



AGENDA COVER MEMO

Memorandum Date: March 24, 2023
First Reading/Work Session Date: February 7, 2023
Second Reading/Joint Public Hearing: February 28, 2023
Third Reading/Deliberations: April 11, 2023

TO: Board of County Commissioners

DEPARTMENT: Public Works, Land Management Division, Planning Program

PRESENTED BY: Lindsey Eichner, Principal Planner, Lane County
Rebecca Gershow, Senior Planner, City of Eugene

AGENDA ITEM TITLE: ORDINANCE NO. PA 1388 / In the Matter of Adopting an Ordinance Establishing Urban Reserves for the City of Eugene; Amending the Eugene-Springfield Metropolitan Area General Plan; Amending the Lane County Rural Comprehensive Plan; Amending the Envision Eugene Comprehensive Plan; Amending the Public Facilities and Services Plan (File No. 509-PA22-05580).

I. MOTION

MOVE TO APPROVE ORDINANCE NO. PA 1388 AS PRESENTED.

II. AGENDA ITEM SUMMARY

The Board is being asked to consider approval of an Ordinance establishing urban reserves for the City of Eugene. The proposal includes amendments to the Eugene-Springfield Metropolitan Area Plan (Metro Plan), Lane County Rural Comprehensive Plan, Envision Eugene Comprehensive Plan, and the Eugene-Springfield Metropolitan Area Public Facilities and Services Plan.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Eugene-Springfield Metropolitan Area General Plan (Metro Plan) is the official long-range general plan (public policy document) of metropolitan Lane County and the cities of Eugene and Springfield. The Metro Plan policies and land use designations apply to areas under the jurisdiction of the Metro Plan. The Metro Plan sets forth general planning policies and land use allocations and serves as the basis

for the coordinated development of programs concerning the use and conservation of physical resources, furtherance of assets, and development or redevelopment of the metropolitan area. The dividing line between the two cities is Interstate 5, and the City of Eugene is the Home City for the metro lands west of I-5.

On August 8, 2017, the Board of Commissioners co-adopted an expansion to Eugene's Urban Growth Boundary, the Envision Eugene Comprehensive Plan, and amendments to the Metro Plan. As part of this adoption process, staff was directed to prioritize urban reserves outside of the UGB.

The Eugene Urban Reserves project was first presented to the Lane County Planning Commission on May 15, 2018 and to the Board of Commissioner on June 19, 2018.

On November 10, 2020, the Board of Commissioners unanimously passed a motion to direct staff to begin the formal adoption process for the urban reserve option that includes enough land to meet approximately 27 years of growth beyond 2032. This direction was consistent with the motion passed by the Eugene City Council on October 21, 2020.

On December 6, 2022 the Lane County Planning Commission unanimously recommended to the Board of Commissioners the adoption of the proposed Eugene urban reserves with specific changes that responded to the public testimony they received. On December 13, 2022 the Eugene Planning Commission passed the same motion, recommending adoption to the City Council.

On February 7, 2023, the Board of Commissioners held a first reading and work session on the proposed adoption package. Eugene City Council held a separate work session on February 15, 2023.

On February 28, 2023, the Eugene City Council and Board of Commissioners held a virtual joint public hearing. At the public hearing, 11 people provided spoken testimony on a variety of topics. Almost 75 pieces of written testimony have been received to date. Staff has prepared a memo provided as **Attachment 1**, in response to public testimony and questions from elected officials.

All record materials, including public testimony, were provided to the Eugene City Council and the Board of Commissioners.

B. Policy Issues

All of the policy considerations are addressed in the joint staff report and findings of fact (see packet materials from February 7, 2023).

C. Board Goals

The amendments support the following Lane County Strategic Priority:

Vibrant Community:

- 2.b Pursue programs and practices that reduce impacts on and leverage the natural environment to enhance livability and

economic development.

The adoption of Urban Reserves and related plan policies will further the Vibrant Communities Key Strategic Initiative 2.b by ensuring expansion of Eugene's UGB occurs in a safe, orderly and efficient manner.

D. Financial and/or Resource Considerations

Adoption of Eugene Urban Reserves does not commit or obligate any Lane County resources other than those to manage the co-adoption process.

E. Health Implications

There are no direct health implications related to the Board's decision regarding co-adoption of Eugene Urban Reserves.

F. Analysis

An in-depth summary and analysis of the changes being made were provided within the agenda cover memo provided for the February 7, 2023 first reading and work session.

G. Options

Motions for the Board of County Commissioners at the third reading include:

Option 1: Move to adopt Ordinance No. PA1388 as presented.

Option 2: Move approval of the third reading, and setting of a fourth reading and deliberations on April 25, 2023, to continue to deliberate on the Ordinance.

IV. RECOMMENDATION

Staff recommends **Option 1** above.

V. TIMING/IMPLEMENTATION

The Eugene City Council is scheduled to deliberate and consider adopting the City's Ordinance on April 10, 2023. Therefore, staff has scheduled deliberations with the Board for April 11, 2023, with the option for the Board to adopt the Lane County Ordinance on that day. The Lane County Ordinance will become effective 30 days after passage by the Board.

Eugene's Ordinance contains a clause that states the Ordinance will become effective 30 days after passage by City Council or upon the date the Lane County Board adopts an ordinance with substantially identical provisions, whichever is later. This clause ensures that the Ordinances become effective on the same date.

VI. FOLLOW-UP

Once the Board takes final action, notice will be provided to the Department of Land Conservation and Development, partner agencies, and all interested parties.

VII. ATTACHMENTS

1. Memorandum, Staff Response to Public Testimony and Elected Officials Questions (3/24/2023)

Ordinance No. PA1388 was included in the packet materials for the first reading on February 7, 2023. There are no proposed edits to the proposed ordinance.

All public comments received have been provided to the Board of Commissioners and Eugene City Council. They can be found on the project website.

Project Website: <https://www.eugene-or.gov/Urban-Reserves>

MEMORANDUM

March 24, 2023

To: Eugene City Council and Lane County Board of Commissioners

From: Rebecca Gershow, City of Eugene Planning Division
Emily Jerome, City of Eugene Deputy City Attorney
Lindsey Eichner, Lane County Land Management Division

Subject: Staff Response to Urban Reserves Public Testimony and Elected Officials Questions

On February 28, 2023, the Eugene City Council and Lane County Board of Commissioners held a joint public hearing on the proposed Eugene urban reserves. At the hearing, eleven members of the public provided verbal testimony. As of March 24, 2023, City staff have delivered 8 batches of written testimony to the City Council and County Board, including 75 submissions. Batches 1-3 consist of testimony that was submitted to the Eugene and Lane County Planning Commissions; batches 4-8 consist of testimony submitted after the Planning Commissions' review, for Council and Board consideration.

City and County staff responded to the substantive concerns raised in testimony batches 1-3 in a November 29, 2022, memo to the Planning Commissions (Attachment 1-A). In response to the testimony, the Planning Commissions recommended revisions to the urban reserves documentation and those revisions were incorporated into the proposal that was presented to the City Council and County Board. This memo responds to concerns raised at the Council and Board's public hearing and in testimony batches 4-8, and two questions from elected officials.

Notably, although not addressed in these memos, there has been a significant amount testimony in support of all or parts of the urban reserves proposal.

1. How much/what kind of analysis must be undertaken (e.g., habitat inventories) when selecting land for urban reserves and what additional analysis will be conducted prior to an urban growth boundary (UGB) expansion?

This issue was raised by Sharon Blick in an email dated February 28, 2023. It was also raised previously in their testimony to the Planning Commission on October 24, 2022, which staff responded to in the November 29, 2022, memo to the Planning Commissions (Attachment 1-A). Blick writes that staff has provided different messages regarding the need for habitat inventories and the timing of such work. In addition, Debra Schlenoff, on behalf of the Lane County Audubon Society, in an email dated March 13, 2023, requested that Staff complete an inventory of wildlife that use "increasingly rare habitat such as riparian areas and oak woodlands" before any development can proceed. The information below clarifies the required level of urban reserves and UGB analysis in general and when new habitat inventories are required, specifically.

Given that the urban reserves study area included over 27,000 acres of land, the analysis could not be undertaken at an acre-by-acre level. However, great care was taken to analyze all the land in the study area in a way that is both consistent with state law and internally consistent throughout the analysis, so that all of the land was fairly evaluated using the same data sources and the same criteria were applied throughout. The study area was divided into 18 subareas to manage the analysis and organize it into areas of land that are geographically affiliated and for which circumstances are reasonably similar. Eighteen separate studies, called Suitability Analysis Subarea Reports, were then developed that applied the State's required "locational factors" to the land in each subarea to identify the land in each subarea that is suitable for urban reserves, if any. In some cases, a subarea was further divided into subparts for purposes of the suitability analysis. This further division of a subarea was done where the subarea included land with distinct characteristics with respect to one or more of the statutory suitability considerations. These Subarea Reports provided a refined supply of land from which the proposed urban reserves land was then selected from, according to the priorities set out in State law and rules. This work is detailed in the [Eugene Urban Reserves Study](#) and its attachments, as well as the [Eugene Urban Reserves Technical Memo](#) included in the adoption package and linked in **Attachment A** to the AIS.

For the land that is ultimately designated as Urban Reserves, the Suitability Analysis Subarea Reports (Appendix 2a to the [Eugene Urban Reserves Study](#)) will be useful again when the City is considering the land for inclusion in a UGB expansion. Where Oregon law allowed, the Subarea Reports were prepared in reference to the criteria that will apply at the time of a future UGB expansion. When the City and County are seeking to add land to the UGB, it will be for a specific purpose (e.g., for residential use) and the Suitability Analysis Subarea Reports will give the City and County a substantial head-start on the more detailed UGB studies by, for example, pre-identifying land that that can be efficiently provided with the services needed for a residential neighborhood.

Once the type and approximate amount of land for a UGB expansion is determined, urban reserve areas will be evaluated in more detail.¹ If land considered for inclusion in the UGB includes a protected natural resource or there is other factual information demonstrating that a resource site, or the impact area of such a site, is on the land, then additional studies and, perhaps, the adoption of new or different protection measures will be necessary. This may include, for example, wetland inventories, wildlife habitat surveys or riparian area identification.² Protection measures are selected based on an analysis that includes the balancing of energy, economic, environmental and social impacts (often referred to as an "ESSEE" analysis).

The urban reserves work, itself, does not (and is not required to) include new habitat studies. For the establishment of urban reserves, state law does allow the City and County to determine that

¹ Depending on state law, there may also be other land studied when a UGB expansion is considered.

² For the Eugene UGB expansion in 2017, the City chose to be proactive in identifying Statewide Planning Goal 5 resources present in the UGB expansion areas rather than waiting for public testimony asserting that there were wetlands in the areas. The City hired consultants to evaluate the potential expansion area for wetland, wildlife and riparian areas. Details can be found in the *Findings for Ordinance Establishing Sufficiency of Eugene UGB for Purposes of Employment, Park and School Land*, which has been included in the record for this proposal located in the Eugene City Council's and Board of Commissioners' offices

some natural resource land is “undevelopable.” Land determined to be “undevelopable” is assumed to have no future potential for development and is assigned a development capacity of zero.

Consistent with the State’s rules for urban reserves, all known critical habitat areas for federally or State-listed threatened and endangered species are classified as undevelopable because they are subject to natural resource protections³. The federally listed critical habitat boundary data used in the analysis was sourced from the U.S. Fish and Wildlife Service Environmental Conservation Online System and was last updated on October 20, 2018. State-listed critical habitat spatial data was purchased from the Oregon Biodiversity Information Center (ORBIC), part of Oregon State University's Institute for Natural Resources, with the most recent update of the data performed in 2016. Due to the sensitive nature of critical habitat data, it is not possible to disclose the precise locations of individual species on a map.

These are the threatened and endangered species with areas of critical habitat within the Urban Reserves study area:

Fish

- Bull Trout (*Salvelinus Confluentus*)
- Chinook Salmon (*Oncorhynchus Tshawytscha*)

Plants

- Bradshaw's Lomatium (*Lomatium bradshawii*)
- Kincaid's Lupine (*Lupinus Sulphureus* ssp. *kincaidii*)
- Wayside Aster (*Eucephalus vialis*)
- White-topped Aster (*Sericocarpus rigidus*)
- Willamette Daisy (*Erigeron decumbens*)

Insects

- Fender's Blue Butterfly (*Icaricia Icaroides Fenderi*)

This is described in Exhibit F, Appendix 4b, the Eugene Urban Reserves Technical Analysis Memo, [Map Documentation of Undevelopable Land](#).

As noted, Sharon Blick provided written and oral testimony at the public hearing urging City and County to conduct their own study of the proposed urban reserves land to determine whether it includes oak woodlands (and affiliated habitat) that should be protected and if so, to apply protection measures to those areas. Blick refers to the West Eugene Wetlands Plan as a model for such a study and protection measures. Debra Schlenoff, on behalf of the Lane County Audubon Society, had similar testimony.

State laws and rules for the establishment of urban reserves do not require the type of study urged by Blick and Schlenoff. This is most likely because the identification of lands as urban reserve does

³ The intention of the urban reserves analysis was to be consistent with rules for UGB analysis as much as practicable, since it will make up most of the first priority land to be selected from for a UGB expansion. The UGB rules state that land that can be excluded from the UGB study area if it includes “Critical or essential habitat for a species listed by a state or federal agency as threatened or endangered” (OAR 660-024-0065(4)c(A)i).

not change the uses allowed on the land and so it has no impact on habitat. Urban reserves land retains its current rural land use designation and zoning and could not be urbanized before being added to the UGB. At the time the City and County are considering a UGB expansion, a Statewide Planning Goal 5 study will be required if there is factual information demonstrating that a resource site, or the impact areas of such a site, is included in the proposed UGB expansion area. This is explained in the findings attached as Exhibit F to the proposed ordinances. Of course, either the City Council or County Board could pass a motion directing that such a study be conducted at any time.

2. What development potential is assigned to land within the County's Goal 5 big game habitat?

Bill Kloos' February 28, 2023, letter and their testimony at the February 28, 2023, public hearing asserts two different arguments. First, Kloos argues that the City and County are required to treat the land that is identified by Lane County as "major big game habitat" or "peripheral big game habitat" as "undevelopable," meaning it should be assigned no capacity and not be counted as providing any land supply. Apparently as an alternative, Kloos also asserts that the City and County should assume a development capacity for such land as a maximum of 1 dwelling per lot, on lot sizes of no smaller than 80 acres (for "major" habitat") or 40 acres (for "peripheral" habitat).

Kloos' testimony refers to the urban reserves rules' definition of "developable land," arguing that, due to the extremely low densities imposed by the County's Rural Comprehensive Plan policy, the major and peripheral big game habitat identified by the County is not "developable" and/or that it must be assigned a development capacity that reflects those extremely low densities.⁴

As noted in Exhibit F, [*Findings in Support of the Establishment of Urban Reserves for the City of Eugene*](#), the City and County considered, but did not completely discount the development potential of land identified with Lane County Goal 5 big game habitat. For the land outside of the Metro Plan boundary (i.e. land subject to the County's Rural Comprehensive Plan), Lane County has identified, as significant Goal 5 resources, much of the area that was identified as either "Major" or "Peripheral" Big Game Habitat by Oregon Department of Fish and Wildlife (ODFW) in the "1982 Lane County Working Paper on Flora and Fauna."⁵ State courts have recently determined that the County's acknowledged Goal 5 program to protect these "Major" or "Peripheral" Big Game habitat areas must be derived from Rural Comprehensive Plan (RCP) Goal 5, Flora and Fauna Policy 11, and the 1982 Lane County Working Paper on Flora and Fauna, which the Courts found to establish

⁴ OAR 660-021-0010(5) defines "Developable Land" as "land that is not severely constrained by natural hazards or designated or zoned to protect natural resources and that is either entirely vacant or has a portion of its area unoccupied by structures or roads." The only use of the term "developable land" within the urban reserves rules states that "urban reserves 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 20-year time frame used to establish the urban growth boundary." OAR 660-010-0030(1) (emphasis added). Kloos makes a related assertion, that the City and County have over-estimated the supply of developable land within the proposed urban reserves (an estimated 27-year supply of land) because the urban reserves studies do not assume a continuation of the County's density limits on rural big game habitat. This assertion is also addressed under section #4 of this memo.

⁵ The County's Goal 5 program included a policy that "Lands with an acknowledged exception as 'built upon or committed' will be treated as Impacted Big Game Range [instead of as Major or Peripheral Habitat], as identified in the 1982 Lane County Working Paper on Flora and Fauna and as revised and updated in 1983." (RCP Goal 5, Flora and Fauna, Policy 10).

density limits for residential development on properties in “Major” and “Peripheral” Big Game Habitat of one dwelling per 80 acres and one dwelling per 40 acres, respectively. Prior to the court’s interpretations in several cases, the County had not been imposing such strict residential densities, but has since changed their practice to follow current case law by applying the density limits as noted above.

In preparing the proposed urban reserves adoption package, the City and County have mostly deferred to the County’s Statewide Planning Goal 5 inventories of significant natural resources as a basis for determining where natural resource protections will impose significant development constraints on land. Most of the land identified by Lane County as having significant Goal 5 natural resources has either been excluded from the proposed urban reserves entirely or classified as “undevelopable,” because the protection of the identified natural resources would pretty clearly continue to limit that particular land’s future development potential for any urban use. However, as Kloos points out, the City and County did not take that approach with respect to the Lane County Goal 5 “major” and “peripheral” big game habitat.

Unlike other Goal 5 resources in the urban reserves study area, the land identified by the County as “major” or “peripheral” big game habitat was not automatically classified as “undevelopable” or assigned an extremely limited development capacity. This is because it is unclear that the land will continue to be limited to the extremely low densities imposed by the County’s Rural Comprehensive Plan Policy 11. There is substantial dissonance between the County’s Goal 5 protections for big game and the protections that are referenced in the State’s rules for adding land to an urban growth boundary. In fact, the State’s UGB rules pertaining to big game habitat clearly place the highest protection value on big game habitat identified as “migration corridors” and “winter range” (as opposed to “major” and “peripheral” big game habitat). The proposed urban reserves do not include any “migration corridors” or “winter range.” At the time of an urban growth boundary amendment, the City could determine that it is appropriate to protect the “major” and “peripheral” big game habitat in ways that do not necessarily impose severe limitations on development. Protection measures, such as the clustering of dwellings, may be used to provide the protections required by Statewide Planning Goal 5, while still addressing the area’s need for housing.⁶

Further, as the location of big game habitat changes over time and the County’s mapping was prepared in the early 1980s, it is reasonable to assume that when the City evaluates the land around the edge of the urban growth boundary as part of a UGB expansion analysis, it could identify different big game habitat areas and classifications. This is an especially reasonable assumption because development has occurred on much of the rural land around Eugene’s UGB that was, in the early 1980s, identified as having big game habitat. This can be seen on the subarea maps included in

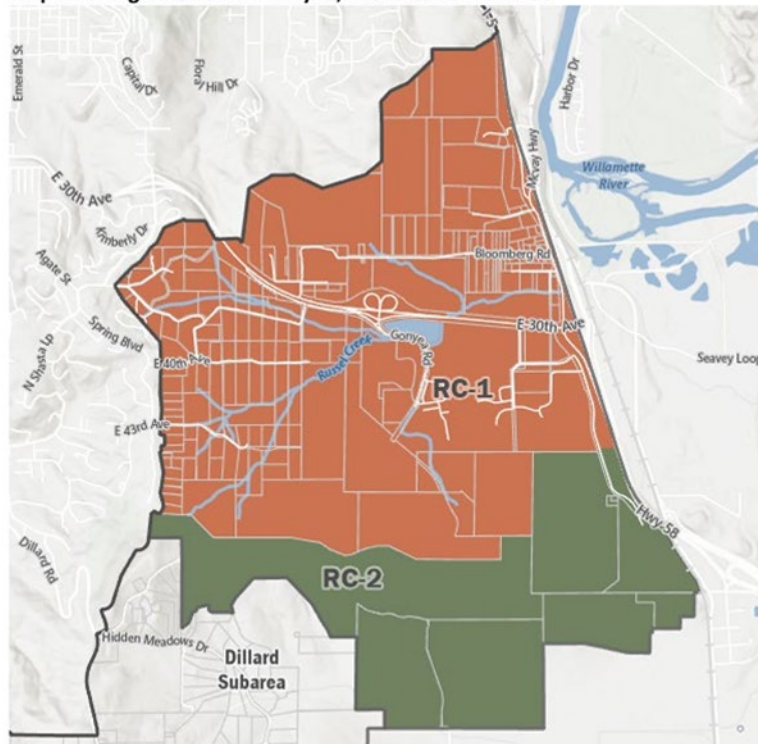
⁶ Unlike the process for selecting urban reserves, the UGB expansion process requires the City to identify the particular kind of land it needs (e.g., land for medium-density residential development) and to conduct thorough study of the potential areas to determine which land is suitable to accommodate that specific need. As noted elsewhere in this memo, the City will have the opportunity, then, to adopt alternative protection measures for any big game habitat identified in UGB expansion areas. It would be short-sighted to assume that the 1 dwelling per 40-acre and 80-acre limits in the Rural Comprehensive plan will always be applicable.

the [Eugene Urban Reserves Study](#). As explained, this will need to be addressed by the City as it considers expanding its UGB into those areas.⁷

The urban reserves study does not simply ignore big game habitat. It includes consideration of big game habitat for each subarea where “major” or “peripheral” big game habitat was identified by ODFW in the County’s map included in the “1982 Lane County Working Paper on Flora and Fauna.” Big game habitat maps are considered in the Suitability Analysis Subarea Reports as part of the analysis under Statewide Planning Goal 14, which requires the City and County to consider, on balance with other things, the environmental consequences of including land in urban reserves (Goal 14, factor 3). For some areas, the presence of big game habitat is a contributing factor for the land’s full exclusion from the proposed urban reserves (i.e. parts D-1 and D-2 of the [Dillard](#) Subarea). However, in other areas, the presence of big game habitat does not outweigh other factors that weigh in favor of inclusion in urban reserves given the uncertainty of future protection, as explained in the previous paragraphs. For such areas, the City would need to conduct an updated Goal 5 study at the time the land is being considered for a UGB expansion and, if significant habitat still exists on the land, to potentially adopt measures to minimize or eliminate negative impacts to the wildlife habitat.

While not for the reason urged by Kloos, a great deal of the land identified on the County’s mapping as big game habitat was ultimately found to be unsuitable for urban reserves and excluded (i.e. the entirety of the [Dillard](#) and [South Willamette](#) subareas).

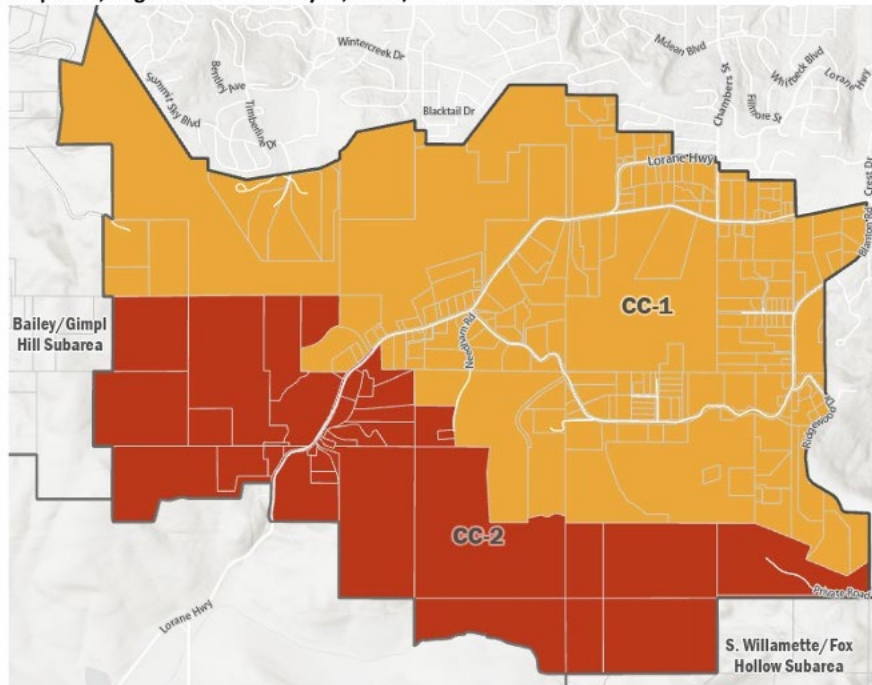
Map 18.2 Organization of Analysis, Russel Creek Subarea



In Map 18.2 from the [Russel Creek Suitability Analysis Report](#), the RC-1 portion of the Russel Creek subarea, which includes significant parcelization, was found suitable for inclusion in urban reserves, but the RC-2 area was not. Both areas include major and peripheral big game habitat on the Lane County maps.

⁷ OAR 660-024-0020(1)(c) and 660-023-0250(3) taken together will require the City to address Goal 5 and related rules under OAR 660-23 for areas proposed to be added to the UGB where factual information, such as County or ODFW mapping, demonstrates that big game habitat is included in the area.

Map 15.2, Organization of Analysis, Crest/Chambers Subarea



In Map 15.2 from the [Crest/Chambers Suitability Analysis Report](#), the CC-1 portion of the Crest/Chambers subarea, which is more parcelized and closer to the UGB, was found to be suitable for urban reserves; while the CC-2 area was not. Both areas include major and peripheral big game habitat on the Lane County maps.

Finally, it is important to note that the areas where big game habitat

was identified, have been assumed to have a much lower development capacity than other areas proposed for inclusion in urban reserves. The [Eugene Urban Reserves Technical Memo](#) explains (pages 18-20) that factors such as elevation and slope can affect the capacity of the land to accommodate new units of housing. The City and County took such factors into account when developing assumptions for the residential capacity of the land in the urban reserves study area. Although doing so made the capacity analysis more complicated than is legally required, it produces more accurate results than a capacity analysis that uses a single method and density assumption for all land in a study area. Further, a recognition that these lands are likely to be developed at lower densities than land in other parts of the urban reserves is consistent with the capacity methodology and assumptions which were used when the City recently reviewed the sufficiency of its UGB. While the lower density assumptions for the areas with big game habitat are not *because of* the existence of that habitat, the correlation is clear.

3. In the urban reserves analysis, the City and County are not providing consistent assumptions about wetlands and are wrongly assigning development capacity to wetlands.

Bill Kloos' February 28, 2023, written testimony asserts that the City and County "do not have consistent assumptions about what rural wetlands are protected Goal 5 resources" and also that the urban reserves work wrongly assigns development capacity to wetlands (Kloos February 23, 2023, letter, issues 2 and 3). Kloos submitted similar testimony to the Planning Commissions on October 25, 2022, which staff responded to in section 4 of the November 29, 2023, memo to the Planning Commissions (Attachment 1-A).

Wetlands that are identified for Goal 5 protections by Lane County are correctly identified and those wetlands, along with wetlands identified on the National Wetlands Inventory or wetlands

designated as “protect” or “restore” in the West Eugene Wetlands Plan, are classified as “undevelopable” land with no development capacity.

City and County staff are confident that the urban reserves work presented to the City Council and County Board correctly identifies and classifies the wetlands protected by the County as Goal 5 resources. This confidence is, in large part, due to a recent review and correction in response to this very issue. It was raised by Kloos before the City and County Planning Commissions and staff recommended changes to resolve the issue. The City and County Planning Commissions both passed a motion to correct the way wetlands were described in the urban reserves analysis consistent with staff’s recommendation. That error, therefore, does not appear in the Urban Reserves documents presented to the City Council and Board of Commissioners. The Planning Commissions’ motion was:

Revise the Urban Reserves Study, Technical Analysis and related urban reserves maps to incorporate the information and determinations described in Public Testimony, Section 4 of the memo dated November 29, 2022, and titled “Staff Response to Public Testimony and Planning Commission Questions,” to correct text and maps related to Lane County’s Goal 5 wetlands.

As explained in section four of City and County staff’s November 29, 2022, memo (Attachment 1-A), the urban reserves documentation needed to be revised because it had mistakenly mischaracterized some of the wetlands in the urban reserves study area. Specifically, in describing the wetlands that the urban reserves mapping showed as “undevelopable” due to natural resource protections, page 5 of the Urban Reserves Study listed the following:

- Lane County Goal 5 adopted wetlands (from the National Wetlands Inventory) or wetlands designated as protected in the West Eugene Wetlands Plan

This description was inaccurate. Lane County’s Goal 5 adopted wetlands are not “from the National Wetland Inventory” (NWI) maps. There are actually three different types of wetlands treated as “undevelopable” in the Eugene Urban Reserves Study area. Therefore, page 5 of the Urban Reserves Study was corrected so that it now lists:

- Lane County Goal 5 adopted wetlands;
- wetlands on the National Wetlands Inventory; and
- wetlands designated as protect or restore in the West Eugene Wetlands Plan

In response to the Planning Commissions’ motion, staff have also updated the analysis maps and associated data to include those County Goal 5 wetlands and differentiate them from the NWI wetlands. (This update did not change any of the land selected for urban reserves.)

Although not County Goal 5 wetlands, the urban reserves documents also classify wetlands shown on the most recent NWI (2016) for the area located outside the Metro Plan boundary as “undevelopable.” Wetlands on the NWI map are subject to the Division of State Lands’ protection measures. In addition, all wetlands designated as “protect” or “restore” in the West Eugene

Wetlands Plan (a Goal 5 plan) are classified as “undevelopable.”⁸ All of the above-described wetlands, classified as “undevelopable” in the urban reserves study area are shown on Map 12 in Exhibit F, Appendix 4b, the Eugene Urban Reserves Technical Analysis Memo, [Map Documentation of Undevelopable Land](#). These wetland areas are not relied upon as land needed for future urbanization; they are assumed to have no development capacity. Even so, in some cases, land with undevelopable wetlands is included in the proposed urban reserves. The reasons for including some wetlands vary, but most often it is because the wetlands are located on part of a larger lot that contains developable land, or on a lot that is surrounded by developable land. Those wetlands are still classified as “undevelopable” land (capacity is only counted on developable land).

Kloos argues that there are probably many more wetlands on land in the proposed urban reserves that have not been identified on local, state or federal wetland maps. They argue that the Oregon Department of State Lands (“DSL”) will require the landowner to get a soil study of these wetlands when the owner attempts to develop the land and that “the vast majority of those soils eventually are determined to [be] wetlands, and those wetlands become hugely expensive and usually off limits to development.” They argue that these lands with probable but presently unidentified wetlands should be counted as “undevelopable.” However, the laws and rules governing the establishment of urban reserves simply would not allow the City and County to discount the developability of land without more information.

It is important to differentiate between the status of land when it is included in urban reserves and the status of land included in the UGB. When land is included in urban reserves, it does not become part of the City’s “buildable lands inventory,” as Kloos’ testimony implies. Land included in urban reserves will eventually be considered for a UGB expansion. At the time of a UGB expansion, the land will be further studied, as needed, to confirm its development potential for the specific type of uses needed by the City’s population. Additionally at the time of a UGB expansion, the suitable, developable land that is added to the UGB is also added to the City’s Buildable Lands Inventory. For example, as part of the adopted 2017 UGB, the City and County chose to be proactive in determining whether there were any significant riparian corridor sites, wetland sites, wildlife habitat sites or impact areas within the UGB expansion areas. The City wanted to be as certain as possible that the expansion area could be developed to serve the industrial employment needs of the City’s population for 20 years. Therefore, the City conducted a study of the land in the proposed expansion area. In the case of the wetlands identified, as described in the *Findings for Ordinance Establishing Sufficiency of Eugene UGB for purposes of Employment, Park and School Land* the City found (as part of the ordinance acknowledged by the state) the wetlands included in the expansion area *could be* developed if done so consistent with other regulations (e.g., wetland banking, inter-agency coordination, stormwater management planning, the application of the Goal 6/WQ Water Quality overlay zone to two major stormwater conveyance channels, and a city-approved area-wide stormwater master plan that incorporates green infrastructure). At the time of a future UGB

⁸ Staff also corrected a typographical omission in the Urban Reserve Study that was presented to the Planning Commissions, which mistakenly left out the words “or restore” in the description of the West Eugene Wetlands Plan. Wetlands in the West Eugene Wetlands Plan that are designated for restoration were (always) included among the wetlands listed / treated as “undevelopable” in the Technical Memo on which the Urban Reserves Study is based.

amendment, the City may conduct a similar study. It is also possible that, by that time, there will be updated mapping for the area, conducted by another agency.

4. Why and how does the City determine that the proposed urban reserves will provide a 27-year supply of developable land?

Kloos' February 28, 2023, letter and their testimony at the February 28, 2023, public hearing assert that the sentence shown in ***bold & italics*** below, should be deleted from the text proposed for inclusion in the Envision Eugene Comprehensive Plan:

To plan for Eugene's land needs beyond 2032, Eugene looked outside the urban growth boundary acknowledged by the state in 2018 (intended to meet the City's needs through 2032) to identify urban reserves that will be prioritized for future inclusion in Eugene's urban growth boundary. ***Based on the analysis conducted when the urban reserves were established, Eugene's urban reserves include enough land to meet 27 additional years of Eugene's projected needs for housing, employment and public uses.***

Kloos argues that there is an insufficient basis for the "27-year" urban reserves. The subject sentence above is proposed for inclusion in the Envision Eugene Comprehensive Plan because the State requires the City and County to include such a finding. State administrative rule 660-021-0030, "Determination of Urban Reserve," includes the following requirement (*emphasis added*):

Urban reserves 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 20-year time frame used to establish the urban growth boundary. *Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.*

The urban reserves record includes hundreds of pages setting out the basis for the determination that the land in the proposed urban reserves is anticipated to provide a land supply for approximately 27 years of growth, from 2032-2059. It is worthy of reiterating that the land identified for urban reserves is anticipated to provide a land supply for ***approximately*** 27 years of growth, from 2032-2059. In no way is this an exact science. While cities and counties in Oregon are required to rely on the State's population forecasts to estimate their growth for purposes of land use planning, the State's directives and prohibitions for determining the development capacity of land are far less instructive. The City and County conducted a significant amount of complex analysis (much more than is legally required) to estimate both the number of developable acres that would be needed to accommodate Eugene's population growth and the number of developable acres in the land proposed for Eugene urban reserves. This is detailed in the [Eugene Urban Reserves Technical Memo](#) and the [Eugene Urban Reserves Study](#).

There is no debating the fact that the 27-year period is an estimate, even considering the City's detailed studies. Population projections could change, development could occur at higher densities than it has in the recent past, new natural resource protections could limit development, and other variables could impact the basis for the 27-year period. Several of these variables are addressed in

this memo. The City and County are required to specify a time period and the record for this matter supports the 27-year finding.

5. Without a parcel-specific Metro Plan Diagram how can the City and County be confident of the capacity of land remaining in the UGB?

Kloos' written testimony submitted on February 28, 2023, and their testimony at the February 28, 2023, public hearing assert that the City and County do not have a valid basis for their assumptions about the development capacity of land remaining inside the Eugene UGB because the adopted Eugene-Springfield Metropolitan Area General Plan (Metro Plan) Diagram does not show lot / parcel lines. This argument was also made when the City conducted and adopted its land studies for the most recent UGB review. At that time, the Oregon Land Use Board of Appeals determined that a parcel-specific Metro Plan Diagram was not required to defend the capacity analysis.

The Metro Plan Diagram is the State-acknowledged map that shows which of the region's overarching land use designations apply to the land within the Metro Plan boundaries.⁹ It was used to create the City's Buildable Lands Inventory (BLI) as part of the UGB Ordinance in 2017. The BLI is the key component of the Residential Land Supply Study that was used to determine the land sufficiency of the UGB. This capacity included a complex capacity analysis, based on actual development trends at the Metro Plan designation level (State law required that it be undertaken at the Plan designation level). The BLI was completed (and acknowledged by the state) with no parcel specific diagram. There is no law that requires the City and County to update the Metro Plan Diagram to be parcel-specific as part of the Urban Reserves work.

It is true that the small scale and lack of parcel lines on the Metro Plan diagram make it difficult to apply to some parcels. However, in preparing the BLI, the City did not simply make guesses. The City used a digital representation, in geographic information system (GIS) layer format, of the Metro Plan diagram. Staff developed a sound methodology to account for the inherent imprecision of the plan diagram layer, including analysis at the sub-tax lot level where tax lots have a split plan designation. The City and its consultants engaged in a painstaking process to develop the BLI maps and such maps provide a more-than-adequate level of accuracy that was upheld in *Homebuilders Association of Lane County v. City of Eugene*, 77 Or LUBA 56 (2018). The BLI was acknowledged by the State in 2018. This work resulted in an adequate factual basis for the City and County's assumptions about the development capacity within the UGB.

⁹ The Metro Plan Diagram is a paper map created by the Lane Council of Governments at a time when parcel-specificity was impossible (or at least prohibitively impractical, given the scale and the area covered). Even so, for the vast majority of parcels in Eugene, there is no ambiguity on the Metro Plan Diagram. For most parcels, the Metro Plan Diagram (by its own terms) is "parcel-specific" because they fall within certain broad categories. For example, most parcels fall within a larger area that is clearly identified as a particular plan designation. In addition, over the time since the Metro Plan Diagram was adopted, area-specific or site-specific actions taken by the City and County have made designations on the Metro Plan Diagram clear. Many parcels have been subject to parcel-specific redesignations or are shown with more specificity on a refinement plan map. A property's "zoning" is not the same as its more general land use "designation" shown on the Metro Plan Diagram map. The City's zoning maps do show lot / parcel lines.

6. Why don't the proposed urban reserves include all the land that is located within the Metro Plan boundary? Shouldn't all land within the Metro Plan boundary be urbanized before considering the urbanization of more rural land?

In testimony provided at the public hearing by Hope Vaccher on behalf of LandWatch Lane County, and in written testimony received on February 28, 2023, they expressed concerns about the fact that the City and County have not proposed all lands within the Metro Plan boundary be included as Eugene urban reserves and included other lands beyond the Metro Plan boundary.

The urban reserves analysis took great care in treating all land equally, in that staff used the same standards and criteria throughout the study area. Being in the Metro Plan does not give land special standing for urban reserves under State law. In some cases, land selected for urban reserves matches the Metro Plan boundary pretty closely (e.g., in the [Russel Creek](#) and [Bailey/Gimpl Hill](#) subareas), but not in others: The Eugene Airport and land immediately north and south of it are included in the Metro Plan, however most of this land is not included in urban reserves mostly due to the fact that it is either in Airport use, or constrained by airport uses and not able to be developed with housing, or because it is significantly impacted by mapped flood hazard areas from Amazon Creek. Some of the other land inside the Metro Plan boundary was found unsuitable for urban reserves largely due to its location adjacent to the McKenzie and Willamette rivers, and their riparian and flood hazard areas (in the [McKenzie](#) and [Beacon/River Loop](#) subareas). The land south of Beacon Drive in the [Awbrey](#) subarea was removed from consideration because it was primarily agricultural designated land with the highest-values Class 1 soils.

7. Why not consider Middle Housing densities in the urban reserves capacity analysis?

In testimony provided at the public hearing by Hope Vaccher on behalf of LandWatch Lane County, and written testimony received on February 28, 2023, they questioned why the densities assumed in the urban reserves documentation does not take the new "middle housing" allowances into consideration. Other testimony also questioned whether the City's new middle housing code was considered in the urban reserves analysis.

This testimony suggests that the City and County should assume that the land already in the UGB will be developed at higher residential densities, making it less likely that an urban growth boundary expansion will be needed and therefore, less likely that the City and County will benefit from designating urban reserves. Perhaps it is also intended to suggest that higher residential densities should be assumed for the land proposed to be included in Urban Reserves (requiring less land).

It is true that the urban reserves density assumptions do not capture the density increases that are likely to occur as a result of the new middle housing allowances. The capacity calculations used in the urban reserves analysis are based on existing development patterns inside the UGB over a twelve-year period as set out in the adopted Buildable Lands Inventory that was acknowledged by the State of Oregon in January 2018. This was the adopted, acknowledged (and best) data available when urban reserves analysis began in 2018, and it remains so. In fact, City's new middle housing code is not yet acknowledged because it is presently on appeal.

The middle housing laws, [House Bill 2001](#) (2019) allows Eugene to develop more densely in areas previously zoned for single-family residential uses. New middle housing code amendments were finalized in June 2022 and began to take effect then. These code amendments may affect overall city density, how much land is needed when the UGB expands, and how quickly we would need to expand into Urban Reserves. Even then, House Bill 2001 includes a significant limit on how much additional density cities and counties can attribute to the new law when evaluating whether a UGB expansion is needed. The City and County would be prohibited from assigning any more than a three percent increase in density due to the middle housing allowances unless they have “quantifiable validation of such departures.” This would require Eugene to “demonstrate that the assumed housing capacity has been achieved in areas that are zoned to allow no greater than the same authorized density level within the local jurisdiction or a jurisdiction in the same region.” ORS 197.296(6)(b).

When it's time to reassess the UGB for future housing capacity, new Growth Monitoring data will be considered, including any changes in development patterns and densities from the Middle Housing code amendments. If there is enough data and documentation to demonstrate there is "quantifiable validation" to assume the code amendments increase density more than three percent, that information will be considered as part of the analysis to determine the appropriate amount of density to assume on buildable land inside the UGB as well for any applicable residential UGB expansion area.

8. Four property owners indicated that their (or others') land should not be included in urban reserves.

Below is a high-level explanation of why these properties are included in urban reserves. Footnotes indicate where to find more information. While staff empathize with property owners' concerns, the City and County cannot pick and choose property to include or exclude from urban reserves without adequate legal justification. The same set of data, criteria and rationale are used to evaluate land throughout the study area.

- a. 2293 Firland Boulevard, Russel Creek subarea. The property owner's attorney describes this 5.5-acre lot zoned F-2 Impacted Forest as having steep slopes; it was recently approved for a single family dwelling by the County. The testimony asserts that since the area around it is parcelized in a similar fashion, it is not likely to redevelop and should therefore not be included in urban reserves. (Batch 7, Reeder)

Staff response: While this property has some steep slopes, they are located away from the right-of-way frontage, and the Russel Creek Subarea Potential Residential Capacity map shows a potential capacity of 5 - 24.5 dwelling units on the 5.5-acre property (if it were to annex into the City and was redeveloped in the future). The property borders the 30th Avenue right-of-way, and is within .25 miles of the UGB, two indicators that the property could annex and city services could be extended to it relatively efficiently if the property were included in the UGB eventually.¹⁰

¹⁰ This is only a partial explanation of why this property was included in the proposed urban reserves. Please see Exhibit F, Appendix 2a-18. *Suitability Analysis-Russel Creek Subarea* for more details.

- b. 87155 Kellmore St, Crow subarea. The property owner describes this property as too steep for inclusion, and future rezoning could prohibit outdoor burning on the property. (Batch 6, Torres)

Staff response: While this property is at the edge of the land selected for urban reserves in the Crow subarea, it is adjacent to right of way in between other land with similar development capacity and topography. Because of its size, topography, and since it is already partially developed, the Crow Subarea Potential Residential Capacity map shows a potential capacity of less than 5 dwelling units (if it were to annex into the City and was redeveloped in the future). In comparison to this property, the land removed from urban reserves consideration nearby had significantly more prohibitively steep slopes which would make efficient accommodation of services unlikely. When any rural property comes into the UGB there will be additional regulations related to outdoor burning.¹¹

- c. 28436 Ruth Lane, West 11th/Greenhill subarea. The testimony noted that the property has been in the owner's family for generations and there are long-term leases on the property. In addition, the testimony asserts that being included in urban reserves would infringe on their civil rights and the rights of their leaseholders. (Batch 5, Long)

Staff response: Being included in urban reserves will not change the ability of the property owner to lease their land and use it, as they have been currently allowed to, under the jurisdiction of Lane County. Urban reserves will not change the uses allowed on the land, including leasing it to others. If land is brought into the UGB, the property owner may choose to seek to annex it into the city—but that is their choice, not a requirement, as there is no policy requiring annexation. Being included in the UGB will give the property owner more development rights, rather than fewer.¹²

- d. Property north of County Farm Road, McKenzie subarea. A nearby resident and farmer who has farmed this property attests that it is the most agriculturally productive of all the land in the urban reserves and should be preserved for continued agricultural production as long as practical. (Batch 6, Johnson)

Staff response: This site is one of the largest agricultural parcels with predominant Class 2 soils left in the proposed urban reserves, as shown in Map 18 of the [Eugene Urban Reserves Study](#). This is because all of the other agriculture-designated farmland with predominant Class 1 soils and adjacent Class 2 soils that were suitable for urban reserves were removed from consideration with the selection of the 27-year urban reserve option. This included farmland in the Awbrey, Highway 99 and the Gamefarm subareas (where the Johnson Vegetable Farms are located). The 27-year proposed urban reserve was selected precisely to avoid the inclusion of agricultural land with the highest value soils (Class 1 and adjacent Class 2 soils). Map 17 shows

¹¹ This is only a partial explanation of why this property was included in the proposed urban reserves. Please see Exhibit F, Appendix 2a-13. *Suitability Analysis-Crow Subarea* for more details.

¹² For more information on why this property and those nearby were included in the proposed urban reserves. Please see Exhibit F, Appendix 2a-12. *Suitability Analysis-West 11th/Greenhill Subarea* for more details.

the Class 1 and adjacent Class 2 land that was excluded from urban reserves with the 27-year option. This property remained in because it stood apart from other properties with predominant Class 1 soils and the southern portion of it is already included in the UGB. It is important to note that this land can continue to be farmed if it is included in urban reserves and later in the urban growth boundary, as long as the property owner wishes to do so. Less than 300 developable acres of agricultural land with predominant Class 2 soils (out of 5,901 total acres) remain in the proposed urban reserves.¹³

Questions from Elected Officials:

9. **At the February 28, 2023, public hearing, Commissioner Loveall asked about the 27-year supply of land, wanting to know realistically how much is developable, and of the developable land, how much more it is going to cost if we have to mitigate the costs of things like wetlands, big game habitat, litigation, etc.**

One of the key considerations¹⁴ for selecting land for urban reserves is counting future development capacity on only the land identified as ‘developable.’ One of the first steps identified in the [Technical Memo](#) and the [Eugene Urban Reserves Study](#) is the extensive list of land that was categorized as severely constrained by natural hazards or subject to natural resource protections or occupied. Land included in these categories was classified as **undevelopable**, and the remaining land in the study area was classified as **developable**. A capacity analysis on the developable land within the study area then determined how many homes or jobs could be accommodated on that land in the future.

The Eugene Urban Reserves Study ultimately identifies an urban reserve area that includes 10,015 total acres of land, with 5,901 developable acres. The proposed urban reserves are expected to provide the City with approximately a 27-year supply of developable land, covering a planning period of 2032-2059.

The question of how much “more” it will cost to urbanize the land to address complications involving things like wetlands or big game habitat is important, but very difficult to answer. The answer depends in large part on what type of land is needed (e.g., for housing or industry) and which land is selected for that future urbanization. Since expansion of the urban growth boundary will happen incrementally, those lands closest to existing development and services, with the fewest development constraints will most likely be selected first. This “order of operation” is only possible if urban reserves are adopted; without urban reserves, UGB expansions must happen according to a very different priority and would likely force the City and County to expand onto land that would be more costly to develop. At the time of a UGB expansion, potential land will need to be further evaluated against the Goal 14 locational factors, which includes weighing considerations such as efficient urbanization, ability to provide services, and environmental, energy, social and economic consequences. This will help inform the City Council and County Board of any development hurdles.

¹³ For more information on why this property and those nearby were included in the proposed urban reserves. Please see Exhibit F, Appendix 2a-2. *Suitability Analysis-McKenzie Subarea* for more details.

¹⁴ Described fully in in Exhibit F, Appendix 4b, the *Eugene Urban Reserves Technical Analysis Memo* (pages 13-15), and in Exhibit F, Appendix 2, *Eugene Urban Reserves Study*, (pages 5-10).

Unfortunately, the City of Eugene is surrounded by areas that impose higher development costs (e.g., ridgeline, wetlands, rivers).

- 10. At their February 15, 2023, work session, some City Councilors had questions about the proposed policy included in the Metro Plan amendments: “*Eugene, in coordination with Lane County, shall initiate a review of the sufficiency of Eugene’s urban reserves no later than 10 years after Eugene’s first UGB expansion following the initial adoption of urban reserves.*” (Metro Plan, proposed policy 35)**

The Lane County Board of Commissioners directed staff to add this policy on November 10, 2020, when they gave direction to proceed with preparing adoption materials for the proposed urban reserves. At the February work session, some City Councilors also had questions related to the timing of the urban reserves review, and when the UGB would be updated.

State law has become prescriptive as to the requirements and timing of UGB work by cities and counties with growth planning becoming a continuous cycle. In addition to the urban reserves work, Eugene staff are currently in the process of updating the buildable lands inventory and, this year, will begin the housing capacity and economic opportunities analysis. These, along with the annual and comprehensive Growth Monitoring reports, are the baseline tools for evaluating the sufficiency of the UGB. Depending on what that analysis shows, it is anticipated that 2024 through 2026 will include the adoption of measures to increase development opportunities within the UGB and potentially a UGB expansion. The proposed policy above, requires the City to start a review of the sufficiency of the urban reserves no later than ten years after Eugene’s UGB expansion (whether such an expansion occurs in 2026 or later). This proposed policy is consistent with Eugene’s commitment to continuously monitor and plan for Eugene’s growth. It is important to note that the Council and Board can direct staff to initiate a review of the sufficiency of Eugene’s urban reserves at any time.

Attachment 1-A: November 29, 2022, Memorandum--Staff Response to Public Testimony and Planning Commission Questions

MEMORANDUM
Staff Response to Public Testimony and Planning Commission Questions
November 29, 2022

To: Eugene and Lane County Planning Commissions
From: Rebecca Gershow, City of Eugene Planning Division
Lindsey Eichner, Lane County Planning Division
Subject: Staff Response to Public Testimony and Planning Commission Questions

On October 18, 2022 the Eugene and Lane County Planning Commissions held a joint public hearing on the proposed Eugene urban reserves. At the hearing, five members of the public provided verbal testimony. Twenty-five people provided written testimony as of 5:00 pm on October 25, 2022. Below is a response to some of the testimony that Commissioners asked about at the public hearing or merited further investigation or explanation.

Planning Commissioner Questions

Most planning commissioner questions were answered at the public hearing. Following the public hearing, staff committed to following up on the two questions below:

1. *Commissioner Hadley asked if property owners would be required to hook up to city sewer services and annex if the property was within the urban growth boundary, already developed and had a failing septic system.*

If property inside a UGB has a failing septic system and is within 300 feet of a sewer line, the Oregon Department of Environmental Quality requires County staff to look at the potential for connection to a public wastewater system instead of septic system replacement; however, it is not always required. In Eugene's urban growth boundary (UGB), if the developed property is required to be connected to sewer, it would not also be required to annex into the city limits (other cities may require annexation). Instead, it would require approval for an extra-territorial extension of services outside the city limits, and part of that approval would require an annexation agreement where the owner would need to agree, in writing, to the property's annexation at some time in the future. The City of Eugene's current policy does not include any city-initiated annexations of private property so, even with such an agreement in place, annexation still remains voluntary based on existing City Council policy. As such, the property would remain unincorporated until the property owner chose to annex, but it would have the benefit of sewer service.

2. *Commissioner Lear asked about impacts to property owners in the proposed urban reserves.*

A property's zoning would not change when it is included in urban reserves, so inclusion in urban reserves will not trigger any change to the uses allowed on a property. This means current uses can continue and other uses that Lane County allows in the property's zone could still be established on the property. Based on state law, several land use policies have been proposed as part of the proposed

urban reserves to ensure that land in urban reserves will remain in its current rural use while also being prioritized for future urban growth. For example, under the proposed policies, if the County regulations for a property now allow a single-family dwelling on the property, a single-family dwelling will still be allowed after the property is included in urban reserves because the same set of County regulations will continue to apply. However, after the property is included in urban reserves the County could not approve requests for zone changes allowing more intensive uses on exception or nonresource land. Similarly, property owners would not be able to request resource land included in Eugene urban reserves to be rezoned or redesignated to a non-resource zone or designation. This will allow farm and forest zoned properties to be re-zoned to marginal lands, but not residential, commercial, or industrial. The intent is to retain larger parcels for resource uses until this land is included in the UGB, at which time it will be eligible for urbanization. This limitation on the ability to change a property's zoning is not a "taking" because no property (property owner) has a right to a zone change. In fact, requests for zone changes or re-designation for more intensive uses in Lane County are quite rare, and approval is not guaranteed: In the last 10 years there have been only **5 requests** for plan amendments to change land from a resource to non-resource use, and of these, only 2 applications have been approved and are final (the other 3 are pending). There have been **no requests** for zone changes allowing more intensive uses on exception or nonresource land.

For the exact wording of the proposed policies, please see **Attachment B**, [Exhibit A-1](#) (Amendments to the Eugene-Springfield Metropolitan Area Plan), and [Exhibit E](#) (Amendments to the Lane County Rural Comprehensive Plan).

Two other documents are included for your information: The Property Owner Matrix, which shows other ways land may change after it is included in urban reserves (**Attachment E**); and the Property Owner FAQs which respond to questions staff have received from property owners (**Attachment F**). Both documents are available to the public on the [urban reserves project page](#).

Public Testimony

1. *One member of the public with property inside the proposed urban reserves (Blick) testified at the public hearing and sent a follow-up email. One of their concerns addressed below was how farmland was prioritized, and that property designated as "rural residential" that is currently being farmed is not considered as farm land for the purposes of the urban reserves analysis, when there may be more intensive farming on these smaller rural residential parcels than on some larger agricultural-designated properties.*

Another concern expressed by Blick and others is related to the level of detail of the analysis of lands for inclusion in urban reserves.

Staff response:

The urban reserves analysis considers farmland to the extent allowed by state law. State law is designed to protect land that the County has designated for farm and forest use (land that is designated for agricultural or forest use in an adopted comprehensive plan, regardless of its current use), by requiring that these farm and forest designated lands in the study area are selected last for inclusion into urban reserves. In contrast, based on state rules, land that the County has designated for rural residential use is some of the first land the City and County must include in urban reserves because the County has

already determined that it is not the best land for farming or timber. The urban reserves analysis was not allowed to make any exceptions to this “order” based on how rural residential designated land is being used (or whether it is being farmed); the determining factor is how the County has designated the land in the Metro Plan or Lane County Rural Comprehensive Plan (regardless of its current use). Consistent with state law, the urban reserves analysis selected land designated as rural residential land for urban reserves before considering the inclusion of any farm and forest designated land.

The farm and forest designated land that was included in urban reserves was selected in order of its land classification, so land with the lowest quality soils were selected first, while land with the highest-quality soils were selected last. Decision-makers selected the 27-year urban reserve option in large part because it left out the highest quality farmland (agricultural designated land with predominant class 1 soils) from the proposed urban reserves, in order to preserve it for agricultural use.

As noted above, urban reserves analysis is tightly controlled by state law. Given that the urban reserves study area included over 27,000 acres of land, the analysis was, by necessity, done at a relatively high level. However, great care was taken to analyze the land in the study area in a way that is both consistent with state law and consistent within the analysis itself, so that all of the land was fairly evaluated using the same data sources and criteria applied throughout. The study area was divided into 18 subareas to manage the analysis of such a large study area and organize it into areas of land that are affiliated geographically. Eighteen Suitability Analysis Subarea Reports were developed that informed the proposed urban reserves. This work is detailed in the [Eugene Urban Reserves Study](#) and its attachments, as well as the [Eugene Urban Reserves Technical Memo](#) included in the adoption package and linked in **Attachment B**.

Once urban reserves are adopted (by the City and County), they automatically become the first priority land to consider when it is time to determine where to expand the UGB, and a more strategic analysis of any potential expansion areas will happen at that time.

2. *One member of the public with property outside the proposed urban reserves (Silberstein) questioned why their property, and their neighbor’s adjacent property, are not included in the proposed urban reserves when their properties appear similar to other nearby property that are included.*

Staff response:

Staff understands Silberstein’s interest in their property being included in urban reserves, as there has been a lengthy email exchange. This correspondence is included in the first and second batch of testimony. A summary of the staff response follows:

The land in question, which is located at the northeast corner of the intersection of Barger Drive and Green Hill Road, was studied as part of the Clear Lake Subarea suitability analysis. As noted previously, urban reserves planning is very prescriptive by nature (in other words, directed by state law), and the same assumptions, criteria and data set were used for analyzing the entire study area, originally consisting of over 27,000 acres. As described more fully in the [Clear Lake Suitability Analysis Report](#), the subject property along with two other lots in the CL-2 area, was identified as unsuitable for urban reserves because it is almost entirely encumbered by the 100-year floodplain and Statewide Planning Goal 5 adopted wetlands and includes no developable acres. *For the purposes of urban reserves*

planning, the subject property is assumed to have no development capacity due the fact that it is severely constrained by natural hazards (floodplain) and subject to natural resource protections (Goal 5 wetlands). Further, due to the location of the property on the edge of the study area, it is not needed in the future to access adjacent developable land. Therefore, as more fully described in the Clear Lake Suitability Analysis staff identified this land as unsuitable for urban reserves.

The subject property is shown outlined in light blue in the two maps below. The map on the left shows Lane County adopted Goal 5 wetland on the property and the map on the right shows the FEMA 100-year floodplain.



Silberstein asserts that they have development rights that allow them to change these circumstances, (e.g. raising base floodplain elevations or filling wetlands), allowing for additional development on their property. Staff does not dispute how any individual property owner may be able to work with the state and federal agencies that govern development on wetlands and in floodplains to develop portions of their property. In other words, it is possible that some of the land identified in the Study as “undevelopable” and/or “unsuitable” could ultimately be developed. However, urban reserves planning analyzes whether urban levels of development should be directed on land in the future based on the land’s current official designations and mapping. Due to the extent of the natural resource and natural hazard constraints that have been mapped on the land in question, and the location of the land on the edge of the proposed urban reserves, in an area where it is not needed to aid in service provision to other land, its inclusion is not justified.

Excluding this property is consistent with the analysis, as there are other properties in the urban reserves study area with similar conditions that were identified as unsuitable for urban reserves.

Examples include nearby land on the west side of Green Hill Road in the Airport South subarea, and land in the Beacon/River Loop and McKenzie subareas—all areas with a significant proliferation of floodplain primarily, and wetlands secondarily.

Silberstein asserts that their land is no different than the land around it that is included in the proposed urban reserves. However, as shown on the maps, the land proposed for urban reserves around it have some development capacity, unlike the subject property. It is for these reasons why staff recommends not changing the conclusion of the Clear Lake Suitability Analysis Report, which identifies the subject property as unsuitable for urban reserves.

3. *An attorney (Kloos) submitted a letter from a property owner (Wildish) on 10.18; a follow-up email from Wildish staff (Wood) was received on 10.21, describing their sand and gravel operation and why three of their properties within the proposed urban reserves should be excluded. (These emails are included in 3 testimony.) The map on page 6 shows the Wildish-owned property in the McKenzie Subarea, and the three subject properties outlined in light blue.*

Staff response:

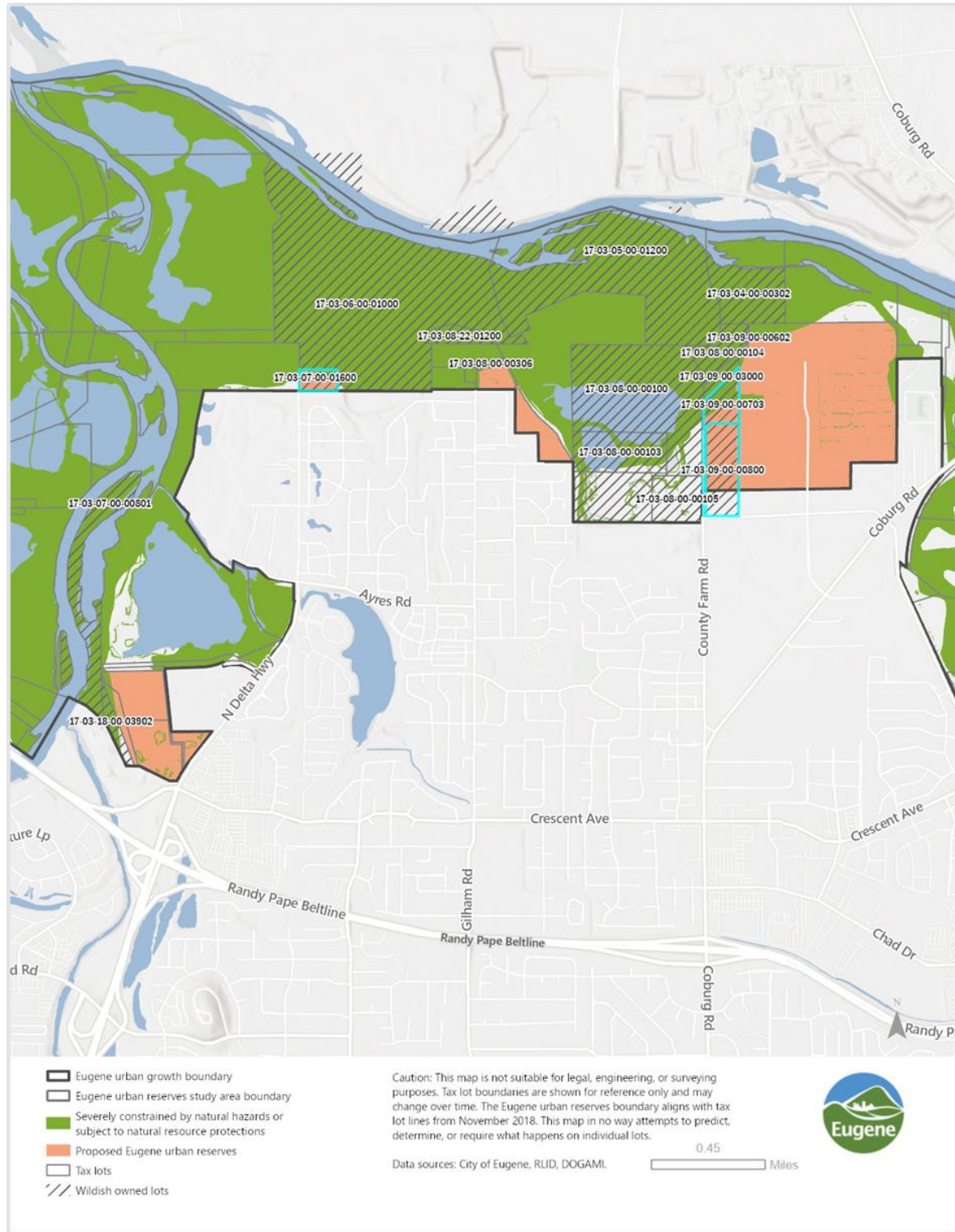
Based on the information submitted by Wildish Land Company (Wildish), staff believes the three tax lots shown on the map on the following page outlined in light blue (totaling 17.7 developable acres outside of the UGB) were analyzed incorrectly in the draft Study provided to the planning commissions. For the reasons explained here, City and County staff recommend changes in the Urban Reserves Study that result in a determination that the outlined portion of the Wildish land is not suitable for urban reserves. These changes would be primarily made in the [McKenzie Suitability Analysis Report](#) and the property would not be included in the proposed Eugene urban reserves.

In their letter, Wildish describes these properties as critical components for the ongoing active mining operation on their adjacent properties, which are part of a Department of Geology and Mineral Industries (DOGAMI) operating permit for surface mining operations. Some of the information important for this reconsideration is the fact that of their approximately 1,180 acre operation, they say in the email sent on 10.22.22 that “only about 85 acres have been fully mined in the last 50+ years ... available [sand and gravel] reserves at the site are estimated to be more than a hundred million tons with the site having a life expectancy of at least 100 years with continuous operations.” The Urban Reserves Study, as currently written, assumed that the land would be available for urban development by the end of the planning period of urban reserves.

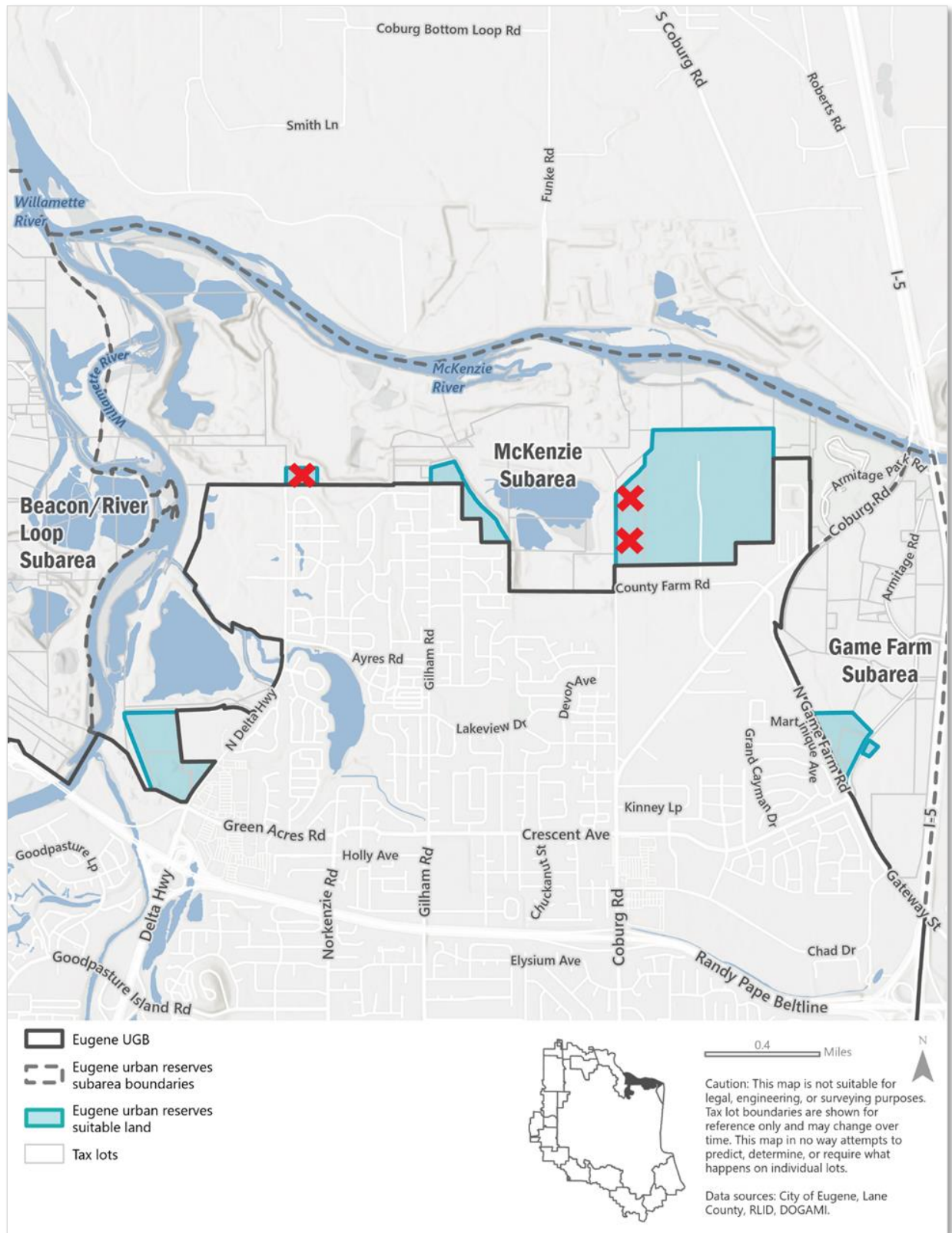
According to Wildish, tax lots 17-03-09-00-00703 and 17-03-07-00-01600 are utilized in day-to-day operations of the mine, while tax lot 17-03-09-00-00800 is currently used as a noise, dust and security buffer for the mining operations; all are part of the ongoing mining operations, which Wildish attests will be active well beyond 2059. Staff notes that all three lots have sand and gravel zoning and plan designation.

The impact of industrial sand and gravel operations such as these on adjacent neighbors can be significant, with truck traffic, noise, and dust from operations. Land dedicated as a buffer between residential neighborhoods inside the UGB and these uses outside the UGB are important for maintaining separation of uses. In this case, these lands, while small, help act as a buffer to minimize impacts to current and future neighbors as they are on the edge of the UGB between developed neighborhoods

and mining operations. Given this additional information, these lands are not suitable for future residential or employment uses by 2059, and therefore staff recommends removing the three tax lots described and shown below from the proposed urban reserves. The McKenzie Suitability Analysis Report will be revised, and the proposed urban reserves will change from 5,918 developable acres to 5,900 developable acres (rounded).



The map below shows the suitable land that would be removed from urban reserves consideration in the McKenzie Subarea.



4. *An attorney living inside the city limits (Kloos) had a variety of wetland-related questions, including how Goal 5 protected wetlands were determined, whether staff were categorizing wetlands correctly in the analysis, and how the urban reserves accounts for wetlands in its analysis (these emails are included in Batch 3 testimony).*

Staff response:

Based on this inquiry, City and County staff have identified an error in the way in which wetlands were described in the urban reserves analysis, and therefore staff propose to correct the way in which wetlands are described and shown. Specifically, in the Urban Reserves Study, on page 5, wetlands that are included on the list of land that is “severely constrained by natural hazards or designated/zoned to protect natural resources,” are described as:

- Lane County Goal 5 adopted wetlands (from the National Wetlands Inventory) or wetlands designated as protected in the West Eugene Wetlands Plan

This is the characterization that Kloos questioned. Instead, staff proposes to change the description to:

- Lane County Goal 5 adopted wetlands;
- wetlands on the National Wetlands Inventory;
- wetlands designated as protect or restore in the West Eugene Wetlands Plan

The Urban Reserves Study was incorrect in characterizing the National Wetlands Inventory (NWI) as proxy for Lane County Goal 5 wetlands. Lane County uses the NWI map to send notice to the state Division of State Lands for applicable protection measures. The only wetlands within the proposed urban reserves that can be correctly characterized as “Lane County Goal 5 adopted wetlands” are on the adopted Goal 5 map from 2004 for the area inside the Metro Plan boundary and outside the UGB.

Staff intend to update the analysis maps to ensure that the references to wetlands are corrected and that all the Lane County Goal 5 adopted wetlands, specifically those included on the map entitled “Goal 5 Wetlands for the area inside the Metro Plan Boundary and outside the UGB” adopted in 2004, are included in the urban reserves analysis. Even though these changes will not change the proposed location of urban reserves, the corrections will require fairly extensive edits throughout the urban reserves analysis, including in the technical analysis text and maps and the Urban Reserves Study text and maps. Specifically, there are two locations in the study area where additional Goal 5 protected wetlands need to be added to the suitability analysis maps – in the Airport North and McKenzie subareas. In both subareas, the “new” Goal 5 wetlands are on land already identified as unsuitable for urban reserves, and therefore do not change the proposed urban reserves, however, the mapping, description, and analysis needs to be updated to match the new data.

5. *The following is in response to Kloos’ questions related to how urban reserves treats wetlands in its analysis.*

The urban reserves analysis assumes no development capacity on identified wetlands (as described above) in the urban reserves study area; wetlands are not counted as “developable,” or relied upon as land needed for future urbanization. In some cases, land with wetlands was found unsuitable for inclusion in urban reserves. In other cases, identified wetlands are included on land in the proposed

urban reserves. The reasons for including some wetlands vary, but most often it is because wetlands do not follow lot lines. Wetlands were sometimes included because they are located on parts of larger lots that contain developable land, or on lots surrounded by developable land. Those wetlands are still not counted as “developable” land.

Kloos argues that there are many more potential wetlands on land in the proposed urban reserves that have not been identified on local, state or federal wetland maps and that, in practical terms, might not be able to be developed. Kloos argues that these lands with potential wetlands should not be counted as “developable.” This argument is the opposite of Silberstein’s (who wants to count some inventoried wetlands as “developable”). As described in the analysis, urban reserves does not assign development capacity to any land on the Study’s list of “undevelopable” land (including but not limited to wetlands) as is allowed under state law. The Study did not, and was not required to, consider whether additional land *may* include wetlands that are not identified (in the inventories discussed above). All land has trade-offs; urban reserves weighed all the factors allowable by state law to evaluate overall the best land to include, but more analysis will be done at the time of UGB expansion to further refine this analysis.

6. *Kloos also had a question about big game habitat and why the urban reserves analysis did not take this into consideration (in their 10.25.22 email included in Batch 3 testimony).*

Staff response:

The County is presently involved in addressing a remand from the Oregon Land Use Board of Appeals (LUBA) that raises questions about the protection measures that should be applied to Big Game Habitat outside of the Metro Plan boundary. These big game habitat areas cover most of the southern, southeastern and southwestern areas in and around the City and its UGB. In fact, the 1980s maps from the Oregon Department of Fish and Wildlife (ODFW) shows that “major” and “peripheral” big game habitat covers over 40 percent, or approximately 11,088 acres of the urban reserves study area (see map on the following page). Arguably, the City and County could have, pursuant to OAR 660-021-0010 and -0030, determined that these big game habitat areas are “undevelopable” and therefore not among the acres that could serve as part of the 27-year supply of urban reserves “developable” land. However, that is not the course taken in the urban reserves analysis. The County Goal 5 study that identified this habitat is more than 35 years old and ODFW’s mapping and recommendations, which are the basis for Oregon local governments’ data for Goal 5 analysis of big game habitat, have changed significantly since the County adopted its Goal 5 program for big game. For these reasons, staff does not recommend that the big game habitat identified on the County’s maps be considered “undevelopable” for purposes of urban reserves analysis.

Staff does recommend that the Urban Reserves Study be revised to include discussion of big game habitat, particularly in the suitability analysis reports where big game habitat is present. Staff recommends updating the text of the following seven Suitability Analysis Reports: West 11th/Green Hill, Crow, Bailey/Gimpl Hill, Crest/Chambers, South Willamette/Fox Hollow, Dillard, and Russel Creek. The presence of big game habitat will be noted and evaluated as part of Locational Factor 3, Environmental Consequences. This evaluation will be part of the basis for the determination of whether certain lands in the study area are unsuitable for future urban development. Due to the fact that there are significant environmental constraints that have already been taken into consideration on lands in the study area

encompassing the South Hills of Eugene, the consideration of big game habitat does not result in a change to the proposed urban reserves. As areas are considered for UGB expansion, the City and County will update the Goal 5 work related to big game habitat.

