in the remaining counties (along with those of the parties who articulated these and other concerns) to an LCDC remand to Metro and the two other counties for resolution.[49]

The Washington County urban reserves were adjusted so that much of the land that had been designated urban reserve and contested went instead to a rural reserve and, at the same time, the urban growth boundary was enlarged to take in other urban reserve designated lands.[50]

This agreement may have settled the Portland metro urban growth disputes but it emboldened other local governments to seek legislative intervention. The legislative session following the one that adopted the "Grand Bargain" for the Portland region was asked to act on a bill to validate the Woodburn UGB[51] that had been remanded twice from the courts.[52] Other 2015 bills sought to include a portion of Clackamas County as an acknowledged urban reserve,[53] another corrected the 2014 legislative designations,[54] while a third demanded a report on the status of the Bend UGB, possibly with a view of intimidating LCDC.[55]

The point is that having the legislature plan by fiat instead of providing a deliberative, though sometimes wrong, planning process is intoxicating to legislators and interest groups wishing to forgo the pleasure of lengthy hearings and appeals. The precedent that such "quick-fix" efforts generate threatens to undermine the planning process instead of addressing the planning issues in a thoughtful manner.

V. Lessons Learned from the Portland Metro Urban Reserves Process

In addition to the dangers of quick-fix solutions, other lessons may be gleaned from the experience of the recent controversy over the nature and extent of the Portland regional UGB.

- There is a downside to centralization of planning administration. A sufficiently motivated interest group need only to bring influence to bear on that authority to achieve an objective, thus avoiding the need to convince numerous regional or local planning officers and agencies.

In any case, it is easier to do "one stop shopping" by lobbying through a centralized process.

- Similarly, it is easier to influence the regional planning process if the bigger or more motivated players in that process are won over, or worn down, sometimes to the detriment of the smaller players and the process itself. For example, there was some concern by Clackamas County that the region deferred too much to Washington County and that county's focus on expanding the "silicon forest," which had promised (and delivered) a significant boost to the region's employment gains over the previous 20 years. Whether wisely or not, the Oregon statutes relating to urban reserves require an agreement among Metro and each of the three counties in which Metro has urban planning authority.[56] The need for an agreement gives each of those counties an opportunity to exert significant influence over the process.

- In addition to the intoxication of power, the opportunities for grandstanding and the appearance of the legislature "riding to the rescue" to save certain areas, because of their size or economic contributions, also has a detrimental effect on planning by truncating the process and giving non-planning factors a larger influence.

- The necessarily complex decision-making involved in considering multiple factors creates a priestly class of planners, lawyers, and administrators to deal with decisions that appear to be made in a "black box," thus reducing the legitimacy of the regional planning process.

- A further consequence of this complex decision-making is the need for detailed findings, which runs the risk of failing at one or more points or failing to evaluate the multiple factors involved in a complex decision and raising the value of the priestly class over planning issues. While it is true that the Oregon legislature has striven mightily to reduce complexity, the presence of multiple and often competing criteria make this job complex.

- Just how much deference should be given to the regional authority is also a troubling question. The question of how much land is needed can be dealt with by the use of a consistent and established methodology. However, much of the recent litigation over UGB changes has to do with where to expand the UGB, rather than by how much. The urban reserves legislation implicitly recognizes the political nature of UGB changes by its use of "factors," as well as criteria in that process. However, the Oregon courts also note that those factors must be weighed and balanced and the findings must set forth the reasons for the location of the boundary, especially when there are competing sites. It is arguable that the use of factors has made the process more, rather than less, difficult by requiring articulation of the reasons why one site was chosen over another.

Oregon plans for urban growth. Other regions may find it necessary to devise a similar process to accommodate urban growth, a process that must have political legitimacy and provide for the consideration of the needs of citizens at all levels of government in the region. It is also likely that many of the same difficulties seen in the Portland Regional Urban Reserves process will be experienced in other regions and may be helpful in the construction of a regional planning process elsewhere.

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[2] Federal Aid Highway Act, 23 U.S.C. sec. 134. *See also* Economic Development Grants by the Economic Development Administration under the Planning and Local Technical Assistance Program under 42 U.S.C. § 3121–3231 (2004).

In addition, there are other federal programs that have advanced regionalism as a planning tool:

- The US Department of HUD has made recent efforts to focus housing planning at the regional level (See HUD Sustainable Communities Regional Planning Grant web page: http://portal.hud.gov/hudportal/HUD?src=/program_offices/economic_resilience/sustainable_communities_regional_planning_grants).

However, Congressional opposition has left those programs without new funding since FY 2011.

- HUD has also encouraged regional fair housing planning from grant recipients in their Affirmatively Furthering Fair Housing planning process; that effort includes a website tracking the implementation of related administrative rules and assessment tools: http://www.huduser.org/portal/affht_pt.html

- HUD has also pioneered with the U.S. Department of Transportation to develop a combination housing and transportation cost estimator [Location Affordability Portal] that provides both highly local and regional housing and transportation cost estimates. http://www.locationaffordability.info/

[3] Village of Euclid, Ohio v. Ambler Realty Co**.**, 272 U. S. 365 (1926).

[4] Southern Burlington County, NAACP v. Township of Mount Laurel, 456 A.2d 390 (N. J., 1983); Berenson v. Town of New Castle, 341 N.E.2d 236 (N.Y. 1975).

[5] For a more complete description of the Oregon land use system, *see generally*
Edward J. Sullivan, *The Quiet Revolution Goes West: The Oregon Planning Program* 1961-2011, 45 J. MARSHALL L. REV. 357, 372–74 (2012).

[6] OR. REV. STAT. § 197.175(2) (1999).

[7] The goals may be found at OR. ADMIN. R. 660-015-0000 (2008).

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/.

[9] OR. CONST., art. XI, § 14.

[10] In 1992, the voters of the region adopted a charter that provided for the structure under which the various powers granted to the regional government by the state constitution and statutory law were administered.

[11] OR. REV. STAT. § 268.390(3) (2009).

[12] OR. REV. STAT. § 268.385 (1977).

[13] OR. REV. STAT. §§ 195.020–.025, .060–.085 (1993).

[14] OR. REV. STAT. § 268.390(4)–(5) (2009).

[15] OR. REV. STAT. § 268.380–.390 (2009).

[16] OR. ADMIN. R. 660-015-0000(14) (2008). The current need factor also provides:

In determining need, local government may specify characteristics, such as parcel size, topography or proximity, necessary for land to be suitable for an identified need.

Both the need and locational factors have been revised over time. Only the current versions are provided here.

[17] *Id.* The locational factors further provides that the boundary shall also be determined by evaluating alternative boundary locations consistent with OR. REV. STAT. 197.298, as well as the locational factors. OR. REV. STAT. 197.298 contains additional criteria for locating the UGB and is discussed below. A slightly different version of this statute becomes effective on January 1, 2016, but does not change the analysis.

[18] OR. REV. STAT. § 197.732(2)(a)–(b) (2011).

[19] OR. REV. STAT. § 197.247 (repealed 1993); *see also* OR. REV. STAT. § 197.298(1)(c) (1999).
[20] OR. REV. STAT. § 197.298(1) (1999).
[21] Subsection (3) of the statute, the priority system has a "safety valve" to prevent an overly rigid application:

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.

[22] 2007 Or. Laws Ch. 723. This current version of urban reserves follows previous LCDC efforts at rulemaking in 1992 and legislative direction in 1993 and 1995. *See* Sullivan, *Urban Growth Management in Portland, Oregon*, 93 OR. L. REV. 455, 475-76 (2014).
[23] OR. REV. STAT. § 197.296(2), .299 (2014).
[24] OR. REV. STAT. § 197.296, .299–.302 (2014).
[25] OR. REV. STAT. § 197.296(6)–(8) (2003); *See also* OR. REV. STAT. § 197.299 (2014).
[26] OR. REV. STAT. § 197.296(6)(a) (2003). The other alternatives are increasing density within the existing UGB or a combination of a UGB amendment and increasing density. OR. REV. STAT. § 197.296(6)(a)–(c) (2003). Despite Metro's legal powers to increase density among its constituent jurisdictions, there are political limitations on that power.
[27] OR. REV. STAT. § 197.299(2) (2014).
[28] OR. REV. STAT. § 197.301 (1997).
[29] OR. REV. STAT. § 197.302 (2001).
[30] The current version of the urban and rural reserves system was established in 2007 through 2007 Or. Laws ch. 723 and implementing administrative rules adopted by LCDC in 2008. OR. ADMIN. R. 660, Div. 27 (2008). These efforts responded to earlier, unsuccessful attempts at implementing an urban reserves system struck down in *D. S. Parklane, Dev., Inc. v. Metro*, described below. The current system was designed to allow a more simplified process for the designation of reserves.
[31] OR. REV. STAT. 195.143 (2007). These reserves are designed for the long-term protection of valued farmland and Metro is required to consider, among other factors, whether the land:

(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section [i.e., 30-50 years], as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

(b) Is capable of sustaining long-term agricultural operations;

(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

(d) Is suitable to sustain long-term agricultural operations, taking into account:

(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

(D) The sufficiency of agricultural infrastructure in the area.

Under OR. REV. STAT. § 195.141(4), LCDC was instructed to adopt administrative rules for rural reserve designation, upon consultation with the Oregon Department of Agriculture. There is no further discussion here of the application of the rural reserves, which would have excluded natural resource lands from consideration of inclusion in the regional UGB.

[32] OR. REV. STAT. § 195.137(2) (2007).

[33] OR. REV. STAT. § 195.143 (2007).

[34] OR. REV. STAT. § 195.145(5)(a) (2011); *See also* OR. ADMIN. R. 660, Div., 27, LCDC's administrative rules for the process and application of these factors in the Portland region.

[35] Urban Growth Boundary: Periodic Review Workplan, Metro. Serv. Dist. Planning & Dev. Dep't, Council Res. 88–1021, at 1–5 (1988).

[36] For a more complete review of cases involving amendment of the UGB before the *Barkers Five* decision, *see* Sullivan, *Urban Growth Management in Portland, Oregon*, 93 OR. L. REV. 455 479-91 (2014).

[37] 35 Or LUBA 516 (1999) *aff'd as modified* 994 P.2d 1205, 1211 (Or. Ct. App. 2000).

[38] D.S. Parklane Dev., Inc. v. Metro, 35 Or LUBA 516 (1999) *aff'd as modified* 994 P.2d 1205, 1211 (Or. Ct. App. 2000).

[39] Metro Ordinance No. 10-1238A as revised in 2011 by Metro Ordinance No. 11-1255. The current version of that order may be viewed at oregonmetro.gov/sites/default/files/regionalreserves041714.pdf.

[40] *See* Metro area's 50-year growth plan wins state approval; designates urban and rural 'reserves' at http://www.oregonlive.com/environment/index.ssf/2011/08/metro_areas_50-year_growth_pla.html. Washington County, which had some of the best farmland, but was also a regional growth leader, had much land in both categories. *See* http://www.oregonmetro.gov/urban-and-rural-reserves.

[41] OR. REV. STAT. § 197.626(1)(c), (f) (2014).

[42] OR. REV. STAT. § 197.650 (2011).

[43] Barkers Five LLC v. LCDC, 323 P.3d 368 (Or. Ct. App. 2014).

[44] *Id.* at 395. Regarding deference, the court said "We will defer to LCDC's "plausible interpretation of its own rule[s], including an interpretation made in the course of applying the rule, if that interpretation is not inconsistent with the wording of the rule, its context, or any other source of law."

[45] In similar contexts, the Oregon legislature and courts have taken a deferential approach to public agency interpretions of its own plans and land use regulations. OR. REV. STAT. § 197.829 (1995); Siporen v. City of Medford, 243 P.3d 776 (Or. 2010).

[46] *Barkers Five,* 323 P.3d at 419.

[47] *Id.* at 423-28.

[48] *Id.* at 428-29. The court termed these additional justifications as "pseudo-factors."

[49] That remand may be found at www.oregon.gov/lcd/docs/murr/MURR_Order_14-ACK-001861_remand_final.pdf.

[50] 2015 Or. Laws Ch. 92.

[51] HB 2649, 2015 Oregon Legislative Session.

[52] 1000 Friends v. LCDC (Woodburn), 12 P.3d 272 (2010) and 317 P.3d 927 (2014).

[53] HB 3313, 2015 Oregon Legislative Session.

[54] HB 2047, 2015 Oregon Legislative Session.

[55] SB 851, 2015 Oregon Legislative Session.

[56] OR. REV. STAT. 195.141, .143 (2007).