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HAND DELIVERED

October 16, 2014

Via HAND DELIVERY
Carrie McLaren
Deputy Director
DLCD
635 Capitol St NE, STE 150
Salem or 97301-2540

DEPT OF
OCT 16 2014
LAND CONSERVATION
AND DEVELOPMENT

RE: Barkers Five/Sandy Baker Refile Consolidated Response Brief

Dear Ms. McLaren:

This firm represents Barkers Five/Sandy Baker. Per your order dated October 15, 2014, Petitioners elect your "Option 2." Accordingly, attached is a refiled consolidated response brief. As explained previously, this brief is filed under protest as we object to being prohibited from filing briefs responsive to the three briefs filed against our clients' position. This has created a situation where it is impossible to respond effectively to all three of the briefs attacking our clients. Our clients' opponents have had more than double the allowed pages to make their points. These opponents, however, were not required to file a single consolidated objection.

We wish to point out that Attachment 5 is legislative history of HB 4078 that the county and Metro had in their possession but refused to provide until yesterday in the context of the Multnomah County District Attorney's review of our public records refusal. Had they timely disclosed these materials, then the materials could have been provided in the context of the briefing schedule set in the scheduling order. However, their refusal to timely produce this information (and it was not otherwise available) means it is attached it here. This legislative history demonstrates that the position they took in their briefs on certain issues was rejected by the legislature. State statutory legislative history is always allowed to be considered in interpreting a statute including at the court of appeals, even if not a part of the record. *Byrnes v. City of Hillsboro,* 104 Or App 95 (1990). However, presumably LCDC would like to see the state legislative history regarding the apparent legislative rejection of the "best achieves" and "amount of land" arguments made by Metro and Multnomah County in their LCDC briefs. Accordingly, even though the page limits do not supply adequate time to explain the meaning of this history, I attach Exhibit 5.

Thank you for your consideration.

Very truly yours,

Wendie L. Kellington

WLK:wlk
CC: Sandy Baker and Steve Barker

PETITIONERS BARKERS FIVE, LLC REPLY TO MULTNOMAH COUNTY, METRO & CHESAREK LCDC No. A152351

Barkers Five and Sandy Baker (Petitioners) file this supplemental brief responding to the above briefs, with the county/Metro response collectively referred to as "county".

HB 4078 DOES NOT AUTHORIZE LCDC TO AFFIRM THE DECISION

The court identified two errors: a missing analysis which specifically includes petitioners' property and a "meaningful explanation" of the yield of that analysis. To invoke the "evidence clearly supports" standard of review, LCDC must find the *only* conclusion from all of the evidence in the record is that the required analysis occurred and that the *only* yield from that analysis is that the Barkers property must be rural reserve as a part of Area 9D. Multnomah County and Metro show neither. This is unsurprising because the court of appeals decided such analyses do not exist, decided that the county improperly applied the reserves factors to make Petitioners' property rural reserve in Area 9D, and the court's decision was not appealed.

The county misunderstands the remand and LCDC's scope of review. The county seeks to have *LCDC* designate Petitioners' property as rural reserve based on *LCDC's* view of the outcome of the required reserves factors analysis, performed as the court held the county was required to do, but did not. HB 4078 does not permit LCDC to weigh and balance the reserves factors. It does not permit LCDC to decide the yield of the reserves factors with respect to Petitioners' property. The purpose of the analysis is to enable the *county* to decide whether a proper analysis yields that all of the land in Area 9D including the Barkers property should be designated rural reserve. Under the "evidence clearly supports" standard of review, the questions are whether the evidence clearly supports the required analysis occurred and, after the required analysis, whether the Barkers' property

must be designated rural reserve. Both the analysis and decision are inherently discretionary exercises reserved to the local governing body. Thus, nothing permits LCDC to undertake the discretionary legal analysis and make the ultimate decision on remand, based on LCDC's judgment of the analytical results. The "evidence clearly supports" standard does not allow the reviewing tribunal to "assume the responsibilities assigned to local governments, such as the weighing of evidence." *Salo v. Oregon City*, 36 Or LUBA 415 (1999). Even if LCDC could supplant itself for the county, LCDC would have to decide that the record is without doubt that the Barkers' property can only be designated rural reserves. The record permits nothing remotely close.

First, the missing analytical exercise must be "meaningful." On this, the court of appeals quoted with approval LCDC's articulation of these legal obligations:

> "Consequently: * * * "consideration" of the factors requires that Metro and the counties (a) apply and evaluate each factor, (b) weigh and balance the factors as a whole, and (c) *meaningfully explain* why a designation as urban or rural reserves is appropriate. (Emphasis added).
> "* * * * *
> "[I]f Metro and the counties properly consider and apply the factors, the decision whether to designate land as urban reserve or rural reserve or to leave the land undesignated is left to the local government."

The court reinforced the importance of a "meaningful explanation":

> "[T]he county was obligated to *meaningfully explain* why its consideration of the factors yielded a rural reserve designation of all of the land in Area 9D. * * * [T]he county must meaningfully explain why, notwithstanding the ostensible differences, it designated all of the land in that area as it did." (Emphasis supplied.) *Barkers Five*, 261 Or App 346.

LCDC has experience with what the court requires for a "meaningful explanation." The county brief falls short. *In 1000 Friends of Oregon v. LCDC*, 260 Or App 444, 455, 458 (2014), the court of appeals remanded to LCDC, for a second time, the Woodburn UGB for a "meaningful" explanation as to "why the steps taken * * * satisfy those legal standards." In the words of the court appeals, the county brief in this case in its best light: "while lengthy,

[do] not include reasoning. [They] contain[] findings of fact ... and statements of law or policy. [They] also include[] conclusions that the facts in this case satisfy the law. [They do] not include the reasoning that led LCDC from the facts to its conclusion." 260 Or App 458.

Here, the applicable standards the court found unlawfully applied here, are so highly discretionary that it is impossible that any particular outcome from a proper analysis is required or "obvious."[1] After weighing and balancing the reserves factors in light of the evidence in the record, the county might decide Barkers should have no designation, an urban reserves designation or a rural reserves designation. (*Compare* Mult Rec 914, 1159 (no designation) 1159e and Exh 2 (urban reserve), MC 1917e (CAC split regarding Area 6). No decision *necessarily* flows from the record.

The county wholly ignores the Barkers' property, instead pointing to generalizations that the north and south parts of Area 9D *could* potentially be designated rural reserve. They ignore that a lawful "consideration of the factors" means:

> "* * * *to the extent that a property owner challenges the inclusion of his or her property within a designated area, the local government is obligated to have explained why its consideration of the factors yields, as to the totality of the designated land, a result that includes that property*."[2] (Emphasis supplied.) 261 Or App 343.

The county cites nothing about the characteristics of the Barkers' property and indeed they don't even identify where it is. The only specific information about the Barkers property was provided by Barkers Five and it explains the property is *not* properly designated rural

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[1] In this regard, contrary to the county brief, the reserves factors are standards. *Barkers,* 261 Or App 341.

[2] The court further explained: "The gravamen of those challenges is that Metro and the counties inadequately considered the reserve factors with regard to the land that was actually designated as either urban or rural reserves. Resolution of those challenges requires an examination of the adequacy of the local government's consideration of the factors *as to the 'land' that was ultimately designated under the standards described above*." (Emphasis supplied.) 261 Or App 305.

reserve. *See* Exhibit 1. The evidence is, at a minimum, conflicting and conflicting evidence is not evidence that "clearly supports" anything. Certainly, the county's evidence does not lead to a conclusion the Barkers' property, or indeed all or any of the land in the southern part of Area 9D, must only be designated rural reserves. In fact, as noted, the county recommended it be either rural or urban reserve. Exh 2.

The county ignores that the issue is the "propriety of the designation of [Barker] property and not * * * the propriety of composition of the study area of which it was a part." 261 Or App 341. They ignore that the court held the error is the Barker property "was improperly designated rural reserve solely because of its inclusion within Area 9D". They ignore the *required but missing* analysis is that the county failed to "conside[r] the reserves factors with regard to the land that it actually designated as rural reserves." *Id.*

The county requests LCDC *remake* the Area 9D reserves decision and designate all of Area 9D rural reserves on a claim that it is "obvious" Area 9D meets the "Farm and Forest Factors" (Mult Br. 13-15). Area 9D was not designated rural reserve on this basis by either the county or Metro governing bodies.[3] *Barkers Five*, 261 Or App 345. To take this action, LCDC must decide the decision is "right for the wrong reason." The "evidence clearly supports" standard of review does not authorize LCDC to remake the county decision; rather LCDC is only authorized to review the decision before it. *West Coast Media LLC v. City of Gladstone*, 192 Or App 102, 109-110) (2004).

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[3] There is no claim in any brief that the challenged decision should be wholly remade to apply the "safe harbor" in OAR 660-027-0060(4). Therefore, Barkers do not address such a claim. We note, however, that Barkers Five did preserve the right to challenge any such argument and the court of appeals specifically stated it did not address this issue. To the extent such an issue comes up on remand, Barkers relies on, and incorporates, its appellate opening brief on this topic by this reference.

The county also claims evidence in the record "clearly supports" that all of Area 9D must be designated rural reserve on natural resource bases. They claim the record shows the county "acknowledged the dissimilarities" between "the northern and southern halves of Areas 9D" and that generalized, equivocal, abbreviated conclusions of the CAC are an adequate substitute for the analysis of all the factors as they pertain to all the land in Area 9D, including Barkers. They are wrong. The county brief merely rehashes arguments rejected by the court of appeals. *Comp* Mult Co. Court Op Br. *to* 261 Or App 338-347.

The court of appeals did not limit its remand for the county to simply show it knew there were dissimilarities in the north and south of Area 9D. The court remanded because of the failure of the county decision to meaningfully "explain why its consideration of rural reserves factors yields a rural reserve designation of all land in Area 9D," which includes the Barker property. 261 Or App 345. Further, the court's "conjunctive observation" of dissimilar areas was an example that "suffice[d] to explain why that is so." Nothing suggests the "conjunctive observation" of analytical defects was the only analytical defect.

The county opening brief to the court of appeals admitted the decision it seeks from LCDC on a "clearly supported" pitch is unavailing, arguing: "it is highly unlikely that any two separate study areas would appear to be similarly situated after the consideration and application of some 23 reserve factors." Mult Op Br p 33. In fact, the sum total of the county claim of the required "meaningful analysis" is citation to general evidence (1) that the "northern half" of Area 9D is forested and subject to little risk of urbanization, and (2) the "southern half" is "primarily farm area", is "mapped 'important farmland' with limitations but "good integrity overall", and "edges compatible to farming", (3) that the southern half "contains stream features of Abbey Creek mainstream, north fork and headwaters areas that are mapped as important regional resources and that separate urban

from rural lands", (4) the southern half is subject to a risk of urbanization and has "some important upland habitat areas of less value than in the north. Mult Co. Br at 12; *see also* 15-18. These are not responsive to the court's remand or all the reserves factors; the evidence is conflicting on these topics, and is far from a meaningful explanation that a particular result is "obvious." *Barkers Five*, 261 Or 345-346.

Even if LCDC speculation could supplant the required local analysis, it is not "obvious" that a rural reserve designation is required on farm or forestry bases. Barkers property and much of the immediate area does not have irrigation and has significant groundwater limitations. ER-19, 5, 1-2, Rec-Item-21 580, 604; MultRec-1732, Rec-Tr-Vol.11, 143-144. The Barkers property is in an area "south of the power line" which the ODA report explains does not have "good integrity" for agriculture. Mult Rec. 46. The Barkers' property is zoned EFU and a rural reserve designation is not required to protect agriculture or agricultural values on EFU zoned land:

> "Undesignated EFU areas continue to be planned and zoned for exclusive farm use, in compliance with Goal 3. There is nothing in Goal 3 that requires Applicable statutory and rule provisions to be interpreted to require rural reserve designation of lands that could qualify under the rural reserve factors." Order 104

The "southern half" is "more parcelized" than the "northern half". Exh 3, Mult Rec. 46 ("This area is almost completely surrounded by the [UGB] and rural residential exception lands.") *See also* Mult Rec.349. The evidence is that small parcels were not considered suitable to support long term agricultural operations. Mult Rec.29, 280, 351; *see* 250. There is no "obvious" way to conclude OAR 660-027-0060(2)(b) (c) or (d) are met. Please keep in mind that the court of appeals' remand was for "further action consistent with the principles expressed in this opinion." 261 Or App 265. There is nothing "consistent with the principles" expressed in that decision for LCDC to speculate about how the county and Metro would analyze the factors under a correct analysis or what it would decide.

Similarly, it is not obvious that "consideration of the pertinent factors yields a designation of all the land in Area 9D – including Barkers' property – as rural reserve" on the natural reserves basis either. Much of the "evidence" the county cites is equivocal; various factors have low or medium rural reserves suitability and similarly many urban reserves factors had medium suitability. Further, the Barkers evidence at Exhibit 1 undermines the county's evidence. Petitioners' property is two (2) miles from Forest Park. LCDC Tr-Vol II, 144; MultCo-Vol.1, 289. It is in the foothills and flats, not in the Tualatin Mountains. ER-2; Transcript-Vol II, 144. Its slopes are between 3-20%. ER-7, 19; Rec-Item-21 582, 604. Petitioners' property is not "steep" as the region used slopes of 25% or less as the benchmark for developable non-industrial lands. JER-878; Rec Vol.1 386, 403, 685; Vol.2, 76, 78, 97, 104, 119; Rec-Vol.14, 8245. Petitioners' property has no buttes, bluffs, islands or extensive wetlands. ER-10, Rec-Item-21-585.

The county's citation to Abbey Cr. or its "riparian" features is also unavailing, Abbey Cr. and its riparian features are already in the UGB and its related features have already been relied on by Metro to justify including them in the North Bethany UGB expansion. Rec-Transcript-Vol.II-144; *See* ER-7; Rec-Item-21, 585; ER-10, Rec-Item-21, 585; Mult Rec 2748, 2754 ("The inclusion of all of areas 84-87 allows Abby (sic) Creek and the adjoining riparian zone to form a natural buffer separating the Bethany area from the resource land and existing rural neighborhoods to the north, and it utilizes the power lines and also the Multnomah County line as clear demarcations along the expansion area's eastern border.") There is nothing obvious that Barkers land or any part of Area 9D is justified as rural reserve where those same features that served to justify the UGB as a buffer.[4] There is certainly no "meaningful explanation" of why this would be the case. Further, the evidence

[4] As far as Barkers can tell, the Abbey Cr. Headwaters are nowhere near their property.

relied on by the county discusses Metro's February 2007 "Natural Landscape Features Inventory" mapping (the only basis for a natural reserves rural reserves designation in the local decision) and explains "These maps do not include a large patch in the Kaiser Rd. area, nor a smaller patch east of Abbey Creek north fork as important regional habitat." Mult Rec. 2996. Ostensibly this is petitioners' property and the evidence is clear that it is not included on the Metro natural features mapping. The "sense of place" rationale on its own per the court was inadequate to meaningfully explain why all of Area 9D including the Barker property must be designated rural reserve under *all* the factors. It is impossible to conclude that the *only* outcome the evidence supports is that the Barker property be rural reserve.

Further, the county's analysis was not "obviously" limited to the north and south of the Skyline/Cornelius Pass intersection at all. The evidence is undisputed that different areas were analyzed differently and that the court required analytical tie is absent. *See* Exh 4. For example, the county evaluated "800 acres" included the Barkers property as analytically distinct. Mult Rec 1887, 2658. Area 6 (including the Barkers property) was analyzed with Area 7b. Mult Rec 2565. The county used power line corridors in Area 6 and 7 as a break point, but there is confusion in the record about what power corridors were analyzed, the county citing a lack of time. Mult Rec. 349; *see* Exh 4. Barkers property is south and east of one power line corridor, west of another one and some of the Barkers property is south of Germantown Rd. Mult Rec. ER-24; Rec-MultCo-Vol-1, 699; -697. All of Barkers' property was nevertheless erroneously mapped as Area 6b. Mult Rec. 2656 (explaining Area 6 is divided from Area 7 "to the south by a power line corridor" and that Area 7 "*adjacent to N. Bethany*" ranked low under the rural reserves factors). Mult Rec. 2594. The Barkers property is adjacent to N. Bethany. Accordingly, the Barkers property meets the description of "Area 7" which staff ranked as "low" for natural resource features. Mult Rec. 2594. Yet,

Area 9D emerged from Area 6a and 6b, not Area 7. The evidence is that the Barkers property in Area 6b is "west of Abbey Cr" (Mult Rec. 2594) and was given "Medium/Low" suitability for urban reserves. Mult Rec. 2594. It "ranked 'high' efficiency for water, and includes area with both high and low efficiency for sewer service." Mult Rec 2565. As noted in Barkers' initial LCDC brief, sewers and wells are failing in this area and there are still 80 undeveloped lots capable of being developed with rural residences.

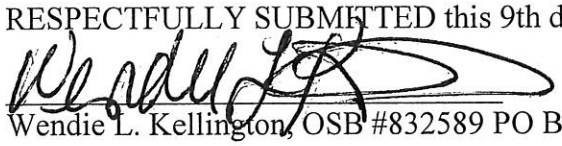
The point is there is no coherent explanation, let alone one that is "obvious," that the reserves factors were applied to all the land in Area 9D, dissimilarities acknowledged nor any analysis at all regarding the characteristics of the Barkers property. The county's evidence does not obviously explain anything.

LCDC may determine that the effect of the errors identified by the court significantly undermine and delay final designation of reserves "in their entirety." LCDC can order the County to remove the Barkers' property from Area 9D, and to leave the Barkers property undesignated. OAR 660-025-0160(7)(c).

Or, LCDC's may acknowledge the county's incorrect analysis affects the Multnomah County reserves "in their entirety" and remand for a new decision based on the proper application of the law. Such would direct the county to decide the reserves designation "on balance best achieves" the particular identified objectives of the reserves rules. OAR 660-027-005(2). The analysis required under the second option must consider the change to the regional balance of reserves following HB 4078 to determine what designation of Area 9D on balance best achieves specific reserves' purposes described in OAR 660-027-005(2). County/Metro is wrong that HB 4078 repealed or preempts the "best achieves" standard. The legislature rejected the county/Metro position as the leg. hist. shows. Ex. 5. It is a well-established statutory interpretation rule that repeal is not to be inferred in any case.

Finally, Chesarek's brief should be stricken. Her 18 page single spaced brief, if double-spaced would well exceed the 25-page limit identified in the Scheduling Order. The Order states that a brief is not "acceptable" if it exceeds that limit. In the alternative, LCDC's review is limited to the record. OAR 660-003-0050(5); OAR 660-025-0085. Chesarek's claim that the CAC "never had time to give a lot of consideration" to the designation of the area in question, "even when developing [their] final recommendations" is not in the record. To the extent there is any such evidence, her arguments that the county failed to adequately evaluate the rural reserve factors was precisely the court of appeals' point and supports remand. Her claim "* * * only the part of Area 9D which is south of Skyline will be visible" is not in the record. Her claims about the intentions of participants, are not in the record. Her claims that the factor analysis continued to evolve is not in the record. Her claim that the natural resources inventory used for designating reserves continually changed, is not in the record. The latter is contrary to OAR 660-027-0060(3) requiring consideration of "those areas identified in Metro's February 2007 "Natural Landscape Features Inventory * * *." This 2007 Metro inventory may not be ignored for updated versions without amending the reserves rules. In fact, the evidence in the record is that the local governments relied exclusively on the Metro Landscape Features Inventory for designating rural reserves on the natural reserves basis. LCDC Order 116, 117, 122, 123, 125, 134, 296; 261 Or App 267-268, 345, 350-351. Her claim that "steep slope hazards exist in area 9D both north and south of Skyline, and the wildlife corridor includes both sides of the mountains" are not an "obvious" "meaningful explanation and, at a minimum, the evidence is conflicting in any case.

RESPECTFULLY SUBMITTED this 9th day of October, 2014 (nun pro tunc).



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(503 636-0069) wk@wkellington.com *Attorney for Petitioners Barkers Five/Sandy Baker*

Metro Land Use Meeting

January 20; Wednesday.

Commissioners

Thank you for hearing my testimony.

I am Sandy Baker…maiden name is Barker. Along with my 4 siblings we are 4th generation owners of 62 acres that sits just inside west Multnomah county, abutting Washington County and the current UGB.

The maps I have presented identifies my property and the suggested area.

I am advocating this area, the most southern area in 9D, be reconsidered as Urban Reserve or the very least undesignated.

The reasons are tied to the very FACTORS of SB 1011.

- PROXIMITY… abuts the current UGB. This is not just available land for the future, but a very committed plan designed for up to 15,000 people.
- Obvious Future infrastructure (the north Bethany expansion).
-
- Buildable
- Connectivity
- It's walkable.. with 2 future schools close to us.
- Can be designed to preserve and enhance natural ecological systems:
- Potential park access…we have 2 creeks on the lower parcel which would provide a valuable parkway and wildlife protection in this area, if urban.
- Transportation issues: Traffic on Kaiser and Germantown roads …are already an issue

- This area is NOT foundation land.
- This area does not have irrigation rights. Which means we cannot sustain fair farming practices as in Washington co abutting us. We cannot participate in the CSA program. There is also the threat of an aquifer problem in this very area. Residents to the east have made this very clear.
- There is a large development above us along Skyline, future North Bethany south and rural residential to the east.
- There is the devaluation of property.

With this foresight of tremendous growth (north Bethany) bordering this area, you can logically plan a head to avoid problems and utilize the potential parkways, protection of streams and wildlife corridors.

Towards the end of the Mult CAC process there was a change in factor interpretations… we were subjected to the safe harbor factor in 0060 (4) which qualifies using the ODA map as rural reserve without justification. This is wrong. And does not need to be used.

This OGA line dividing important and conflicted land is an arbitrary line. How can half of this residential area be considered important and the other conflicted.

For the most part during this process, this finger of land was considered urban reserve.

Finally, I attended the Multnomah Co CAC meetings beginning in Oct 2008. It was my observation that the process was dominated by a particular CAC member with a hidden agenda that appeared to be, NO URBAN RESERVES in this part of Multnomah co (Westside)… this individual lives just east of my property on a small parcel less than 2 and a half acres on Germantown road. And, along with others, has been campaigning for many years in preparation to lock this area out from any urban consideration.

In response to a public record request, we received email communication which indicates a biased agenda that stained the process. The majority of material presented during this process, especially by this individual, dominated, manipulated, and was prejudice. This contradicts the proposed SB 1011.

This binder is the communication supporting my observations. This was a flawed process.

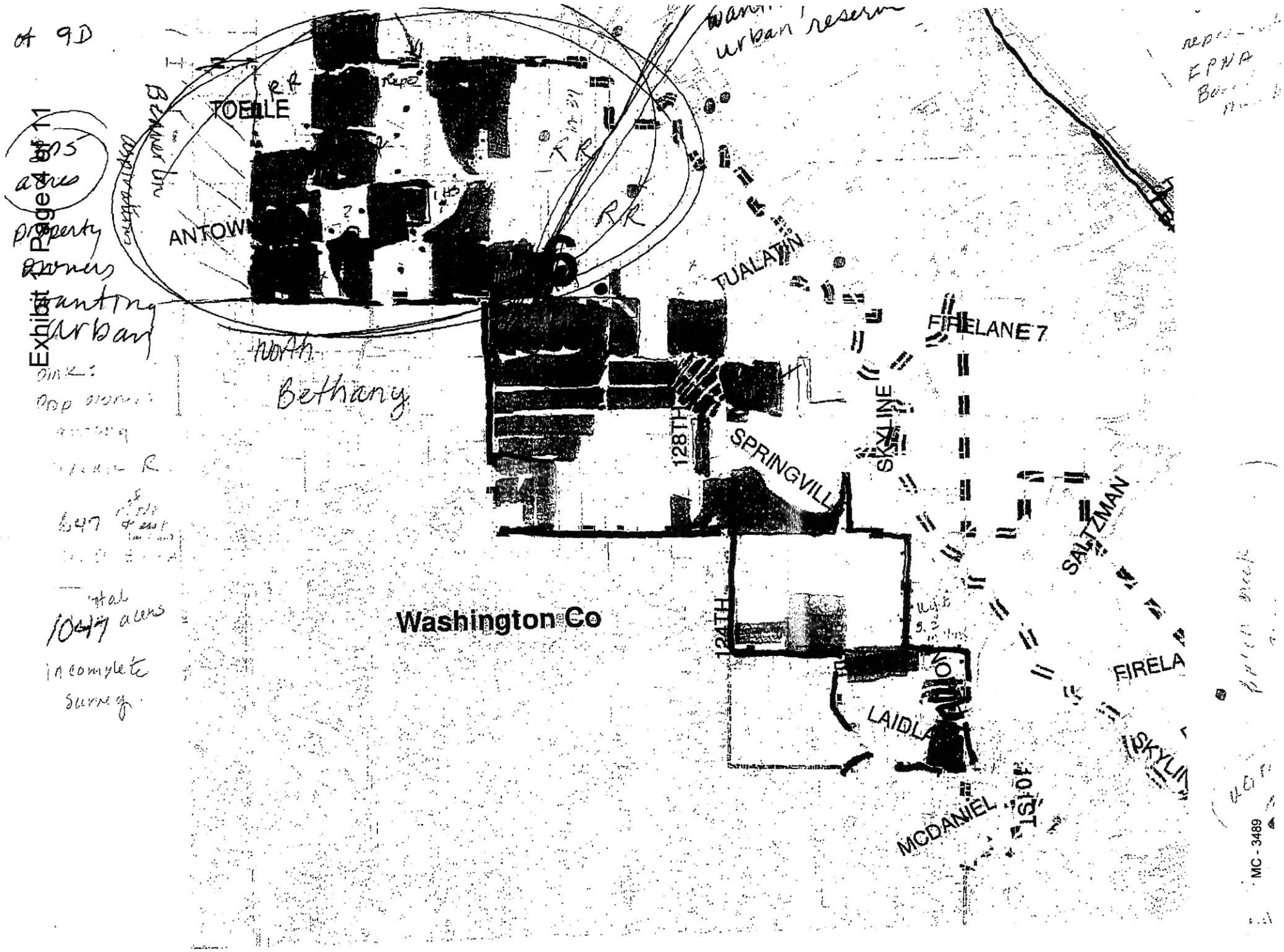
I am not a developer, I do not have a developer. I am a property owner who wants a fair and logical designation.

Thank you.

Sandy Baker

Personal note: we were born and raised on this property but were denied the right to build and raise our families due to the continued land use regulations. It has been in the family for 105 and used as pasture land only…our parents owned a bakery to support the family. We were a measure 37 and now a measure 49.

Exhibit 1 Page 4 of 11



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December 16, 2009

Via facsimile, electronic mail and US Mail

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Dear Commissioners Brian, Lehan and Cogen, and Councilor Harrington:

We represent the Barker family with regards to their real property located within the southern portion of Map Area 6b of the Multnomah County Candidate Area Maps: Potential Urban and Rural Reserve Areas (the "Property") and which is currently being considered for designation as either "Urban Reserve" or "Rural Reserve." *See* attached map. This letter sets forth our clients' concerns as to the propriety of the Multnomah County Citizen Advisory Committee's ("MCAC") recommendation that the Property be designated as Rural Reserve and explains why the Property is best suited to be designated as Urban Reserve, or to be left with no designation at all. We urge you to consider the issues raised in this letter prior to making your determination.

1. **<u>The Property clearly meets the applicable factors for designation as Urban Reserve set forth in OAR 660-027-0050</u>**

In recommending that the Property be designated as Rural Reserve, the MCAC engaged in an outcome determinative process with the largely unconcealed goal of designating the Property as Rural Reserve. Contrary to this conclusion, the Property is perfectly suited to be designated as Urban Reserve. This determination is supported not only by the Property's characteristics, but also by a casual review of applicable maps which reveal that the entirety of the Property, except for a small area separating the northern portion of Map Area 6b from the southern portion is surrounded either by the edge of the Urban Growth Boundary (specifically the North Bethany expansion to the south), or areas that are currently developed as rural residential or recommended to be Urban Reserve. Given its location, there is no logical reason why the Property should be designated as Rural Reserve. Moreover, as discussed below, the Property clearly meets the

applicable factors for designation as Urban Reserve set forth in OAR 660-027-0050 which requires that Metro "shall base its decision" on the designation of applicable property on consideration of these factors.

(1) Can the Property be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments?

YES - The North Bethany expansion is located immediately to the south of the Property, which expansion will include substantial infrastructure development, new schools, etc. The Property is fully accessible on several sides as it is unencumbered by power lines, existing structures, and roadways. Additionally, the Property has excellent park access at both its upper and lower portions, and its slopes are suitable for development ranging from 3% to 20%, with a mid-range of 10% to 12% slope.

(2) Does the Property have sufficient development capacity to support a healthy economy?

YES - The answer to (1), above, and several of the answers below support this conclusion. Specifically, the vast majority of the Property has more than sufficient capacity for development and will complement and support the North Bethany expansion.

(3) Can the Property be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers?

YES - The Property abuts the Urban Growth Boundary, including the North Bethany expansion, which will include urban-level facilities and services, as well as at least two public schools which will be built within walking distance from much of the Property.

(4) Can the Property be designed to be walkable and served with a well-connected systems of streets, bikeways, recreation trails, and public transit by appropriate services providers?

YES - Again, the property abuts the North Bethany expansion. Also, it is walkable and will be served both internally (upon development) and externally, via the surrounding neighborhoods, with a well-connected systems of streets,

bikeways, recreation trails and public transit.

(5) Can the Property be designed to preserve and enhance natural ecological systems?

YES - There are two creeks on the lower portion of the Property owned by our clients which is not only buildable, but would be a tremendous parkway to serve all of the surrounding neighborhoods.

(6) Does the Property include sufficient land suitable for a range of needed housing types?

YES - As noted above, nearly the entire Property is suitable for development and the Property's characteristics are such that it is perfectly suitable for any needed housing type.

(7) Can the Property be developed in a way that preserves important natural landscape features included in urban reserves?

YES - The Property can easily be developed in a way to preserve natural landscape features included in Urban Reserve. It should be noted that the Property is actually better suited for development in this manner than the North Bethany expansion given its characteristics.

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

YES - As noted above, the Property is almost entirely surrounded by development and property that will be designated as Urban Reserve. There is no foundation agricultural property abutting, or even nearby, the Property. The Property easily meets this factor.

The answers to each of the questions above, which clearly support an Urban Reserve designation for the Property, have been documented in the public record and presented to the MCAC, which has simply ignored this information. The following section of this letter addresses each of the Rural Reserve factors and shows, equally clearly, that the Property is simply not suited to be designated as Rural Reserve.

2. **The Property clearly does not meet the applicable factors for designation as Rural Reserve set forth in OAR 660-027-0060**

The factors to be considered for designation of property as Rural Reserve are set forth in OAR 660-027-0060(2) and (3). Inasmuch as the Property plainly is not suitable to "provide long-term protection to the agricultural industry or forest industry" due to its location abutting existing residential development and future large-scale development, the following will address only the factors set forth in OAR 660-027-0060(3)(b) - (h) pertaining to land intended to "protect important natural landscape features."

(b) Is the Property subject to natural disasters or hazards such as floodplains, steep slopes, and areas subject to landslides?

NO - The Property is not subject to natural disasters or hazards (certainly not more than surrounding areas), has no steep slopes and is not subject to landslides. While there is a small floodplain toward the lower portion of the Property, this area is well-suited to serve as a parkway or other undeveloped recreational area in support of surrounding development, including the North Bethany expansion. Moreover, it should be noted that the steepest slope in the area is actually located inside the North Bethany expansion to the south of the Property.

(c) Is the Property important fish, plant or wildlife habitat?

NO - While we are hesitant to consider any property as not being important to fish, plant or wildlife habitat, it simply must be noted that this Property is no different in this respect than the surrounding properties that have been allowed to be developed for residential purposes and that will be developed under the North Bethany expansion. To answer this question in the affirmative is not only unfair, but is completely self-serving to those owners of surrounding properties who have been allowed to develop their own property and want to deny the same right to neighboring property owners such as the owners of the Property.

(d) Is the Property necessary to protect water quality or water quantity, such as streams, wetlands and riparian area?

NO - First, this Property is no different than surrounding properties upon which small creeks flow, including property inside the UGB. Moreover, Sec overlays have been removed from the Property allowing for additional areas to be developed within the Property. In short, the Property is not necessary to protect

water quality or quantity.

(e) Does the Property provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands?

NO - As noted throughout this letter, the Property is virtually indistinguishable from surrounding property that is within the Urban Growth Boundary, is residentially developed, and that will be designated as Urban Reserve. More specifically, the Property contains no buttes, bluffs, islands or extensive wetlands. in fact, the nearest "butte" is located inside the Urban Growth Boundary in the North Bethany expansion to the south.

(f) Can the Property serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses?

NO - As noted above, the nearest butte is located to the south of the Property inside the North Bethany expansion, and nothing located on the Property is suitable to serve as a natural boundary or buffer. In fact, a designation as Rural Reserve will be a completely arbitrary buffer and will in no way serve to reduce conflicts between urban and rural uses given that the Property is almost entirely surrounded by currently developed property, the North Bethany expansion, and property to be designated as Urban Reserve.

(g) Does the Property provide for separation between cities?

NO.

(h) Does the Property provide easy access to recreational opportunities in rural areas, such as rural trails and parks.

NO. In fact, the exact opposite is true. The Property provides easy access to recreational opportunities in urban areas, such as Forest Park and the North Bethany expansion. Arguments to the contrary simply ignore the geographic reality of the area.

As is evident from review of these factors, the Property is simply not suitable to be designated as Rural Reserve. Again, each of these answers can be, and was, fully documented and is in the public record having been presented to the MCAC.

3. **The MCAC recommendation to designate the Property as Rural Reserve serves the personal interests of MCAC members and is not supported by the evidence in the record.**

The MCAC recommendation to designate the Property as Rural Reserve must not be accepted. As noted above, the Property meets each and every factor that must be considered by Metro to designate the Property as Urban Reserve, and does not meet any factor to be considered by Metro to designate the Property as Rural Reserve. A review of the actual recommendation for the Property by the MCAC, quoted below for your ease of reference, supports these conclusions:

> West Hills South – Map Areas 6a and 6b: Designate this area as rural reserve. The area north of Skyline (6a) is important agricultural (forest) land, continues the landscape feature/wildlife corridor from area 5 into Forest Park, and ranks high on the sense of place factor. The area from Skyline Blvd. south to Germantown Rd., is also important agricultural land, and includes landscape features that form urban – rural edges along the south, east, and northwest borders of this area. These are the Abbey Creek drainage, the Powerlines right-of-way, and the Rock Creek drainage. While this area contains approximately 800 acres of land with moderately low suitability for urban use, the area also qualifies for rural reserve designation as important agricultural land within 3 miles of the UGB. The urban deficiencies in this area are important – lack of governance, transportation system costs, etc., indicating that rural reserve is the better designation.

This recommendation is rife with unsupported and subjective conclusory statements. For example, the recommendation states that the Property is of "moderately low suitability for urban use." As noted above this is simply false, particularly in light of the irrefutable fact that the Property is surrounded nearly entirely by developed property, the Urban Growth Boundary, and property that will be designated as Urban Reserve.

Another example is the statement that the "area qualifies for rural reserve designation as important agricultural land..." Again, as the recommendation relates to the Property, this statement is false. The property immediately adjacent to the Property is not agricultural property.[1] Finally, to state that the Property has "urban deficiencies" ignores the location of the Property next to the North Bethany expansion which will bring substantial improvements to the

---

[1]In fact, the property immediately to the west of the Property is recommended to remain un-designated, which recommendation was made by the MCAC and staff in direct opposition to a directive by Nora Curtis, of Washington County Clean Water Services, who indicated that the map upon which the recommendation relied was not to be used for such purposes.

infrastructure, as well as the residential development to the east of the Property.

While we can only speculate as to the specific reasons why the MCAC ignored the volumes of information presented to them, our review of public records produced by the MCAC reveals an outcome driven process led and manipulated by the Chair of the MCAC who owns property immediately to the east of the Property. Simply stated, designating the Property as Rural Reserve will provide the Chair, and her neighbors, with their own personal buffer between the North Bethany expansion and other property to be designated as Urban Reserve, despite the clear evidence contradicting a Rural Reserve designation. The manipulation of this process directly contradicts the direction to, and agreement by, MCAC members to "participate in a way that reflects a broad and balanced range of community interests rather than individual views."

As you prepare to make your recommendation as to which property to designate as Urban Reserve and Rural Reserve, we respectfully request that you consider the contents of this letter as it relates to designation of the Property, and also consider the devastating impact that a Rural Reserve designation will have on all property owners who own such property. As noted above, even a casual glance at the map shows very clearly that the Property is not in any way suited to be designated as Rural Reserve.

In the event that the Property is ultimately designated as Rural Reserve, and in light of the skewed process undertaken by the MCAC and public records reviewed relating to that process, our clients are prepared to consider all legal options and remedies available to them under state and federal law.

Sincerely,

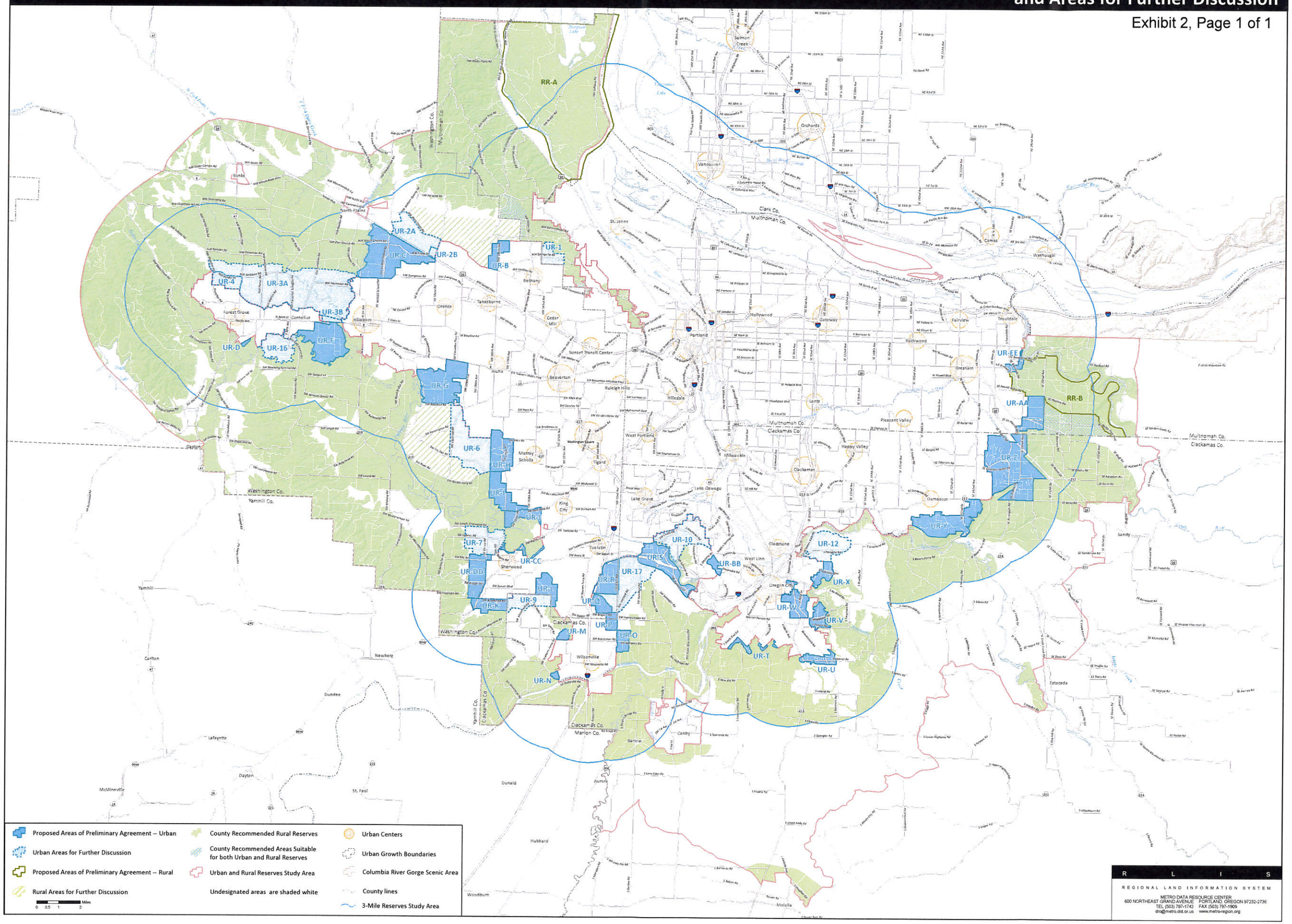
Matthew D. Lowe

/mdl
Enclosure
cc: Metro Council (*via electronic transmission*)
Clients (*via electronic transmission*)

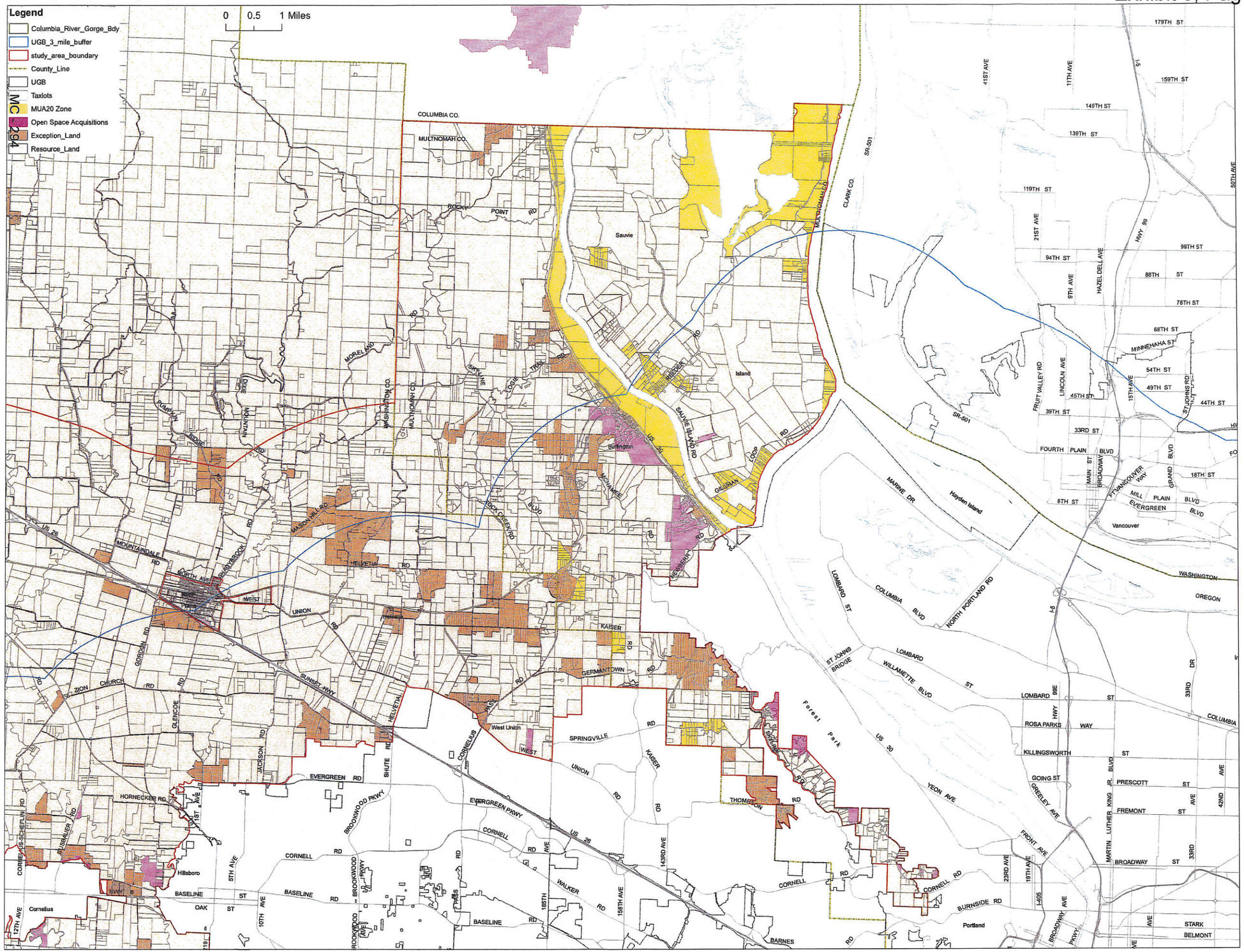
G:\Clients.O&C\4-MOD\Barker's Five, LLC\Urban-Rural Reserve Matter\Core 4 letter 12-16-09 #2.wpd

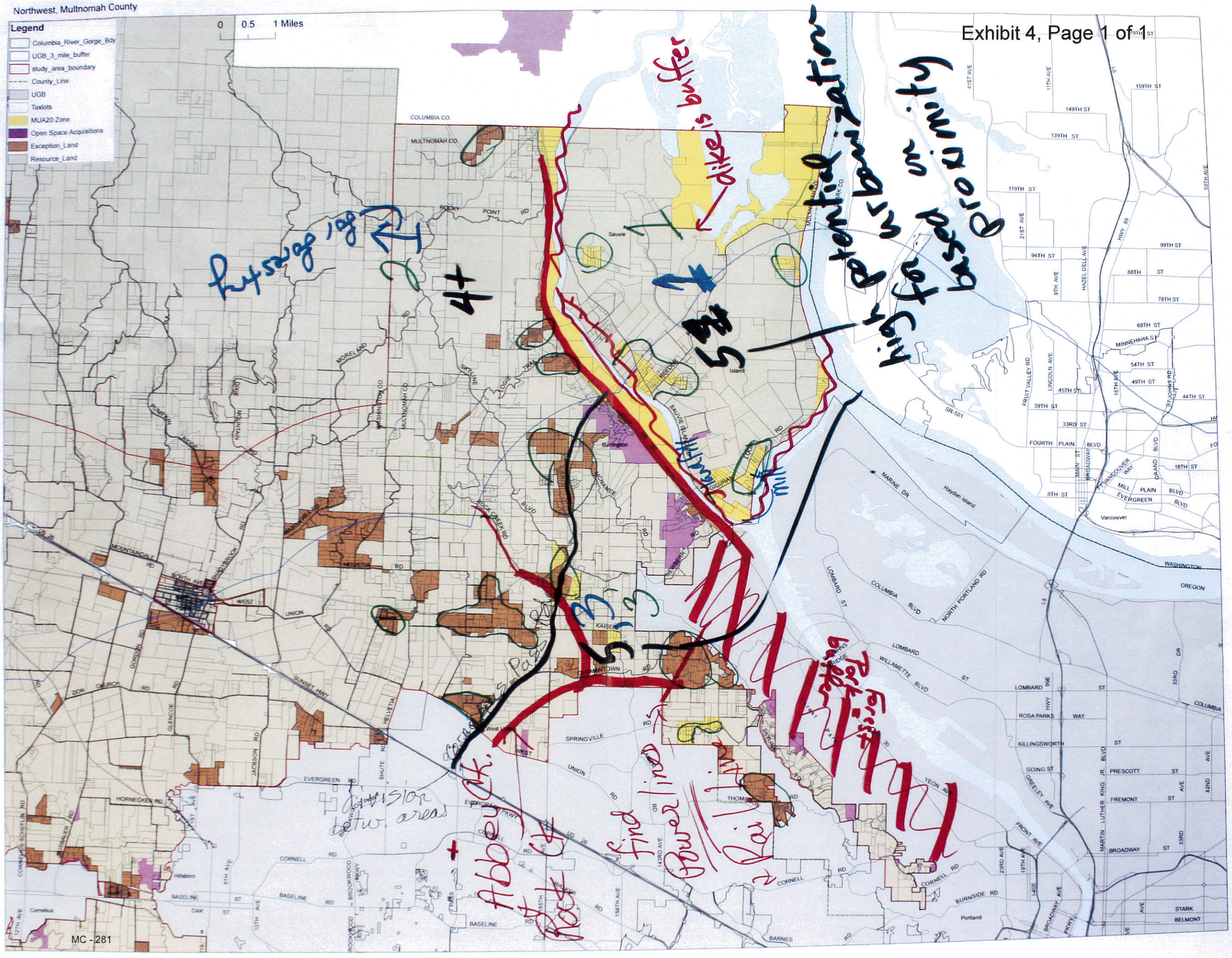
12/03/09

Core 4 Proposed Areas of Preliminary Agreement
and Areas for Further Discussion



Northwest, Multnomah County




Northwest, Multnomah County
Legend
Columbia_River_Gorge_Bdy
UGB_3_mile_buffer
study_area_boundary
County_Line
UGB
Taxlots
MUA20 Zone
Open Space Acquisitions
Exception_Land
Resource_Land
0 0.5 1 Miles
COLUMBIA CO.
MULTNOMAH CO.
Sauvie
Island
Burlington
Hayden Island
Vancouver
Portland
Hillsboro
Cornelius
dike is buffer
high potential urbanization for based on proximity
Forest Park buffer
Abbeyck
find power line
Rail line
division btw. areas
4+
5
MC - 281

Unknown

From: Claudia Black [claudia.black@multco.us]
Sent: Tuesday, February 25, 2014 11:45 AM
To: TOMKINS Jed
Cc: SCHILLING Karen; BOGUE Emerald
Subject: Fwd: Land Use Admendments
Attachments: 20140225 - hb4078 12.doc; ATT01029.htm

From Rep. Unger.

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** "Rep Unger" <rep.benunger@state.or.us>
> **Date:** February 25, 2014, 11:41:23 AM PST
> **To:** "clyons@clackamas.us" <clyons@clackamas.us>, "claudia.black@multco.us" <claudia.black@multco.us>
> **Subject: Land Use Admendments**
>
> This is Lisa, Rep. Unger's LA. He wanted me to send these amendments to you. Please let me know if you have any questions or input.
>
> Thanks,
>
> Lisa Herzog

Unknown

From: michelle.plambeck@multco.us on behalf of District 3 [district3@multco.us]
Sent: Wednesday, February 26, 2014 9:21 AM
To: Judy SHIPRACK; Adam RENON
Subject: Fwd: Draft amendments to land use legislation
Attachments: ATT00001.htm; 20140225 - hb4078 12.doc

---------- Forwarded message ----------
From: **Rep Lininger** <rep.annlininger@state.or.us>
Date: Tue, Feb 25, 2014 at 1:45 PM
Subject: Draft amendments to land use legislation
To: "jbernard@co.clackamas.or.us" <jbernard@co.clackamas.or.us>, "psavas@co.clackamas.or.us" <psavas@co.clackamas.or.us>, "gschmidt@clackamas.us" <gschmidt@clackamas.us>, "smadkour@co.clackamas.or.us" <smadkour@co.clackamas.or.us>, "dchandler@co.clackamas.or.us" <dchandler@co.clackamas.or.us>, "district3@multco.us" <district3@multco.us>, "claudia.black@multco.us" <claudia.black@multco.us>

Here are draft amendments to the legislation that Rep. Clem has been leading the effort to develop. Wanted to keep you in the loop. Thanks. Ann

---

From: Rep Clem
Sent: Tuesday, February 25, 2014 11:22 AM
To: Shaun Jillions; Randy Tucker; Dave Hunnicut <dave@oia.org>; Jon Chandler; Jason Miner; Mary Kyle McCurdy; jjohnson@oda.state.or.us; Chris Crean; Rep Unger; Rep Davis; WHITMAN Richard M * GOV; Bruce.C.MILLER@ojd.state.or.us; Ann lininger; Rep Lininger; christy@olcv.org
Subject: Fwd: My Thoughts

First shot at amendments. Please review ASAP and forward to anyone you don't see on the list that needs it.

BC

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

Begin forwarded message:

> **From:** Reiley Beth <ReileyB@leg.state.or.us>
> **Date:** February 25, 2014 at 11:14:30 AM PST
> **To:** Rep Clem <ClemB@leg.state.or.us>
> **Subject: FW: My Thoughts**
>
> Here is Harrison's draft. He is sending it to pubs now so let me know if you want changes.

Beth Reiley

503.986.1755

From: Conley Harrison
Sent: Tuesday, February 25, 2014 11:14 AM
To: Jim Johnson; Reiley Beth
Subject: RE: My Thoughts

This includes Mary Kyle McCurdy's issue at section 3 (5). I also fielded a call from Roger with Metro who is emailing another nit that is not yet in the draft.

As noted, the structure of section 3 is: Sub (1) confirms rural reserves plus changes; sub (2) confirms urban reserve changes; and sub (3) addresses changes to undesignated real property.

Since my pubs person stuck her head in my door, I have decided to print and let you and them have at it. However, with the interruptions, I may have been in the middle of something that did not get completed. Certainly, I intend to keep reviewing while you and my editors have it.

B. Harrison Conley
Senior Deputy Legislative Counsel
Legislative Counsel Committee
900 Court Street NE - S101
Salem, OR 97301-4065
503-986-1243 (Phone)
503-373-1043 (Fax)

From: Jim Johnson [mailto:james.w.johnson@state.or.us]
Sent: Tuesday, February 25, 2014 8:52 AM
To: Conley Harrison
Subject: Re: My Thoughts

OK

Jim Johnson

Oregon Department of Agriculture

Sent from my iPhone

On Feb 25, 2014, at 8:43 AM, "Conley Harrison" <harrison.conley@state.or.us> wrote:

Come on over. Even if we are still at it, my 9:30 should be quick.

B. Harrison Conley
Senior Deputy Legislative Counsel
Legislative Counsel Committee
900 Court Street NE - S101
Salem, OR 97301-4065
503-986-1243 (Phone)
503-373-1043 (Fax)

From: James Wallace Johnson [mailto:james.w.johnson@state.or.us]
Sent: Tuesday, February 25, 2014 8:42 AM
To: Conley Harrison
Cc: Reiley Beth
Subject: Re: My Thoughts

I am know available. I can come over when best for you.

Jim Johnson
Land Use and Water Planning Coordinator
Oregon Department of Agriculture
635 Capitol Street N.E.
Salem, Oregon 97301

(503)986-4706
jjohnson@oda.state.or.us

<image001.png>

On Feb 25, 2014, at 7:56 AM, "Conley Harrison" <harrison.conley@state.or.us> wrote:

I just booked a 9:30 am, but you're my top priority if you want to meet this morning.

B. Harrison Conley
Senior Deputy Legislative Counsel
Legislative Counsel Committee
900 Court Street NE - S101
Salem, OR 97301-4065
503-986-1243 (Phone)
503-373-1043 (Fax)

From: Jim Johnson [mailto:johnsonjw3@frontier.com]
Sent: Monday, February 24, 2014 8:57 PM
To: vendorz@yahoo.com; Conley Harrison
Cc: jjohnson@oda.state.or.us; johnsonjw3@frontier.com
Subject: My Thoughts

Harrison

Attached is an edited version that includes some changes made today such as a reduction in Bendemeer and an extension of the line from said area to the east. If OK with you, let's get together early tomorrow and go over these. If you need to contact me this evening, you can reach me at 503-620-2549. I have not yet reviewed the rest of the bill.

Good work!

--
Jim Johnson

--
Office of Commissioner Judy Shiprack
Multnomah County District 3
501 SE Hawthorne Blvd., Suite 600
Portland, OR 97214
503 988 5217

Proposed Amendments to
House Bill 4078

2/23/14 (BHC/)

LC 141

On page 1 of the printed corrected bill, line 2, after the semicolon insert <<creating new provisions; amending ORS 197.299, 197.626 and 197.651;>>.

In line 10, after <<approved>> insert <<legislative>> and delete <<2002>> and insert <<2005>>.

On page 2, delete lines 28 and 29 and insert:

<<(17) On June 14, 2012, the commission unanimously approved the expansion of the urban growth boundary by Ordinance No. 11-1264B in Aproval Order 12-UGB-001826.>>.

Delete lines 37 through 44 and insert:

<<(20) The regional and local land use decisions related to Multnomah County and Clackamas County that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826 and sections 3 and 4 of this 2014 Act achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(a) Livability in our communities;

<<(b) Viability and vitality in our agricultural and forest industries; and

<<(c) Protection of the important natural landscape features that define the metropolitan region for its residents.

<<SECTION 2. (1) Section 3 of this 2014 Act is added to and made a part of ORS 195.137 to 195.145.

<<(2) Section 4 of this 2014 Act is added to and made a part of ORS 197.295 to 197.314.

<<SECTION 3. (1) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as rural reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowedged rural reserve in Washington County, except that BEAVERTON S (AKA SCHOLLS FERRY/TILE FLAT ROADS) - the real property in Area 5C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more particularly described as tax lots 1500 and 1501, section 1 of township 2 south, range 2 west, Willamette Meridian, is not designated as a reserve area or included within the acknowledged urban growth boundary.

<<(2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

<<(a) AREA 8A - CENTRAL - The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment Ato Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)> that is east of the east boundary of the right of way of Jackson School Road and east of the east bank of of Storey Creek and the east bank of Waibel Creek is included within the urban growth boundary .

<<(b) AREA 8A WEST - The real property Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)> that is south of the south boundary of the right of way of Highway 26 and west of the real property described in paragraph

(a) of this subsection designated rural reserve.

<<(c) HELVETIA - AREA 8B - STANDRING - The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more particularly described as tax lots 100, 900, 901, 1100, 1200, 1300 and 1400 in township 1 north, range 2 west, sections 15 and 16, Willamette Meridian, is not designated as a reserve area or included within the acknowledged urban growth boundary.

<<(d) HELVETIA - AREA 8B - The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is not described in paragraph (a) of this subsection is designated as acknowledged rural reserve.

<<(e) HILLSBORO 1 FOREST GROVE - AREA 7B North of Forest Grove - The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is north of the south bank of Council Creek is designated rural reserve.

<<(f) HILLSBORO 1 - FOREST GROVE AREA 7B North of Cornelius -The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is south of the south bank of Council Creek is included within the urban growth boundary.

(3) For purposes of land use planning in Oregon, in relation to the following real property in Washington County that is not reserved by designation in Metro Resolution No. 11-4245, adopted on March 15, 2011, the Legislative Assembly designates:

<<(a) S NORTH PLAINS - The undesignated real property that is situated south of the City of North Plains on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as tax lots 100, 101, 200, 201 in section 11 of township 1 north, range 3 west, Willamette Meridian, and tax lots 1800, 2000 and 3900 in section 12 of township 1 north, range 3 west, Willamette Meridian, is designated as rural reserve.

<<(b) N of CORNELIUS in re COUNCIL CREEK - The undesignated real property that is situated north of the City of Cornelius on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is north of the south bank of Council Creek, east of the east right of way of Cornelius-Schefflin Road and west of the west bank of Dairy Creek is designated acknowledged rural reserve.

<<(c) N of FOREST GROVE - The undesignated real property that is north of the City of Forest Grove on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as east of Area 7B, west of the east right of way of Highway 47 and south of the south right of way of Northwest Purdin Road is designated acknowledged rural reserve.

<<(d) BENDEMEER - The Legislative Assembly designates as acknowledged urban reserve the following real property that is not reserved by designation and that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

(A) All of lots 2 through 18, inclusive;

(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of West Union Road and the west boundary of Cornelius Pass Road; and

(c) The undesignated real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south

bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of Highway 26; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly to the point of origin.

<<(4) Land in Washington County that is planned and zoned for farm, forest or mixed farm and forest use and that is not designated as urban reserve may not be included within the urban growth boundary of Metro before at least 75 percent of the land in Washington County that was designated urban reserve on or before the effective date of this 2014 Act has been included within the urban growth boundary, annexed into a city and planned and zoned for urban uses.

<<(5) The real property described in subsection (2)(a) of this section:

<<(a) Is employment land of state significance does not count in determining the employment capacity of the land within Metro; and

<<(b) Must be planned and zoned for employment use.

<<(6) The designation of rural reserve and urban reserve in this section does not require a metropolitan service district or any county to modify any intergovernmental agreement entered into under ORS 195.141 on or before the effective date of this 2014 Act.

<<SECTION 4. For the purpose of land use planning in Oregon, the Legislative Assembly designates the urban growth boundary designated in Metro Ordinance No. 11-1264B, adopted October 20, 2011, as the acknowledged urban growth boundary of Metro except that:

<<(1) CORNELIUS 1 - AREA 7C - The real property in Area 7C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(2) CORNELIUS 2 - AREA 7D - The real property in Area 7D on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(3) FOREST GROVE 1 - AREA 7E - The real property in Area 7E on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(4) AREA 8A WEST - The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)> that is south of the south boundary of the right of way of Highway 26 and west of the real property described in section 3 (2)(a) of this 2014 Act is designated rural reserve.

<<**SECTION 5.** ORS 197.299 is amended to read:

<<197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than [~~five~~] **six** years after completion of the previous inventory, determination and analysis.

<<(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

<<(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

<<(c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the

estimated housing needs for 20 years from the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

<<(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

<<(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

<<(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

<<(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

<<(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

<<**SECTION 6.** ORS 197.626 is amended to read:

<<197.626. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

<<(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

<<(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

<<(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

<<(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

<<(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

<<(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

<<(2) When the commission reviews a final land use decision of a metropolitan service district under subsection (1)(a), (c), (d) or (f) of this section, the commission shall issue a final order in writing within 180 days after the commission votes whether to approve the decision.

<<[~~(2)~~] **(4)** A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

<<**SECTION 7.** ORS 197.651 is amended to read:

<<197.651. (1) Judicial review [~~of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141~~] is **conducted** as provided in subsections (3) to [~~(12)~~] **(15)** of this section[~~.~~] **for a final order of the Land Conservation and Development Commission concerning a final land use decision:**

<<(a) Made by a metropolitan service district and described in ORS 197.626 (1)(a), (c) or (d).

<<(b) Made by a county and described in ORS 197.626 (1)(f).

<<(2) Judicial review [~~of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794~~] is **conducted** as provided in subsections (3) to (7), (9), (10) and [~~(12)~~] **(15)** of this section[~~.~~] **for:**

<<(a) Any other final order of the commission described in ORS 197.626.

<<(b) A final order of the commission described in ORS 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794.

<<(3) A proceeding for judicial review under this section may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

<<(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

<<(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

<<(6) Within [~~21~~] **14** days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

<<(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

<<(8) The Court of Appeals shall:

<<(a) Hear oral argument within [~~49~~] **56** days [~~of~~] **after** the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than [~~49~~] **56** days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

<<(b) Set forth in writing and provide to the parties a determination to hear oral argument more than [~~49~~] **56** days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

<<(c) Consider, in making a determination under paragraph (b) of this subsection:

<<(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that [~~49~~] **56** days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

<<(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

<<(9) The court:

<<(a) Shall limit judicial review of an order reviewed under this section to the record.

<<(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

<<(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

<<(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

<<(b) Unconstitutional.

<<(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

<<(11) The Court of Appeals shall issue a final order on the petition for judicial review [~~with the greatest possible expediency.~~] **within 180 days after the court hears oral argument.**

<<(12) The 180-day period described in subsection (11) of this section does not include:

<<(a) A period of delay that results from a motion properly before the Court of Appeals; or

<<(b) Except as provided in subsection (13) of this section, a period of delay that results from a continuance granted by the court on the court's own motion or at the request of one of the parties if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 180 days.

<<(13) A period of delay resulting from a continuance granted by the Court of Appeals under subsection (12)(b) of this section is not excluded from the 180-day period unless the court sets forth in the record, orally or in writing, reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the parties in having a decision within the 180-day period. The court shall consider the following factors in determining whether to grant a continuance under subsection (12)(b) of this section:

<<(a) Whether the refusal to grant a continuance in the proceeding is likely to make it impossible to continue with the proceeding or to result in a miscarriage of justice; or

<<(b) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of fact or law, that it is not reasonable to expect adequate consideration of the issues within the 180-day period.

<<(14) The Court of Appeals may not grant a continuance under subsection (12)(b) of this section due to general congestion of the court calendar or lack of diligent preparation or attention to the case by a party or a member of the court.

<<[~~(12)~~] **(15)** If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

<<**SECTION 8. (1) The amendments to ORS 197.626 by section 6 of this 2014 Act apply to a final land use decision of a metropolitan service district that is submitted to the Land Conservation and Development Commission for review on or after the effective date of this 2014 Act.**

<<(2) The amendments to ORS 197.651 by section 7 of this 2014 Act apply to a petition for judicial review under ORS 197.651 that is filed on or after the effective date of this 2014 Act.

<<**SECTION 9. The amendments to ORS 197.299 by section 5 of this 2014 Act become operative January 1, 2015.**>>.

In line 45, delete <<4>> and insert <<10>>.

Unknown

From: Rep Clem [rep.brianclem@state.or.us]
Sent: Wednesday, February 26, 2014 7:13 PM
To: Claudia Black
Cc: Jed TOMKINS; Karen SCHILLING; Rep Clem; Roger Alfred
Subject: Re: Final amendments for review

We better talk tonight. The fis/ris is already in and it's ready to move.

My cell is 503 931-2536. Let me read his email here quickly.

BC

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

On Feb 26, 2014, at 7:08 PM, "Claudia Black" <claudia.black@multco.us> wrote:

> Hi again,
>
> Can Jed and I please meet with you tomorrow morning before the hearing to discuss our request? If so, would 8:30 or 8:45 work for you?
>
> Thank you!
>
> Claudia
>
> Claudia Black, Co-Director
> Office of Government Relations
> Multnomah County
> 503-709-4806
>
> On Feb 26, 2014, at 6:30 PM, Jed TOMKINS <jed.tomkins@multco.us> wrote:
>
>> Rep. Clem,
>>
>> The attached amendments omit the language Multnomah County has been requesting---not sure where it went as earlier drafts that I saw today all had the correct language.
>>
>> I've copied the language I am talking about into this email (below).
>>
>> This language is very important because, without this language, the lines you are setting in stone for Washington County could force MultCO and ClackCO to redraw their reserve lines, which is worse than where the court of appeals left us (i.e., the court of appeals has not asked MultCO to redraw any reserve lines).
>>
>> Thanks for your time on this.

MultCO requests the following language:

Delete lines 37 through 44 and insert:

<<(20) The regional and local land use decisions that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826, in combination with sections 3 and 4 of this 2014 Act:

<<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and

<<(b) Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(A) Livability in our communities;

<<(B) Viability and vitality in our agricultural and forest industries; and

<<(C) Protection of the important natural landscape features that define the metropolitan region for its residents.

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

NOTICE: This communication, including any attachments, may contain privileged or other confidential information. If you have received this communication in error, please advise the sender by reply email and immediately delete the communication without copying or disclosing the contents. Thank you.

---------- Forwarded message ----------
From: **Claudia Black** <claudia.black@multco.us>
Date: Wed, Feb 26, 2014 at 5:51 PM
Subject: Fwd: Final amendments for review
To: TOMKINS Jed <jed.tomkins@multco.us>
Cc: SCHILLING Karen <karen.c.schilling@multco.us>

Hi! These are the "final" amendments. Please take a look at them and let me know if we are still okay. Thanks!

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** Randy Tucker <Randy.Tucker@oregonmetro.gov>
> **Date:** February 26, 2014, 5:08:47 PM PST
> **To:** "gwenn@baldwinconsulting.biz" <gwenn@baldwinconsulting.biz>, Dan Eisenbeis <Dan.Eisenbeis@portlandoregon.gov>, Black Claudia <claudia.black@multco.us>
> **Subject: Fwd: Final amendments for review**
>
> FYI
>
> Sent from a handheld gadget
>
> Begin forwarded message:
>
> > **From:** Rep Clem <rep.brianclem@state.or.us>
> > **Date:** February 26, 2014 5:01:27 PM PST
> > **To:** Reiley Beth <beth.reiley@state.or.us>, "cgaston@oregonian.com" <cgaston@oregonian.com>, "'cherryamabisca@gmail.com'" <cherryamabisca@gmail.com>, "Chris Crean (Chris@gov-law.com)" <chris@gov-law.com>, "Dave Hunnicut <dave@oia.org> (dave@oia.org)" <dave@oia.org>, "inga.deckert@tonkon.com" <inga.deckert@tonkon.com>, "james.w.johnson@state.or.us" <james.w.johnson@state.or.us>, "'james_mccauley@co.washington.or.us'" <james_mccauley@co.washington.or.us>, "'jason@friends.org'" <jason@friends.org>, "Jon Chandler (jchandler@oregonhba.com)" <jchandler@oregonhba.com>, "katie@oregonfb.org" <katie@oregonfb.org>, "'mkm@friends.org'" <mkm@friends.org>, "'psavas@co.clackamas.or.us'" <psavas@co.clackamas.or.us>, Randy Tucker <Randy.Tucker@oregonmetro.gov>, Rep Lininger <rep.annlininger@state.or.us>, Rep Unger <rep.benunger@state.or.us>, Rep Gallegos <rep.joegallegos@state.or.us>, Rep Davis <rep.johndavis@state.or.us>, WHITMAN Richard

M * GOV <richard.m.whitman@state.or.us>, Roger Alfred <Roger.Alfred@oregonmetro.gov>, Sen Roblan <sen.arnieroblan@state.or.us>, Sen Edwards C <sen.chrisedwards@state.or.us>, "'shaun.jillions@tonkon.com'" <shaun.jillions@tonkon.com>, Inman Tim <tim.inman@state.or.us>
Subject: Final amendments for review

See everyone at 9:00am tomorrow! Any glaring errors, please write back immediately.

Dan Balm

Legislative Assistant

Office of Rep. Brian Clem

503-986-1421

rep.brianclem@state.or.us

<HB4078_14_2014_Regular_Session.pdf>

Unknown

From: Rep Clem [rep.brianclem@state.or.us]
Sent: Wednesday, February 26, 2014 7:14 PM
To: Jed TOMKINS
Cc: Claudia BLACK; Karen SCHILLING; Rep Clem; Roger Alfred
Subject: Re: Final amendments for review

Thousand friends and the home builders both hated these provision - hence their deletion. Can you try and work with either Jon chandler, Shawn Jillions and/or Mary Kyle McCurdy on this?

BC

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

On Feb 26, 2014, at 6:30 PM, "Jed TOMKINS" <jed.tomkins@multco.us> wrote:

Rep. Clem,

The attached amendments omit the language Multnomah County has been requesting---not sure where it went as earlier drafts that I saw today all had the correct language.

I've copied the language I am talking about into this email (below).

This language is very important because, without this language, the lines you are setting in stone for Washington County could force MultCO and ClackCO to redraw their reserve lines, which is worse than where the court of appeals left us (i.e., the court of appeals has not asked MultCO to redraw any reserve lines).

Thanks for your time on this.

MultCO requests the following language:

Delete lines 37 through 44 and insert:

<<(20) The regional and local land use decisions that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826, in combination with sections 3 and 4 of this 2014 Act:

<<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and

<<(b) Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(A) Livability in our communities;

<<(B) Viability and vitality in our agricultural and forest industries; and

<<(C) Protection of the important natural landscape features that define the metropolitan region for its residents.

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
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---------- Forwarded message ----------
From: **Claudia Black** <claudia.black@multco.us>
Date: Wed, Feb 26, 2014 at 5:51 PM
Subject: Fwd: Final amendments for review
To: TOMKINS Jed <jed.tomkins@multco.us>
Cc: SCHILLING Karen <karen.c.schilling@multco.us>

Hi! These are the "final" amendments. Please take a look at them and let me know if we are still okay. Thanks!

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** Randy Tucker <Randy.Tucker@oregonmetro.gov>
> **Date:** February 26, 2014, 5:08:47 PM PST
> **To:** "gwenn@baldwinconsulting.biz" <gwenn@baldwinconsulting.biz>, Dan Eisenbeis <Dan.Eisenbeis@portlandoregon.gov>, Black Claudia <claudia.black@multco.us>
> **Subject: Fwd: Final amendments for review**

FYI

Sent from a handheld gadget

Begin forwarded message:

From: Rep Clem <rep.brianclem@state.or.us>
Date: February 26, 2014 5:01:27 PM PST
To: Reiley Beth <beth.reiley@state.or.us>, "cgaston@oregonian.com" <cgaston@oregonian.com>, "'cherryamabisca@gmail.com'" <cherryamabisca@gmail.com>, "Chris Crean (Chris@gov-law.com)" <chris@gov-law.com>, "Dave Hunnicut <dave@oia.org> (dave@oia.org)" <dave@oia.org>, "inga.deckert@tonkon.com" <inga.deckert@tonkon.com>, "james.w.johnson@state.or.us" <james.w.johnson@state.or.us>, "'james_mccauley@co.washington.or.us'" <james_mccauley@co.washington.or.us>, "'jason@friends.org'" <jason@friends.org>, "Jon Chandler (jchandler@oregonhba.com)" <jchandler@oregonhba.com>, "katie@oregonfb.org" <katie@oregonfb.org>, "'mkm@friends.org'" <mkm@friends.org>, "'psavas@co.clackamas.or.us'" <psavas@co.clackamas.or.us>, Randy Tucker <Randy.Tucker@oregonmetro.gov>, Rep Lininger <rep.annlininger@state.or.us>, Rep Unger <rep.benunger@state.or.us>, Rep Gallegos <rep.joegallegos@state.or.us>, Rep Davis <rep.johndavis@state.or.us>, WHITMAN Richard M * GOV <richard.m.whitman@state.or.us>, Roger Alfred <Roger.Alfred@oregonmetro.gov>, Sen Roblan <sen.arnieroblan@state.or.us>, Sen Edwards C <sen.chrisedwards@state.or.us>, "'shaun.jillions@tonkon.com'" <shaun.jillions@tonkon.com>, Inman Tim <tim.inman@state.or.us>
Subject: Final amendments for review

See everyone at 9:00am tomorrow! Any glaring errors, please write back immediately.

Dan Balm

Legislative Assistant

Office of Rep. Brian Clem

503-986-1421

rep.brianclem@state.or.us

<HB4078_14_2014_Regular_Session.pdf>

Unknown

From: Claudia Black [claudia.black@multco.us]
Sent: Wednesday, February 26, 2014 8:15 PM
To: Rep Clem
Subject: Re: Final amendments for review

Thanks! I'll check with Jed on this...

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

On Feb 26, 2014, at 8:02 PM, "Rep Clem" <rep.brianclem@state.or.us> wrote:

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

Begin forwarded message:

From: dave <dave@oia.org>
Date: February 26, 2014 at 7:48:19 PM PST
To: Rep Clem <rep.brianclem@state.or.us>, Shaun Jillions <shaun.jillions@tonkon.com>
Subject: RE: Fwd: Final amendments for review

Mult. Co. is incorrect - the court (pgs. 93-98 of the opinion) found that Multnomah County had not provided sufficient justification for including all of Area 9D as RR. As a result property owners in that area have been given an opportunity to demonstrate that inclusion of their land was improper. That.opportunity would be stripped by the language Mult. Co. wants. Our goal was not to interfere with the court ruling as it applied to Mult and Clack Counties - if.Multnomah County amendments were inserted, it would reverse the court's decision as to both Multnomah and Clackamas Counties.

Moreover, if this bill did not pass, Multnomah County would still be required to reevaluate their reserves, as Washington County reserves have been thrown out, and Washington County would by default be required to redraw their reserves, which would then trigger a new review by Multnomah County, as reserves are ultimately designated on a regionwide basis.

Multnomah County is.attempting to interfere with the court's decision. We agreed not to do that.

Dave Hunnicutt

-------- Original message --------
From: Rep Clem
Date:02/26/2014 7:21 PM (GMT-08:00)
To: Shaun Jillions ,"Dave Hunnicut "
Subject: Fwd: Final amendments for review

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

Begin forwarded message:

From: Jed TOMKINS <jed.tomkins@multco.us>
Date: February 26, 2014 at 6:30:40 PM PST
To: <rep.brianclem@state.or.us>
Cc: Claudia BLACK <claudia.black@multco.us>, Karen SCHILLING <karen.c.schilling@multco.us>, Roger Alfred <Roger.Alfred@oregonmetro.gov>
Subject: Fwd: Final amendments for review

Rep. Clem,

The attached amendments omit the language Multnomah County has been requesting---not sure where it went as earlier drafts that I saw today all had the correct language.

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Thanks for your time on this.

MultCO requests the following language:

Delete lines 37 through 44 and insert:

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<<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and

<<(b) Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

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Jed Tomkins
Assistant County Attorney
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501 SE Hawthorne Blvd., Suite 500
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Ph: (503) 988-3138
Fx: (503) 988-3377

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---------- Forwarded message ----------
From: **Claudia Black** <claudia.black@multco.us>
Date: Wed, Feb 26, 2014 at 5:51 PM
Subject: Fwd: Final amendments for review
To: TOMKINS Jed <jed.tomkins@multco.us>
Cc: SCHILLING Karen <karen.c.schilling@multco.us>

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Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

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Date: February 26, 2014, 5:08:47 PM PST
To: "gwenn@baldwinconsulting.biz" <gwenn@baldwinconsulting.biz>, Dan Eisenbeis <Dan.Eisenbeis@portlandoregon.gov>, Black Claudia <claudia.black@multco.us>
Subject: Fwd: Final amendments for review

FYI

Sent from a handheld gadget

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> **From:** Rep Clem <rep.brianclem@state.or.us>
> **Date:** February 26, 2014 5:01:27 PM PST
> **To:** Reiley Beth <beth.reiley@state.or.us>, "cgaston@oregonian.com" <cgaston@oregonian.com>, "'cherryamabisca@gmail.com'" <cherryamabisca@gmail.com>, "Chris Crean (Chris@gov-law.com)" <chris@gov-law.com>, "Dave Hunnicut <dave@oia.org> (dave@oia.org)" <dave@oia.org>, "inga.deckert@tonkon.com" <inga.deckert@tonkon.com>, "james.w.johnson@state.or.us" <james.w.johnson@state.or.us>, "'james_mccauley@co.washington.or.us'" <james_mccauley@co.washington.or.us>, "'jason@friends.org'" <jason@friends.org>, "Jon Chandler (jchandler@oregonhba.com)" <jchandler@oregonhba.com>, "katie@oregonfb.org" <katie@oregonfb.org>, "'mkm@friends.org'" <mkm@friends.org>, "'psavas@co.clackamas.or.us'" <psavas@co.clackamas.or.us>, Randy Tucker <Randy.Tucker@oregonmetro.gov>, Rep Lininger <rep.annlininger@state.or.us>, Rep Unger <rep.benunger@state.or.us>,

Rep Gallegos <rep.joegallegos@state.or.us>, Rep Davis <rep.johndavis@state.or.us>, WHITMAN Richard M * GOV <richard.m.whitman@state.or.us>, Roger Alfred <Roger.Alfred@oregonmetro.gov>, Sen Roblan <sen.arnieroblan@state.or.us>, Sen Edwards C <sen.chrisedwards@state.or.us>, "'shaun.jillions@tonkon.com'" <shaun.jillions@tonkon.com>, Inman Tim <tim.inman@state.or.us>
Subject: Final amendments for review

See everyone at 9:00am tomorrow! Any glaring errors, please write back immediately.

Dan Balm

Legislative Assistant

Office of Rep. Brian Clem

503-986-1421

rep.brianclem@state.or.us

<HB4078_14_2014_Regular_Session.pdf>

Unknown

From: Claudia Black [claudia.black@multco.us]
Sent: Thursday, February 27, 2014 7:58 AM
To: Clem Rep
Subject: Fwd: Final amendments for review

Here's more info.

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** Jed TOMKINS <jed.tomkins@multco.us>
> **Date:** February 26, 2014, 10:11:55 PM PST
> **To:** Claudia Black <claudia.black@multco.us>
> **Subject: Re: Final amendments for review**
>
> Claudia, please distribute as you see fit.
>
> At the bottom of this email is alternative language intended to address the concerns that Homebuilders, Realtors, and 1000 Friends had with the prior language. As for OIA, there appears to be a fundamental misunderstanding, which I will seek to clear up tomorrow.
>
> To be perfectly clear: MultCO's language **DOES NOT** deprive any property owner of any benefit afforded by the the Court of Appeals decision.
>
> In contrast, if this bill does not contain this language, then MultCO and ClackCO are worse off then they are with just the Court of Appeals decision
>
> Again, the purpose of our language is to address standards that apply to the reserves on a regional basis (i.e., the combined reserves in all three counties)---these two standards are known as the "amount of land" standard and "best achieves" standard.
>
> Both LCDC **and the Court of Appeals** found that our reserves package satisfied these regional standards, **but for the invalidity of the WASHINGTON COUNTY reserves**. Therefore, if the legislature is going to validate Washington County reserves, it should do so in a way that **re-establishes** the satisfaction of these regional standards.
>
> If this bill does not re-establish the satisfaction of the regional standards, then that burden will fall soley and unfairly to Multnomah and Clackamas Counties.
>
> Here is revised language intended to address stakeholder concerns:
>
> Amend HB 4078-14 as follows:

On page 5, line 14, before "Section 4", **insert a sixth subsection into Section 3 of the bill**, as follows:

"(6) The urban and rural reserves outside of Washington County that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826 shall not be further reviewed for satisfaction of standards of review set forth in ORS 195.145(4), OAR 660-027-0040(2), and OAR 660-027-0005(2)."

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

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On Wed, Feb 26, 2014 at 9:15 PM, Jed TOMKINS <jed.tomkins@multco.us> wrote:
Gross mischaracterization of the effect of our language.

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

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On Wed, Feb 26, 2014 at 9:10 PM, Jed TOMKINS <jed.tomkins@multco.us> wrote:
Mr. Hunnicut does not understand the court's order correctly, nor the purpose served by our language.

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

NOTICE: This communication, including any attachments, may contain privileged or other confidential information. If you have received this communication in error, please advise the sender by reply email and immediately delete the communication without copying or disclosing the contents. Thank you.

On Wed, Feb 26, 2014 at 8:11 PM, Claudia Black <claudia.black@multco.us> wrote:
Please read this.

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** "Rep Clem" <rep.brianclem@state.or.us>
> **Date:** February 26, 2014, 8:02:24 PM PST
> **To:** Claudia Black <claudia.black@multco.us>
>
> **Subject: Fwd: Final amendments for review**

> Representative Brian Clem. HD21
> H-284, State Capitol - Salem, OR
> (503) 986-1421 - Office

> Begin forwarded message:

> > **From:** dave <dave@oia.org>
> > **Date:** February 26, 2014 at 7:48:19 PM PST
> > **To:** Rep Clem <rep.brianclem@state.or.us>, Shaun Jillions <shaun.jillions@tonkon.com>
> > **Subject: RE: Fwd: Final amendments for review**
> >
> > Mult. Co. is incorrect - the court (pgs. 93-98 of the opinion) found that Multnomah County had not provided sufficient justification for including all of Area 9D as RR. As a result property owners in that area have been given an opportunity to demonstrate that

inclusion of their land was improper. That.opportunity would be stripped by the language Mult. Co. wants. Our goal was not to interfere with the court ruling as it applied to Mult and Clack Counties - if.Multnomah County amendments were inserted, it would reverse the court's decision as to both Multnomah and Clackamas Counties.

Moreover, if this bill did not pass, Multnomah County would still be required to reevaluate their reserves, as Washington County reserves have been thrown out, and Washington County would by default be required to redraw their reserves, which would then trigger a new review by Multnomah County, as reserves are ultimately designated on a regionwide basis.

Multnomah County is.attempting to interfere with the court's decision. We agreed not to do that.

Dave Hunnicutt

-------- Original message --------
From: Rep Clem
Date:02/26/2014 7:21 PM (GMT-08:00)
To: Shaun Jillions ,"Dave Hunnicut "
Subject: Fwd: Final amendments for review

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

Begin forwarded message:

> **From:** Jed TOMKINS <jed.tomkins@multco.us>
> **Date:** February 26, 2014 at 6:30:40 PM PST
> **To:** <rep.brianclem@state.or.us>
> **Cc:** Claudia BLACK <claudia.black@multco.us>, Karen SCHILLING <karen.c.schilling@multco.us>, Roger Alfred <Roger.Alfred@oregonmetro.gov>
>
> **Subject: Fwd: Final amendments for review**
>
> Rep. Clem,
>
> The attached amendments omit the language Multnomah County has been requesting---not sure where it went as earlier drafts that I saw today all had the correct language.

I've copied the language I am talking about into this email (below).

This language is very important because, without this language, the lines you are setting in stone for Washington County could force MultCO and ClackCO to redraw their reserve lines, which is worse than where the court of appeals left us (i.e., the court of appeals has not asked MultCO to redraw any reserve lines).

Thanks for your time on this.

MultCO requests the following language:

Delete lines 37 through 44 and insert:

<<(20) The regional and local land use decisions that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826, in combination with sections 3 and 4 of this 2014 Act:

<<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and

<<(b) Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(A) Livability in our communities;

<<(B) Viability and vitality in our agricultural and forest industries; and

<<(C) Protection of the important natural landscape features that define the metropolitan region for its residents.

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

NOTICE: This communication, including any attachments, may contain privileged or other confidential information. If you have received this communication in error, please advise the sender by reply email and immediately delete the communication without copying or disclosing the contents. Thank you.

---------- Forwarded message ----------
From: **Claudia Black** <claudia.black@multco.us>
Date: Wed, Feb 26, 2014 at 5:51 PM
Subject: Fwd: Final amendments for review
To: TOMKINS Jed <jed.tomkins@multco.us>
Cc: SCHILLING Karen <karen.c.schilling@multco.us>

Hi! These are the "final" amendments. Please take a look at them and let me know if we are still okay. Thanks!

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** Randy Tucker <Randy.Tucker@oregonmetro.gov>
> **Date:** February 26, 2014, 5:08:47 PM PST
> **To:** "gwenn@baldwinconsulting.biz" <gwenn@baldwinconsulting.biz>, Dan Eisenbeis <Dan.Eisenbeis@portlandoregon.gov>, Black Claudia <claudia.black@multco.us>
> **Subject: Fwd: Final amendments for review**
>
> FYI
>
> Sent from a handheld gadget
>
> Begin forwarded message:

From: Rep Clem <rep.brianclem@state.or.us>
Date: February 26, 2014 5:01:27 PM PST
To: Reiley Beth <beth.reiley@state.or.us>, "cgaston@oregonian.com" <cgaston@oregonian.com>, "'cherryamabisca@gmail.com'" <cherryamabisca@gmail.com>, "Chris Crean (Chris@gov-law.com)" <chris@gov-law.com>, "Dave Hunnicut <dave@oia.org> (dave@oia.org)" <dave@oia.org>, "inga.deckert@tonkon.com" <inga.deckert@tonkon.com>, "james.w.johnson@state.or.us" <james.w.johnson@state.or.us>, "'james_mccauley@co.washington.or.us'" <james_mccauley@co.washington.or.us>, "'jason@friends.org'" <jason@friends.org>, "Jon Chandler (jchandler@oregonhba.com)" <jchandler@oregonhba.com>, "katie@oregonfb.org" <katie@oregonfb.org>, "'mkm@friends.org'" <mkm@friends.org>, "'psavas@co.clackamas.or.us'" <psavas@co.clackam

as.or.us>, Randy Tucker <Randy.Tucker@oregonmetro.gov>, Rep Lininger <rep.annlininger@state.or.us>, Rep Unger <rep.benunger@state.or.us>, Rep Gallegos <rep.joegallegos@state.or.us>, Rep Davis <rep.johndavis@state.or.us>, WHITMAN Richard M * GOV <richard.m.whitman@state.or.us>, Roger Alfred <Roger.Alfred@oregonmetro.gov>, Sen Roblan <sen.arnieroblan@state.or.us>, Sen Edwards C <sen.chrisedwards@state.or.us>, "'shaun.jillions@tonkon.com'" <shaun.jillions@tonkon.com>, Inman Tim <tim.inman@state.or.us>

Subject: Final amendments for review

See everyone at 9:00am tomorrow! Any glaring errors, please write back immediately.

Dan Balm

Legislative Assistant

Office of Rep. Brian Clem

503-986-1421

rep.brianclem@state.or.
us

<HB4078_14_2014_Regular_Session.pdf>

HB 4078-14
(LC 141)
2/26/14 (BHC/ps)

PROPOSED AMENDMENTS TO
HOUSE BILL 4078

1 On page 1 of the printed corrected bill, line 2, after the semicolon insert
2 "creating new provisions; amending ORS 195.085, 197.299 and 197.626;".
3 In line 10, after "approved" insert "legislative" and delete "2002" and in-
4 sert "2005".
5 On page 2, delete lines 28 and 29 and insert:
6 "(17) On June 14, 2012, the commission unanimously approved the expan-
7 sion of the urban growth boundary by Ordinance No. 11-1264B in Approval
8 Order 12-UGB-001826.".
9 Delete lines 37 through 44 and insert:
10 **"SECTION 2. (1) Section 3 of this 2014 Act is added to and made a**
11 **part of ORS 195.137 to 195.145.**
12 **"(2) Section 4 of this 2014 Act is added to and made a part of ORS**
13 **197.295 to 197.314.**
14 **"SECTION 3. (1) For purposes of land use planning in Oregon, the**
15 **Legislative Assembly designates the land in Washington County that**
16 **was designated as rural reserve in Metro Resolution No. 11-4245,**
17 **adopted on March 15, 2011, as the acknowledged rural reserve in**
18 **Washington County, except that:**
19 **"(a) The real property in Area 5C on Metro's map denominated as**
20 **the 'Urban and Rural Reserves in Washington County, Attachment A**
21 **to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' that is**
22 **more particularly described as tax lots 1500 and 1501, section 1 of**

township 2 south, range 2 west, Willamette Meridian, is not designated as a reserve area.

"(b) The Legislative Assembly designates as acknowledged urban reserve the real property that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

"(A) All of lots 1 through 18, inclusive;

"(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of the right of way of West Union Road and the west boundary of the right of way of Cornelius Pass Road; and

"(C) The real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of West Union Road; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly along the right of way to the point of origin.

"(2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

"(a) The real property in Area 8A on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' east of the east boundary of the right of way of Jackson School Road and east of the east bank of Storey Creek and the east bank of Waibel Creek

is included within the acknowledged urban growth boundary.

"(b) The real property in Area 8A on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' that is south of the south boundary of the right of way of Highway 26 and west of the real property described in paragraph (a) of this subsection is designated as acknowledged rural reserve.

"(c) The real property in Area 8B on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' that is more particularly described as tax lots 100, 900, 901, 1100, 1200, 1300 and 1400 in section 15 of township 1 north, range 2 west, Willamette Meridian, is not designated as a reserve area.

"(d) The real property in Area 8B on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' that is not described in paragraph (c) of this subsection is designated as acknowledged rural reserve.

"(e) The real property in Area 7B on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' that is north of the south bank of Council Creek is designated as acknowledged rural reserve.

"(f) The real property in Area 7B on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' that is south of the south bank of Council Creek is included within the acknowledged urban growth boundary.

"(3) For purposes of land use planning in Oregon, in relation to the following real property in Washington County that is not reserved by

designation in Metro Resolution No. 11-4245, adopted on March 15, 2011, the Legislative Assembly designates:

"(a) As acknowledged rural reserve the real property that is situated south of the City of North Plains on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' more particularly described as tax lots 100, 101, 200 and 201 in section 11 of township 1 north, range 3 west, Willamette Meridian, and tax lots 1800 and 2000 and that portion of tax lot 3900 that is north of the south line of the Dobbins Donation Land Claim No. 47 in section 12 of township 1 north, range 3 west, Willamette Meridian.

"(b) As acknowledged rural reserve the real property that is situated north of the City of Cornelius on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' and that is north of the south bank of Council Creek, east of the east right of way of Cornelius-Schefflin Road and west of the west bank of Dairy Creek.

"(c) As acknowledged rural reserve the real property that is north of the City of Forest Grove on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' more particularly described as east of Area 7B, west of the east right of way of Highway 47 and south of the south right of way of Northwest Purdin Road.

"(d) As acknowledged rural reserve the real property that is situated west of Area 8B on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT).'

"(4) Land in a county in Metro that is planned and zoned for farm, forest or mixed farm and forest use and that is not designated as urban reserve may not be included within the urban growth boundary

of Metro before at least 75 percent of the land in the county that was designated urban reserve in this section has been included within the urban growth boundary and planned and zoned for urban uses.

"(5)(a) The real property described in subsection (2)(a) of this section:

"(A) Is employment land of state significance and does not count in determining the employment capacity of the land within Metro; and

"(B) Must be planned and zoned for employment use.

"(b) In its legislative reviews of the urban growth boundary on or after the effective date of this 2014 Act, Metro shall not count the employment capacity of the real property described in subsection (2)(a) of this section in determining the employment capacity of the land within Metro.

"SECTION 4. For the purpose of land use planning in Oregon, the Legislative Assembly designates the urban growth boundary designated in Metro Ordinance No. 11-1264B, adopted October 20, 2011, as the acknowledged urban growth boundary of Metro, subject to the conditions of approval in the ordinance, except that:

"(1) The real property in Area 7C on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' is included within the acknowledged urban growth boundary.

"(2) The real property in Area 7D on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' is included within the acknowledged urban growth boundary.

"(3) The real property in Area 7E on Metro's map denominated as the 'Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),' is included within the acknowledged urban growth boundary.

1 "**SECTION 5.** ORS 197.299 is amended to read:

2 "197.299. (1) A metropolitan service district organized under ORS chapter
3 268 shall complete the inventory, determination and analysis required under
4 ORS 197.296 (3) not later than [*five*] **six** years after completion of the previ-
5 ous inventory, determination and analysis.

6 "(2)(a) The metropolitan service district shall take such action as neces-
7 sary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable
8 land supply determined under ORS 197.296 (3) within one year of completing
9 the analysis.

10 "(b) The metropolitan service district shall take all final action under
11 ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply
12 determined under ORS 197.296 (3) within two years of completing the analy-
13 sis.

14 "(c) The metropolitan service district shall take action under ORS 197.296
15 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b)
16 is completed, to provide sufficient buildable land within the urban growth
17 boundary to accommodate the estimated housing needs for 20 years from the
18 time the actions are completed. The metropolitan service district shall con-
19 sider and adopt new measures that the governing body deems appropriate
20 under ORS 197.296 (6)(b).

21 "(3) The Land Conservation and Development Commission may grant an
22 extension to the time limits of subsection (2) of this section if the Director
23 of the Department of Land Conservation and Development determines that
24 the metropolitan service district has provided good cause for failing to meet
25 the time limits.

26 "(4)(a) The metropolitan service district shall establish a process to ex-
27 pand the urban growth boundary to accommodate a need for land for a public
28 school that cannot reasonably be accommodated within the existing urban
29 growth boundary. The metropolitan service district shall design the process
30 to:

"(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

"(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

"(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

"**SECTION 6.** ORS 197.626 is amended to read:

"197.626. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

"(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

"(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

"(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

"(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

"(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

"(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

"(2) When the commission reviews a final land use decision of a metropolitan service district under subsection (1)(a), (c), (d) or (f) of this section, the commission shall issue a final order in writing within 180 days after the commission votes whether to approve the decision.

"[*(2)*] **(3)** A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

"SECTION 7. ORS 195.085 is amended to read:

"195.085. (1) [*No later than the first periodic review that begins after November 4, 1993,*] Local governments and special districts shall demonstrate compliance with ORS 195.020 and 195.065.

"(2) The Land Conservation and Development Commission may adjust the deadline for compliance under this section when cities and counties that are parties to an agreement under ORS 195.020 and 195.065 are scheduled for periodic review at different times.

"(3) Local governments and special districts that are parties to an agreement in effect on November 4, 1993, which provides for the future provision of an urban service shall demonstrate compliance with ORS 195.065 no later than the date such agreement expires or the second periodic review that begins after November 4, 1993, whichever comes first.

"(4) An urban service agreement in effect on the effective date of this 2014 Act does not apply to real property described as Area 2 on Metro's map denominated '2011 UGB Expansion Areas, Ordinance 11-1264B, Exhibit A, October, 2011.'

"SECTION 8. (1) For the purpose of ORS 195.065, the City of Hillsboro and Tualatin Valley Fire and Rescue shall enter into an agreement for the unincorporated communities of Reedville, Aloha,

Rock Creek and North Bethany in Washington County.

"(2) The agreement must generally follow a boundary between the City of Hillsboro and Tualatin Valley Fire and Rescue along the north-south axis of Southwest 209th Avenue in Washington County, between Southwest Farmington Road and the intersection of Northwest Cornelius Pass Road and Northwest Old Cornelius Pass Road, excluding areas that are within the City of Hillsboro on the effective date of this 2014 Act.

"(3) The City of Hillsboro and Tualatin Valley Fire and Rescue shall report to the Legislative Assembly in the manner described in ORS 192.245 on or before January 1, 2015, on the agreement required by this section.

"SECTION 9. The amendments to ORS 197.626 by section 6 of this 2014 Act apply to a final land use decision of a metropolitan service district that is submitted to the Land Conservation and Development Commission for review on or after the effective date of this 2014 Act.

"SECTION 10. Section 8 of this 2014 Act is repealed December 31, 2015.

"SECTION 11. The amendments to ORS 197.299 by section 5 of this 2014 Act become operative January 1, 2015.".

In line 45, delete "4" and insert "12".

Unknown

From: Roger Alfred [Roger.Alfred@oregonmetro.gov]
Sent: Thursday, February 27, 2014 8:08 AM
To: Jed TOMKINS
Subject: Re: Final amendments for review

Call my cell if you can. 503-481-7138.

Sent from my iPhone

On Feb 27, 2014, at 7:54 AM, "Jed TOMKINS" <jed.tomkins@multco.us> wrote:

> Correct. I'm in Salem we can discuss when you get here.
>
> On Thursday, February 27, 2014, Roger Alfred <Roger.Alfred@oregonmetro.gov> wrote:
> > Jed is this the legislative finding regarding "best achieves" that Richard and I put in the original version or something else? I don't have original amendments with me.
> >
> > Sent from my iPhone
> > On Feb 26, 2014, at 7:14 PM, "Rep Clem" <rep.brianclem@state.or.us> wrote:
> >
> > Thousand friends and the home builders both hated these provision - hence their deletion. Can you try and work with either Jon chandler, Shawn Jillions and/or Mary Kyle McCurdy on this?
> > BC
> >
> > Representative Brian Clem. HD21
> > H-284, State Capitol - Salem, OR
> > (503) 986-1421 - Office
> >
> > On Feb 26, 2014, at 6:30 PM, "Jed TOMKINS" <jed.tomkins@multco.us> wrote:
> >
> > Rep. Clem,
> > The attached amendments omit the language Multnomah County has been requesting---not sure where it went as earlier drafts that I saw today all had the correct language.
> > I've copied the language I am talking about into this email (below).
> > This language is very important because, without this language, the lines you are setting in stone for Washington County could force MultCO and ClackCO to redraw their reserve lines, which is worse than where the court of appeals left us (i.e., the court of appeals has not asked MultCO to redraw any reserve lines).
> > Thanks for your time on this.
> > MultCO requests the following language:
> >
> > Delete lines 37 through 44 and insert:
> >
> > <<(20) The regional and local land use decisions that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826, in combination with sections 3 and 4 of this 2014 Act:
> >

> <<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and
>
> <<(b) Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:
>
> <<(A) Livability in our communities;
>
> <<(B) Viability and vitality in our agricultural and forest industries; and
>
> <<(C) Protection of the important natural landscape features that define the metropolitan region for its residents.
>
>
>
>
>
>
> Jed Tomkins
>
> Assistant County Attorney
>
> Office of Multnomah County Attorney
>
> 501 SE Hawthorne Blvd., Suite 500
>
> Portland, OR 97214
>
> Ph: (503) 988-3138
>
> Fx: (503) 988-3377
>
>
>
> NOTICE: This communication, including any attachments, may contain privileged or other confidential information. If you

--

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

NOTICE: This communication, including any attachments, may contain privileged or other confidential information. If you have received this communication in error, please advise the sender by reply email and immediately delete the communication without copying or disclosing the contents. Thank you.

Unknown

From: Claudia Black [claudia.black@multco.us]
Sent: Tuesday, February 25, 2014 9:37 PM
To: TOMKINS Jed; SCHILLING Karen
Subject: Fwd: For your review...
Attachments: 20140225 - 3rd hb4078 12.doc; ATT01758.htm

New amendment...are we okay?

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** Randy Tucker <Randy.Tucker@oregonmetro.gov>
> **Date:** February 25, 2014, 9:22:19 PM PST
> **To:** Claudia Black <claudia.black@multco.us>
> **Subject: FW: For your review...**
>
> Looks like your first item (50-year supply) is taken care of here.
>
> ---
>
> **From:** Randy Tucker
> **Sent:** Tuesday, February 25, 2014 9:10 PM
> **To:** 'Claudia Black'
> **Subject:** FW: For your review...
>
> ---
>
> **From:** Gwenn Baldwin [mailto:gwenn@baldwinconsulting.biz]
> **Sent:** Tuesday, February 25, 2014 8:49 PM
> **To:** Randy Tucker; 'Mark Landauer'; 'James McCauley'
> **Subject:** FW: For your review...
>
> FYI. gb
>
> ---
>
> **From:** Rep Clem [mailto:rep.brianclem@state.or.us]
> **Sent:** Tuesday, February 25, 2014 7:09 PM
> **To:** bruce.c.miller@state.or.us; Dave Hunnicut <dave@oia.org>; Gwenn Baldwin; inga.deckert@tonkon.com; Jason Miner; Jon Chandler; Katie Fast; Mary Kyle McCurdy; Shaun Jillions
> **Subject:** Fwd: For your review...
>
> New amendment for review and comment - doesn't have a sb 122 resolution in here yet.
>
> Please disseminate if you don't see someone who needs it on this list.
>
> BC

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

Begin forwarded message:

From: Conley Harrison <ConleyH@leg.state.or.us>
Date: February 25, 2014 at 5:23:21 PM PST
To: Rep Clem <ClemB@leg.state.or.us>, WHITMAN Richard M * GOV <Richard.M.WHITMAN@state.or.us>, "jjohnson@oda.state.or.us (james.w.johnson@state.or.us)" <james.w.johnson@state.or.us>
Subject: For your review...

As noted at the top of the Word doc, probably better for a short list of reviewers initially. If you like it, then spread it.

We are on to a new base – the -12. The tracked changes show the differences between the official -12 and where we seem to be going.

Richard: Your references to areas is not the terminology with which I am familiar. Please help me with those areas at the end of section 3.

Also, some of the new requirements that appear at the end of sections 3 and 4 might be misplaced (since those sections are being added to reserves and UGB series of laws, respectively). I will reconsider the placement before we finalize another draft.

B. Harrison Conley
Senior Deputy Legislative Counsel
Legislative Counsel Committee
900 Court Street NE - S101
Salem, OR 97301-4065
503-986-1243 (Phone)
503-373-1043 (Fax)

Let's not broadcast distribute this one just yet. We now have a new base document.

All of the changes I had by 11:00 am and some of the changes I had by 2:30 pm are in the official -12, which is the new base for this Word doc. I had tried to identify as tracked changes only the potential changes to our new base.

All road and creek boundaries will become center of the road or creek.

Starting Point:
Section 3 (1) validates the rural reserves with exceptions.
Section 3 (2) validates the urban reserves with exceptions.
Section 3 (3) designates certain undesignated lands.
Section 4 validates UGB with exceptions.

Proposed Amendments to
House Bill 4078

2/25/14 (BHC/ps)

LC 141

On page 1 of the printed corrected bill, line 2, after the semicolon insert <<creating new provisions; amending ORS 197.299, 197.626 and 197.651;>>.

In line 10, after <<approved>> insert <<legislative>> and delete <<2002>> and insert <<2005>>.

On page 2, delete lines 28 and 29 and insert:

<<(17) On June 14, 2012, the commission unanimously approved the expansion of the urban growth boundary by Ordinance No. 11-1264B in Approval Order 12-UGB-001826.>>.

Delete lines 37 through 44 and insert:

<<(20) The regional and local land use decisions ~~related to Multnomah County and Clackamas County~~ that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826, in combination with ~~and are validated by~~ sections 3 and 4 of this 2014 Act:

<<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and

<<(b) ~~achieve~~ Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(~~a~~A) Livability in our communities;

<<(~~b~~B) Viability and vitality in our agricultural and forest industries; and

<<(~~c~~C) Protection of the important natural landscape features that define the metropolitan region for its residents.

<<**SECTION 2. (1) Section 3 of this 2014 Act is added to and made a part of ORS 195.137 to 195.145.**

<<(2) Section 4 of this 2014 Act is added to and made a part of ORS 197.295 to 197.314.

<<**SECTION 3. (1) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as rural reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged rural reserve in Washington County, except that ~~BEAVERTON S (AKA SCHOLLS FERRY/TILE FLAT ROADS) -~~ the real property in Area 5C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more**

particularly described as tax lots 1500 and 1501, section 1 of township 2 south, range 2 west, Willamette Meridian, is not designated as a reserve area or included within the acknowledged urban growth boundary.

<<(b)[BHC1] ~~BENDEMEER -~~ The Legislative Assembly designates as acknowledged urban reserve the real property that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

<<(A) All of lots 1 through 18, inclusive;

<<(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of West Union Road and the west boundary of Cornelius Pass Road; and

<<(C) The real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of West Union Road[BHC2]; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly along the right of way to the point of origin.

<<(2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

<<(a) ~~AREA 8A CENTRAL -~~ The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is east of the east boundary of the right of way of Jackson School Road and east of the east bank of Storey Creek and the east bank of Waibel Creek is included within the acknowledged urban growth boundary.

<<(b) ~~AREA 8A WEST -~~ The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is south of the south boundary of the right of way of Highway 26 and west of the real property described in paragraph (a) of this subsection is designated as acknowledged rural reserve.

<<(c) ~~HELVETIA AREA 8A - STANDRING -~~ The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more particularly described as tax lots 100, 900, 901, 1100, 1200, 1300 and 1400 in township 1 north, range 2 west, sections 15 and 16, Willamette Meridian, is not designated as a reserve area.

<<(d) ~~HELVETIA AREA 8B -~~ The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is not described in paragraph (c) of this subsection is designated as acknowledged rural reserve.

<<(e) ~~HILLSBORO 1 - (AKA FOREST GROVE) - AREA 7B N OF FOREST GROVE -~~ The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is north of the south bank of Council Creek is designated as acknowledged rural reserve.

<<(f) ~~HILLSBORO 1 - (AKA FOREST GROVE) - AREA 7B N OF FOREST GROVE -~~ The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is south of the south bank of Council Creek is included within the acknowledged urban growth boundary.

<<(3) For purposes of land use planning in Oregon, in relation to the following

real property in Washington County that is not reserved by designation in Metro Resolution No. 11-4245, adopted on March 15, 2011, the Legislative Assembly designates:

<<(a) ~~S OF NORTH PLAINS -~~ The undesignated real property that is situated south of the City of North Plains on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as tax lots 100, 101, 200 and 201 in section 11 of township 1 north, range 3 west, Willamette Meridian, and tax lots 1800 and 2000 and that portion of tax lot 3900 that is north of the south line of the Dobbins Donation Land Claim No. 47 in section 12 of township 1 north, range 3 west, Willamette Meridian, is designated as acknowledged rural reserve.

<<(b) ~~N OF CORNELIUS IN COUNCIL CREEK -~~ The undesignated real property that is situated north of the City of Cornelius on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> and that is north of the south bank of Council Creek, east of the east right of way of Cornelius-Schefflin Road and west of the west bank of Dairy Creek is designated as acknowledged rural reserve.

<<(c) ~~N OF FOREST GROVE -~~ The undesignated real property that is north of the City of Forest Grove on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as east of Area 7B, west of the east right of way of Highway 47 and south of the south right of way of Northwest Purdin Road is designated as acknowledged rural reserve.

<<(d) The undesignated real property that is situated west of Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is designated acknowledged rural reserve.

<<(d) [BHC3] **~~BENDEMEER - As acknowledged urban reserve the following real property that is not reserved by designation and that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:~~**

~~<<(A) All of lots 2 through 18, inclusive;~~

~~<<(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of West Union Road and the west boundary of Cornelius Pass Road; and~~

~~<<(c) The undesignated real property that begins at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of Highway 26; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly to the point of origin.~~

<<(4) Land in a county in Metro that is planned and zoned for farm, forest or mixed farm and forest use and that is not designated as urban reserve may not be included within the urban growth boundary of Metro before at least 75 percent of the land in the county that was designated urban reserve on or before the effective date of this 2014 Act has been included within the urban growth boundary, annexed into a city and planned and zoned for urban uses.

<<(5)(a) The real property described in subsection (2)(a) of this section:

<<(~~a~~A) Is employment land of state significance ~~and does not count in determining the employment capacity of the land within Metro~~; and

<<(~~b~~B) Must be planned and zoned for employment use.

<<(b) In its first legislative review of the urban growth boundary on or after the effective date of this 2014 Act, Metro shall not count the employment capacity of the real property described in subsection (2)(a) of this section in determining the employment capacity of the land within Metro

~~<<(6) The designation of rural reserve and urban reserve in this section does not require a metropolitan service district or any county to modify any intergovernmental agreement entered into under ORS 195.141 on or before the effective date of this 2014 Act.~~

<<(6) The following real property is not subject to an intergovernmental agreement entered into under ORS 195.141 on or before the effective date of this 2014 Act:

<<(a) The area described as Area [__] in Metro Ordinance 2011[SOUTH HILLSBORO] It has been suggested that this reference is to AREA 6A????

<<(b) (Bindemere west) The area west of Cornelius Pass Road???; and

<<(c) (Sunset Acres) ????[BHC4]

<<**SECTION 4.** **For the purpose of land use planning in Oregon, the Legislative Assembly designates the urban growth boundary designated in Metro Ordinance No. 11-1264B, adopted October 20, 2011, as the acknowledged urban growth boundary of Metro, subject to the conditions of approval in the ordinance, except that:**

<<(1) ~~CORNELIUS 1 - AREA 7C -~~ The real property in Area 7C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(2) ~~CORNELIUS AREA 2 - AREA 7D -~~ The real property in Area 7D on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(3) ~~FOREST GROVE AREA 7E -~~ The real property in Area 7E on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<**SECTION 5.** ORS 197.299 is amended to read:

<<197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than [~~five~~]**six** years after completion of the previous inventory, determination and analysis.

<<(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

<<(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

<<(c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

<<(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

<<(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

<<(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

<<(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

<<(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

<<**SECTION 6.** ORS 197.626 is amended to read:

<<197.626. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

<<(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

<<(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

<<(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

<<(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

<<(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

<<(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

<<**(2) When the commission reviews a final land use decision of a metropolitan service district under subsection (1)(a), (c), (d) or (f) of this section, the commission shall issue a final order in writing within 180 days after the commission votes whether to approve the decision.**

<<[~~(2)~~] **(3)** A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

<<**SECTION 7.** ORS 197.651 [BHC5]is amended to read:

<<197.651. (1) Judicial review [~~of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141~~] is **conducted** as provided in subsections (3) to [~~(12)~~] **(15)** of this section[~~.~~] **for a final order of the Land Conservation and Development Commission concerning a final land use decision:**

<<(a) Made by a metropolitan service district and described in ORS 197.626 (1)(a), (c) or (d).

<<(b) Made by a county and described in ORS 197.626 (1)(f).

<<(2) Judicial review [~~of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794~~] is **conducted** as provided in subsections (3) to (7), (9), (10) and [~~(12)~~] **(15)** of this section[~~.~~] **for:**

<<(a) Any other final order of the commission described in ORS 197.626.

<<(b) A final order of the commission described in ORS 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794.

<<(3) A proceeding for judicial review under this section may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

<<(4) The filing of the petition, as set forth in subsection (3) of this section, and

service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

<<(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

<<(6) Within [~~21~~] **14** days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

<<(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

<<(8) The Court of Appeals shall:

<<(a) Hear oral argument within [~~49~~] **56** days [~~of~~] **after** the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than [~~49~~] **56** days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

<<(b) Set forth in writing and provide to the parties a determination to hear oral argument more than [~~49~~] **56** days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

<<(c) Consider, in making a determination under paragraph (b) of this subsection:

<<(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that [~~49~~] **56** days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

<<(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

<<(9) The court:

<<(a) Shall limit judicial review of an order reviewed under this section to the record.

<<(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

<<(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

<<(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

<<(b) Unconstitutional.

<<(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

<<(11) The Court of Appeals shall issue a final order on the petition for judicial review [~~with the greatest possible expediency.~~] **within 180 days after the court hears oral argument.**

<<(12) The 180-day period described in subsection (11) of this section does not include:

<<(a) A period of delay that results from a motion properly before the Court of Appeals; or

<<(b) Except as provided in subsection (13) of this section, a period of delay

that results from a continuance granted by the court on the court's own motion or at the request of one of the parties if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 180 days.

<<(13) A period of delay resulting from a continuance granted by the Court of Appeals under subsection (12)(b) of this section is not excluded from the 180-day period unless the court sets forth in the record, orally or in writing, reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the parties in having a decision within the 180-day period. The court shall consider the following factors in determining whether to grant a continuance under subsection (12)(b) of this section:

<<(a) Whether the refusal to grant a continuance in the proceeding is likely to make it impossible to continue with the proceeding or to result in a miscarriage of justice; or

<<(b) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of fact or law, that it is not reasonable to expect adequate consideration of the issues within the 180-day period.

<<(14) The Court of Appeals may not grant a continuance under subsection (12)(b) of this section due to general congestion of the court calendar or lack of diligent preparation or attention to the case by a party or a member of the court.

<<[~~(12)~~] **(15)** If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

<<SECTION 8. (1) The amendments to ORS 197.626 by section 6 of this 2014 Act apply to a final land use decision of a metropolitan service district that is submitted to the Land Conservation and Development Commission for review on or after the effective date of this 2014 Act.

<<(2) The amendments to ORS 197.651 by section 7 of this 2014 Act apply to a petition for judicial review under ORS 197.651 that is filed on or after the effective date of this 2014 Act.

<<SECTION 9. The amendments to ORS 197.299 by section 5 of this 2014 Act become operative January 1, 2015.>>.

In line 45, delete <<4>> and insert <<10>>.

Unknown

From: Claudia Black [claudia.black@multco.us]
Sent: Wednesday, February 26, 2014 11:29 AM
To: TOMKINS Jed
Cc: SCHILLING Karen
Subject: Fwd: This is a -13
Attachments: 20140226 hb4078 13.doc; ATT01317.htm

New ones. Still okay?

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** Randy Tucker <Randy.Tucker@oregonmetro.gov>
> **Date:** February 26, 2014, 11:24:50 AM PST
> **To:** Claudia Black <claudia.black@multco.us>
> **Subject: FW: This is a -13**

> **From:** Shaun Jillions [mailto:shaun.jillions@tonkon.com]
> **Sent:** Wednesday, February 26, 2014 11:17 AM
> **To:** Randy Tucker
> **Subject:** FW: This is a -13
>
> FYI

Shaun Jillions | Tonkon Torp LLP

1600 Pioneer Tower | 888 S.W. Fifth Avenue

Portland, Oregon 97204

503.802.5762 | FAX 503.972.7462

shaun.jillions@tonkon.com | www.tonkon.com

This message may contain confidential communications and privileged information. If you received this message in error, please delete it and notify me promptly.

Circular 230 Disclaimer: If any part of this communication is interpreted as providing federal tax advice, U.S. Treasury Regulations require that we inform you that we neither intended nor wrote this communication for you to use in avoiding federal tax penalties that the IRS may attempt to impose and you may not use it for that purpose.

From: Rep Clem <rep.brianclem@state.or.us>
Date: Wednesday, February 26, 2014 at 11:11 AM
To: Reiley Beth <beth.reiley@state.or.us>, David Hunnicutt <dave@oia.org>, Inga Deckert <inga.deckert@tonkon.com>, Jason Miner <jason@friends.org>, Jon Chandler <jchandler@oregonhba.com>, Mary Kyle McCurdy <mkm@friends.org>, Rep Unger <rep.benunger@state.or.us>, Rep Davis <rep.johndavis@state.or.us>, Richard Whitman <richard.m.whitman@state.or.us>, Shaun Jillions <shaun.jillions@tonkon.com>
Subject: Fwd: This is a -13

Please forward on -

BC

Representative Brian Clem. HD21
H-284, State Capitol - Salem, OR
(503) 986-1421 - Office

Begin forwarded message:

> **From:** Conley Harrison <ConleyH@leg.state.or.us>
> **Date:** February 26, 2014 at 11:07:15 AM PST
> **To:** Rep Clem <ClemB@leg.state.or.us>, Reiley Beth <ReileyB@leg.state.or.us>, WHITMAN Richard M * GOV <Richard.M.WHITMAN@state.or.us>, "jjohnson@oda.state.or.us (james.w.johnson@state.or.us)" <james.w.johnson@state.or.us>
> **Subject: This is a -13**

I will go ahead and deliver it official, but I think you do not yet want to adopt this version.

B. Harrison Conley
Senior Deputy Legislative Counsel
Legislative Counsel Committee
900 Court Street NE - S101
Salem, OR 97301-4065
503-986-1243 (Phone)
503-373-1043 (Fax)

Proposed Amendments to
House Bill 4078

2/26/14 (BHC/ps)

LC 141

On page 1 of the printed corrected bill, line 2, after the semicolon insert <<creating new provisions; amending ORS 197.299, 197.626 and 197.651;>>.

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<<(20) The regional and local land use decisions that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826, in combination with sections 3 and 4 of this 2014 Act:

<<(a) Do not alter the number of years for which the urban reserves provide a supply of land; and

<<(b) Achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(A) Livability in our communities;

<<(B) Viability and vitality in our agricultural and forest industries; and

<<(C) Protection of the important natural landscape features that define the metropolitan region for its residents.

<<SECTION 2. (1) Section 3 of this 2014 Act is added to and made a part of ORS 195.137 to 195.145.

<<(2) Section 4 of this 2014 Act is added to and made a part of ORS 197.295 to 197.314.

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<<(b) The Legislative Assembly designates as acknowledged urban reserve the real property that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

<<(A) All of lots 1 through 18, inclusive;

<<(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of West Union Road and the west boundary of Cornelius Pass Road; and

<<(C) The real property that is more particularly described as: Beginning at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of West Union Road ; thence westerly along the right of way to its intersection with the east boundary of the right

of way of Cornelius Pass Road; thence northerly along the right of way to the point of origin.

<<(2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

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<<(b) The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is south of the south boundary of the right of way of Highway 26 and west of the real property described in paragraph (a) of this subsection is designated as acknowledged rural reserve.

<<(c) The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more particularly described as tax lots 100, 900, 901, 1100, 1200, 1300 and 1400 in sections 15 and 16 of township 1 north, range 2 west, Willamette Meridian, is not designated as a reserve area.

<<(d) The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is not described in paragraph (c) of this subsection is designated as acknowledged rural reserve.

<<(e) The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is north of the south bank of Council Creek is designated as acknowledged rural reserve.

<<(f) The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is south of the south bank of Council Creek is included within the acknowledged urban growth boundary.

<<(3) For purposes of land use planning in Oregon, in relation to the following real property in Washington County that is not reserved by designation in Metro Resolution No. 11-4245, adopted on March 15, 2011, the Legislative Assembly designates:

<<(a) The undesignated real property that is situated south of the City of North Plains on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as tax lots 100, 101, 200 and 201 in section 11 of township 1 north, range 3 west, Willamette Meridian, and tax lots 1800 and 2000 and that portion of tax lot 3900 that is north of the south line of the Dobbins Donation Land Claim No. 47 in section 12 of township 1 north, range 3 west, Willamette Meridian, is designated as acknowledged rural reserve.

<<(b) The undesignated real property that is situated north of the City of Cornelius on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> and that is north of the south bank of Council Creek, east of the east right of way of Cornelius-Schefflin Road and west of the west bank of Dairy Creek is designated as acknowledged rural reserve.

<<(c) The undesignated real property that is north of the City of Forest Grove on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as east of Area 7B, west of the east right of way of

Highway 47 and south of the south right of way of Northwest Purdin Road is designated as acknowledged rural reserve.

<<(d) As acknowledged urban reserve the following real property that is not reserved by designation and that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

<<(A) All of lots 2 through 18, inclusive;

<<(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of West Union Road and the west boundary of Cornelius Pass Road; and

<<(c) The undesignated real property that begins at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of Highway 26; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly to the point of origin.

<<(d) The undesignated real property that is situated west of Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is designated acknowledged rural reserve.

<<(4) Land in a county in Metro that is planned and zoned for farm, forest or mixed farm and forest use and that is not designated as urban reserve may not be included within the urban growth boundary of Metro before at least 75 percent of the land in the county that was designated urban reserve on or before the effective date of this 2014 Act has been included within the urban growth boundary, annexed into a city and planned and zoned for urban uses.

<<(5)(a) The real property described in subsection (2)(a) of this section:

<<(A) Is employment land of state significance and does not count in determining the employment capacity of the land within Metro; and

<<(B) Must be planned and zoned for employment use.

<<(b) In its first legislative review of the urban growth boundary on or after the effective date of this 2014 Act, Metro shall not count the employment capacity of the real property described in subsection (2)(a) of this section in determining the employment capacity of the land within Metro.

<<(6) The following real property is not subject to an intergovernmental agreement entered into under ORS 195.141 on or before the effective date of this 2014 Act:

<<(a) The area described as Area [__] in Metro Ordinance 2011[SOUTH HILLSBORO] It has been suggested that this reference is to AREA 6A????

<<(b) (Bindemere west) The area west of Cornelius Pass Road???; and

<<(c) (Sunset Acres) ????

<<<u>SECTION 4.</u> For the purpose of land use planning in Oregon, the Legislative Assembly designates the urban growth boundary designated in Metro Ordinance No. 11-1264B, adopted October 20, 2011, as the acknowledged urban growth boundary of Metro, subject to the conditions of approval in the ordinance, except that:

<<(1) The real property in Area 7C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(2) The real property in Area 7D on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(3) The real property in Area 7E on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution

No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<**SECTION 5.** ORS 197.299 is amended to read:

<<197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than [~~five~~]**six** years after completion of the previous inventory, determination and analysis.

<<(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

<<(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

<<(c) The metropolitan service district shall take action under ORS 197.296 (6)(b), within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

<<(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

<<(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

<<(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

<<(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

<<(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

<<**SECTION 6.** ORS 197.626 is amended to read:

<<197.626. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

<<(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

<<(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

<<(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

<<(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

<<(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

<<(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the

amendment of the designation.

<<**(2) When the commission reviews a final land use decision of a metropolitan service district under subsection (1)(a), (c), (d) or (f) of this section, the commission shall issue a final order in writing within 180 days after the commission votes whether to approve the decision.**

<<[~~(2)~~] **(3)** A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

<<**SECTION 7.** ORS 197.651 is amended to read:

<<197.651. (1) Judicial review [~~of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141~~] is **conducted** as provided in subsections (3) to [~~(12)~~] **(15)** of this section[~~.~~] **for a final order of the Land Conservation and Development Commission concerning a final land use decision:**

<<(a) Made by a metropolitan service district and described in ORS 197.626 (1)(a), (c) or (d).

<<(b) Made by a county and described in ORS 197.626 (1)(f).

<<(2) Judicial review [~~of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794~~] is **conducted** as provided in subsections (3) to (7), (9), (10) and [~~(12)~~] **(15)** of this section[~~.~~] **for:**

<<(a) Any other final order of the commission described in ORS 197.626.

<<(b) A final order of the commission described in ORS 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794.

<<(3) A proceeding for judicial review under this section may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

<<(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

<<(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

<<(6) Within [~~21~~] **14** days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

<<(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

<<(8) The Court of Appeals shall:

<<(a) Hear oral argument within [~~49~~] **56** days [~~of~~] **after** the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than [~~49~~] **56** days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

<<(b) Set forth in writing and provide to the parties a determination to hear oral argument more than [~~49~~] **56** days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

<<(c) Consider, in making a determination under paragraph (b) of this subsection:

<<(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that [~~49~~] **56** days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

<<(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

<<(9) The court:

<<(a) Shall limit judicial review of an order reviewed under this section to the record.

<<(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

<<(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

<<(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

<<(b) Unconstitutional.

<<(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

<<(11) The Court of Appeals shall issue a final order on the petition for judicial review [~~with the greatest possible expediency.~~] **within 180 days after the court hears oral argument.**

<<(12) The 180-day period described in subsection (11) of this section does not include:

<<(a) A period of delay that results from a motion properly before the Court of Appeals; or

<<(b) Except as provided in subsection (13) of this section, a period of delay that results from a continuance granted by the court on the court's own motion or at the request of one of the parties if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 180 days.

<<(13) A period of delay resulting from a continuance granted by the Court of Appeals under subsection (12)(b) of this section is not excluded from the 180-day period unless the court sets forth in the record, orally or in writing, reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the parties in having a decision within the 180-day period. The court shall consider the following factors in determining whether to grant a continuance under subsection (12)(b) of this section:

<<(a) Whether the refusal to grant a continuance in the proceeding is likely to make it impossible to continue with the proceeding or to result in a miscarriage of justice; or

<<(b) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of fact or law, that it is not reasonable to expect adequate consideration of the issues within the 180-day period.

<<(14) The Court of Appeals may not grant a continuance under subsection (12)(b) of this section due to general congestion of the court calendar or lack of diligent preparation or attention to the case by a party or a member of the court.

<<[~~(12)~~] **(15)** If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

<<**<u>SECTION 8.</u> (1) The amendments to ORS 197.626 by section 6 of this 2014 Act apply to a final land use decision of a metropolitan service district that is submitted to the Land Conservation and Development Commission for review on or after the effective date of this 2014 Act.**

<<(2) The amendments to ORS 197.651 by section 7 of this 2014 Act apply to a

petition for judicial review under ORS 197.651 that is filed on or after the effective date of this 2014 Act.

<<SECTION 9. The amendments to ORS 197.299 by section 5 of this 2014 Act become operative January 1, 2015.>>.

In line 45, delete <<4>> and insert <<10>>.

Unknown

From: Roger Alfred [Roger.Alfred@oregonmetro.gov]
Sent: Tuesday, February 25, 2014 1:23 PM
To: Jed TOMKINS; Richard.M.Whitman@state.or.us; Claudia BLACK
Subject: RE: LC141 - reserves - amt. of land std

Got it – thanks. I'm about to head down to Salem, will make sure this is added to our growing list of tweaks.

From: Jed TOMKINS [mailto:jed.tomkins@multco.us]
Sent: Tuesday, February 25, 2014 1:21 PM
To: Roger Alfred; Richard.M.Whitman@state.or.us; Claudia BLACK
Subject: LC141 - reserves - amt. of land std

Roger and Richard,

LC 141, attached, addresses the "best achieves" standard. That is good. But it should also address the second of the two standards that apply to the reserves on a region-wide basis---i.e., as a "package"---that is the "amount of land standard" ORS 195.145(4) and in rule at OAR 660-027-0040(2), which says that the package must provide 40-50 years of urban reserves. The LCDC rule requires the specific number of years.

Our original package hit the 50 year mark. I have inserted redlines into the attached LC141 to address this standard.

I have spoken to Rep Clem and Claudia Black; they have asked me to contact you about this.

Jed Tomkins
Assistant County Attorney
Office of Multnomah County Attorney
501 SE Hawthorne Blvd., Suite 500
Portland, OR 97214
Ph: (503) 988-3138
Fx: (503) 988-3377

NOTICE: This communication, including any attachments, may contain privileged or other confidential information. If you have received this communication in error, please advise the sender by reply email and immediately delete the communication without copying or disclosing the contents. Thank you.

On Mon, Feb 24, 2014 at 11:56 AM, Jed TOMKINS <jed.tomkins@multco.us> wrote:
Richard and Roger,

It is sounding like MultCo need not be involved in Rep. Clem's bill and, indeed, that no one wants to hear from MultCO on this :-)

From what I am hearing, that all sounds fine, but I can imagine a couple of ways that this bill might impact MultCO, its reserves and its position in the court of appeals litigation. Accordingly, I feel that I, on behalf of MultCO, really need to see the current working draft before too much more happens.

Is that something you can provide to me?

Thanks and kind regards,

Jed

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On Mon, Feb 24, 2014 at 8:42 AM, Roger Alfred <Roger.Alfred@oregonmetro.gov> wrote:
Correct. The bill addresses Wash Co reserves and UGB only.

Sent from my iPhone

On Feb 24, 2014, at 8:15 AM, "Jed TOMKINS" <jed.tomkins@multco.us> wrote:

> Can you confirm one thing for me. I am hearing that Rep Clem's work:
>
> - primarily concerns the UGB
> - Is changing the UGB in Washington Co., but is leaving the UGB intact as Metro drew it for MultCO and Clackamas
> - Might address reserves in Washington County to some extent, **but is not addressing MultCO or Clackamas reserves**
>
> Is this right? I am just trying to confirm whether MultCO reserve Areas 9D or 9B are in play---I am told they are not, but it is thirdhand information.

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Unknown

From: Claudia Black [claudia.black@multco.us]
Sent: Tuesday, February 25, 2014 2:09 PM
To: Tucker Randy
Subject: Fwd: LC141 - reserves - amt. of land std

FYI

Claudia Black, Co-Director
Office of Government Relations
Multnomah County
503-709-4806

Begin forwarded message:

> **From:** "Rep Clem" <rep.brianclem@state.or.us>
> **Date:** February 25, 2014, 1:48:43 PM PST
> **To:** Claudia Black <claudia.black@multco.us>
> **Cc:** "Jed TOMKINS" <jed.tomkins@multco.us>, "Rep Clem" <rep.brianclem@state.or.us>, "WHITMAN Richard M * GOV" <richard.m.whitman@state.or.us>, "Roger Alfred" <roger.alfred@oregonmetro.gov>
> **Subject: Re: LC141 - reserves - amt. of land std**
>
> I'm talking w Ludlow now. He says they will support if they can get a guarantee they will get advantaged in the next UGB. I'm talking w Hughes
>
> Representative Brian Clem. HD21
> H-284, State Capitol - Salem, OR
> (503) 986-1421 - Office
>
> On Feb 25, 2014, at 1:42 PM, "Claudia Black" <claudia.black@multco.us> wrote:
>
>> Just FYI. According to Chris Lyons (Clack's lobbyist), the Board just voted unanimously to oppose the entire amendment.
>>
>> Claudia Black, Co-Director
>> Office of Government Relations
>> Multnomah County
>> 503-709-4806
>>
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Jed

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<20140225 - hb4078 12 - amount of land standard.docx>

Proposed Amendments to
House Bill 4078

2/23/14 (BHC/)

LC 141

On page 1 of the printed corrected bill, line 2, after the semicolon insert <<creating new provisions; amending ORS 197.299, 197.626 and 197.651;>>.

In line 10, after <<approved>> insert <<legislative>> and delete <<2002>> and insert <<2005>>.

On page 2, delete lines 28 and 29 and insert:

<<(17) On June 14, 2012, the commission unanimously approved the expansion of the urban growth boundary by Ordinance No. 11-1264B in Aproval Order 12-UGB-001826.>>.

Delete lines 37 through 44 and insert:

<<(20) The regional and local land use decisions related to Multnomah County and Clackamas County that were approved by the Land Conservation and Development Commission in Approval Order No. 12-UGB-001826 and sections 3 and 4 of this 2014 Act provide a 30 year supply of urban reserve land, beyond the 20-year period for which Metro has demonstrated a buildable land supply in the most recent inventory, and achieve a balance in the expansion of the area within the urban growth boundary and in the designation of urban reserves and rural reserves that best achieves:

<<(a) Livability in our communities;

<<(b) Viability and vitality in our agricultural and forest industries; and

<<(c) Protection of the important natural landscape features that define the metropolitan region for its residents.

<<**SECTION 2. (1) Section 3 of this 2014 Act is added to and made a part of ORS 195.137 to 195.145.**

<<(2) Section 4 of this 2014 Act is added to and made a part of ORS 197.295 to 197.314.

<<**SECTION 3. (1) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as rural reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowedged rural reserve in Washington County, except that BEAVERTON S (AKA SCHOLLS FERRY/TILE FLAT ROADS) - the real property in Area 5C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more particularly described as tax lots 1500 and 1501, section 1 of township 2 south, range 2 west, Willamette Meridian, is not designated as a reserve area or included within the acknowledged urban growth boundary.**

<<(2) For purposes of land use planning in Oregon, the Legislative Assembly designates the land in Washington County that was designated as urban reserve in Metro Resolution No. 11-4245, adopted on March 15, 2011, as the acknowledged urban reserve in Washington County, except that:

<<(a) AREA 8A - CENTRAL - The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment Ato Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)> that is east of the east boundary of the right of way of Jackson School Road and east of the east bank of of Storey Creek and the east bank of Waibel Creek is included within the urban growth boundary .

<<(b) AREA 8A WEST - The real property Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report

for Resolution No. 11-4245 (03/17/11 DRAFT)> that is south of the south boundary of the right of way of Highway 26 and west of the real property described in paragraph (a) of this subsection designated rural reserve.

<<(c) HELVETIA - AREA 8B - STANDRING - The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is more particularly described as tax lots 100, 900, 901, 1100, 1200, 1300 and 1400 in township 1 north, range 2 west, sections 15 and 16, Willamette Meridian, is not designated as a reserve area or included within the acknowledged urban growth boundary.

<<(d) HELVETIA - AREA 8B - The real property in Area 8B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is not described in paragraph (a) of this subsection is designated as acknowledged rural reserve.

<<(e) HILLSBORO 1 FOREST GROVE - AREA 7B North of Forest Grove - The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is north of the south bank of Council Creek is designated rural reserve.

<<(f) HILLSBORO 1 - FOREST GROVE AREA 7B North of Cornelius -The real property in Area 7B on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is south of the south bank of Council Creek is included within the urban growth boundary.

(3) For purposes of land use planning in Oregon, in relation to the following real property in Washington County that is not reserved by designation in Metro Resolution No. 11-4245, adopted on March 15, 2011, the Legislative Assembly designates:

<<(a) S NORTH PLAINS - The undesignated real property that is situated south of the City of North Plains on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as tax lots 100, 101, 200, 201 in section 11 of township 1 north, range 3 west, Willamette Meridian, and tax lots 1800, 2000 and 3900 in section 12 of township 1 north, range 3 west, Willamette Meridian, is designated as rural reserve.

<<(b) N of CORNELIUS in re COUNCIL CREEK - The undesignated real property that is situated north of the City of Cornelius on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> that is north of the south bank of Council Creek, east of the east right of way of Cornelius-Schefflin Road and west of the west bank of Dairy Creek is designated acknowledged rural reserve.

<<(c) N of FOREST GROVE - The undesignated real property that is north of the City of Forest Grove on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> more particularly described as east of Area 7B, west of the east right of way of Highway 47 and south of the south right of way of Northwest Purdin Road is designated acknowledged rural reserve.

<<(d) BENDEMEER - The Legislative Assembly designates as acknowledged urban reserve the following real property that is not reserved by designation and that is part of the original plat of Bendemeer, Washington County, Oregon, more particularly described as:

(A) All of lots 2 through 18, inclusive;

(B) The parts of lots 64, 65 and 66 that are situated between the east boundary of West Union Road and the west boundary of Cornelius Pass Road; and

(c) The undesignated real property that is more particularly described as:

Beginning at a point of origin that is the south bank of Holcomb Creek and the east boundary of the right of way of Cornelius Pass Road; thence easterly along the south bank of Holcomb Creek, continuing along the south bank of Holcomb Lake to its intersection with the west boundary of Area 8C; thence southerly along the west boundary of Area 8C to its intersection with the north boundary of the right of way of Highway 26; thence westerly along the right of way to its intersection with the east boundary of the right of way of Cornelius Pass Road; thence northerly to the point of origin.

<<(4) Land in Washington County that is planned and zoned for farm, forest or mixed farm and forest use and that is not designated as urban reserve may not be included within the urban growth boundary of Metro before at least 75 percent of the land in Washington County that was designated urban reserve on or before the effective date of this 2014 Act has been included within the urban growth boundary, annexed into a city and planned and zoned for urban uses.

<<(5) The real property described in subsection (2)(a) of this section:

<<(a) Is employment land of state significance does not count in determining the employment capacity of the land within Metro; and

<<(b) Must be planned and zoned for employment use.

<<(6) The designation of rural reserve and urban reserve in this section does not require a metropolitan service district or any county to modify any intergovernmental agreement entered into under ORS 195.141 on or before the effective date of this 2014 Act.

<<SECTION 4. For the purpose of land use planning in Oregon, the Legislative Assembly designates the urban growth boundary designated in Metro Ordinance No. 11-1264B, adopted October 20, 2011, as the acknowledged urban growth boundary of Metro except that:

<<(1) CORNELIUS 1 - AREA 7C - The real property in Area 7C on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(2) CORNELIUS 2 - AREA 7D - The real property in Area 7D on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(3) FOREST GROVE 1 - AREA 7E - The real property in Area 7E on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT),> is included within the acknowledged urban growth boundary.

<<(4) AREA 8A WEST - The real property in Area 8A on Metro's map denominated as the <Urban and Rural Reserves in Washington County, Attachment A to Staff Report for Resolution No. 11-4245 (03/17/11 DRAFT)> that is south of the south boundary of the right of way of Highway 26 and west of the real property described in section 3 (2)(a) of this 2014 Act is designated rural reserve.

<<**SECTION 5.** ORS 197.299 is amended to read:

<<197.299. (1) A metropolitan service district organized under ORS chapter 268 shall complete the inventory, determination and analysis required under ORS 197.296 (3) not later than [~~five~~] **six** years after completion of the previous inventory, determination and analysis.

<<(2)(a) The metropolitan service district shall take such action as necessary under ORS 197.296 (6)(a) to accommodate one-half of a 20-year buildable land supply determined under ORS 197.296 (3) within one year of completing the analysis.

<<(b) The metropolitan service district shall take all final action under ORS 197.296 (6)(a) necessary to accommodate a 20-year buildable land supply determined under ORS 197.296 (3) within two years of completing the analysis.

<<(c) The metropolitan service district shall take action under ORS 197.296 (6)(b),

within one year after the analysis required under ORS 197.296 (3)(b) is completed, to provide sufficient buildable land within the urban growth boundary to accommodate the estimated housing needs for 20 years from the time the actions are completed. The metropolitan service district shall consider and adopt new measures that the governing body deems appropriate under ORS 197.296 (6)(b).

<<(3) The Land Conservation and Development Commission may grant an extension to the time limits of subsection (2) of this section if the Director of the Department of Land Conservation and Development determines that the metropolitan service district has provided good cause for failing to meet the time limits.

<<(4)(a) The metropolitan service district shall establish a process to expand the urban growth boundary to accommodate a need for land for a public school that cannot reasonably be accommodated within the existing urban growth boundary. The metropolitan service district shall design the process to:

<<(A) Accommodate a need that must be accommodated between periodic analyses of urban growth boundary capacity required by subsection (1) of this section; and

<<(B) Provide for a final decision on a proposal to expand the urban growth boundary within four months after submission of a complete application by a large school district as defined in ORS 195.110.

<<(b) At the request of a large school district, the metropolitan service district shall assist the large school district to identify school sites required by the school facility planning process described in ORS 195.110. A need for a public school is a specific type of identified land need under ORS 197.298 (3).

<<**SECTION 6.** ORS 197.626 is amended to read:

<<197.626. (1) A local government shall submit for review and the Land Conservation and Development Commission shall review the following final land use decisions in the manner provided for review of a work task under ORS 197.633:

<<(a) An amendment of an urban growth boundary by a metropolitan service district that adds more than 100 acres to the area within its urban growth boundary;

<<(b) An amendment of an urban growth boundary by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary;

<<(c) A designation of an area as an urban reserve under ORS 195.137 to 195.145 by a metropolitan service district or by a city with a population of 2,500 or more within its urban growth boundary;

<<(d) An amendment of the boundary of an urban reserve by a metropolitan service district;

<<(e) An amendment of the boundary of an urban reserve to add more than 50 acres to the urban reserve by a city with a population of 2,500 of more within its urban growth boundary; and

<<(f) A designation or an amendment to the designation of a rural reserve under ORS 195.137 to 195.145 by a county, in coordination with a metropolitan service district, and the amendment of the designation.

<<(2) When the commission reviews a final land use decision of a metropolitan service district under subsection (1)(a), (c), (d) or (f) of this section, the commission shall issue a final order in writing within 180 days after the commission votes whether to approve the decision.

<<[~~(2)~~] **(4)** A final order of the commission under this section may be appealed to the Court of Appeals in the manner described in ORS 197.650 and 197.651.

<<**SECTION 7.** ORS 197.651 is amended to read:

<<197.651. (1) Judicial review [~~of a final order of the Land Conservation and Development Commission under ORS 197.626 concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under ORS 195.141~~] is **conducted** as provided in subsections (3) to [~~(12)~~] **(15)** of this section[.] **for a final order of the Land Conservation and Development Commission concerning a final land use decision:**

<<(a) Made by a metropolitan service district and described in ORS 197.626

(1)(a), (c) or (d).

<<(b) Made by a county and described in ORS 197.626 (1)(f).

<<(2) Judicial review [~~of any other final order of the commission under ORS 197.626 or of a final order of the commission under 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794~~] is **conducted** as provided in subsections (3) to (7), (9), (10) and [~~(12)~~] **(15)** of this section[~~.~~] **for:**

<<(a) Any other final order of the commission described in ORS 197.626.

<<(b) A final order of the commission described in ORS 197.180, 197.251, 197.628 to 197.651, 197.652 to 197.658, 197.659, 215.780 or 215.788 to 215.794.

<<(3) A proceeding for judicial review under this section may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.

<<(4) The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.

<<(5) The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.

<<(6) Within [~~21~~] **14** days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.

<<(7) Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.

<<(8) The Court of Appeals shall:

<<(a) Hear oral argument within [~~49~~] **56** days [~~of~~] **after** the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than [~~49~~] **56** days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.

<<(b) Set forth in writing and provide to the parties a determination to hear oral argument more than [~~49~~] **56** days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.

<<(c) Consider, in making a determination under paragraph (b) of this subsection:

<<(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that [~~49~~] **56** days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

<<(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

<<(9) The court:

<<(a) Shall limit judicial review of an order reviewed under this section to the record.

<<(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

<<(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

<<(a) Unlawful in substance or procedure. However, error in procedure is not cause

for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

<<(b) Unconstitutional.

<<(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

<<(11) The Court of Appeals shall issue a final order on the petition for judicial review [~~with the greatest possible expediency.~~] **within 180 days after the court hears oral argument.**

<<(12) The 180-day period described in subsection (11) of this section does not include:

<<(a) A period of delay that results from a motion properly before the Court of Appeals; or

<<(b) Except as provided in subsection (13) of this section, a period of delay that results from a continuance granted by the court on the court's own motion or at the request of one of the parties if the court granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 180 days.

<<(13) A period of delay resulting from a continuance granted by the Court of Appeals under subsection (12)(b) of this section is not excluded from the 180-day period unless the court sets forth in the record, orally or in writing, reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the parties in having a decision within the 180-day period. The court shall consider the following factors in determining whether to grant a continuance under subsection (12)(b) of this section:

<<(a) Whether the refusal to grant a continuance in the proceeding is likely to make it impossible to continue with the proceeding or to result in a miscarriage of justice; or

<<(b) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of fact or law, that it is not reasonable to expect adequate consideration of the issues within the 180-day period.

<<(14) The Court of Appeals may not grant a continuance under subsection (12)(b) of this section due to general congestion of the court calendar or lack of diligent preparation or attention to the case by a party or a member of the court.

<<[~~(12)~~] **(15)** If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

<<**SECTION 8. (1) The amendments to ORS 197.626 by section 6 of this 2014 Act apply to a final land use decision of a metropolitan service district that is submitted to the Land Conservation and Development Commission for review on or after the effective date of this 2014 Act.**

<<(2) The amendments to ORS 197.651 by section 7 of this 2014 Act apply to a petition for judicial review under ORS 197.651 that is filed on or after the effective date of this 2014 Act.

<<**SECTION 9. The amendments to ORS 197.299 by section 5 of this 2014 Act become operative January 1, 2015.**>>.

In line 45, delete <<4>> and insert <<10>>.

Unknown

From: Shipsey Steven [steve.shipsey@doj.state.or.us]
Sent: Tuesday, June 10, 2014 3:08 PM
To: Jed TOMKINS; Ebbett Patrick M
Subject: RE: Urban Rural Reserves - Remand

Thanks Jed. I will review this and get back to you. This is helpful to have the county's sense that the record as is is sufficient.

Steve

From: Jed TOMKINS [mailto:jed.tomkins@multco.us]
Sent: Tuesday, June 10, 2014 11:20 AM
To: Shipsey Steven; Ebbett Patrick M
Subject: Urban Rural Reserves - Remand

Wondering if anyone out there has considered the operation of LCDC's new authority to affirm a decision "clearly supported" by the record--HB 4078, sec 9 (2014)---attached.

I've given it "some" thought . . . as evidenced by the attached draft tome (sorry), the highlights of which are:

- I hope to have an opportunity on remand to ask LCDC to resolve the remand (at least as to MultCO) at the LCDC level, rather than having the matter remanded back to the county board---I think HB 4078 makes this possible and I would submit something along the lines of the attached draft brief and present oral argument if they hold a hearing
- The deficiency in MultCO's rural reserve designation of Area 9D is *technical* in nature--it was the *explanation* that was deficient; no substantive conflict in the evidence was identified
    - The deficiency is cured if *both* the northern and southern halves of Area 9D are shown to be suitable for RR Designation
    - Other relevant rules include:
        - No need to justify the designation of the Barker Property itself;
        - If an area could be given either designation, the local gov gets to choose
- The record *is* sufficient:
    - The attached excerpt from LCDC's record as transmitted to the Court of Appeals shows ample analysis and explanation of the suitability of *both* halves of Area 9D as rural reserve
    - **note:** Area 9 used to be called Area 6. In addition, Area 6a is the northern half and Area 6b is the souther half.
- Consequently:
    - The matter could go all the way back to the county, in which case I would advise my Board to keep the record closed and just issue a new, more thorough explanation; or
    - LCDC can affirm the RR designation of Area 9D if LCDC finds that the record "clearly supports" the suitability of *both* the northern and the southern halves of Area 9D for RR Designation
        - I believe the attached excerpt of record does the trick---I don't think it's a close call at all; you'll see that both halves ranked very high for rural reserve under both the farm and forest factors and the landscape feature factors.
        - I don't know why the county's explanation didn't bring more of this out--it's a shame--it was also done before my time! :-)

Would love to discuss if you have the time.

Jed

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Unknown

From:	Jed TOMKINS [jed.tomkins@multco.us]
Sent:	Friday, February 28, 2014 10:21 AM
To:	Alan Rappleyea
Cc:	Ebbett Patrick M; Roger Alfred; smadkour@clackamas.us; Boderman, Nathan; Jacquilyn Saito-Moore; Chris Crean
Subject:	Re: Urban / Rural Reserves: CoA Decision - Legislation - Next Steps

Chris Crean suggests postponing this conversation until after the legislature adjourns---i.e., so we will know the fate of HB 4078.

I agree. I'll email a prompt shortly after sine die.

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On Wed, Feb 26, 2014 at 2:06 PM, Alan Rappleyea <Alan_Rappleyea@co.washington.or.us> wrote:

All our issues will be taken care of . . . but . . .

I am available at 2:00 pm-5pm.

Alan A. Rappleyea

Washington County Counsel

155 N First Ave. Suite 340

Hillsboro, OR 97124-3072

Ph: 503-846-8747

E-mail: alan_rappleyea@co.washington.or.us

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From: Ebbett Patrick M [mailto:patrick.m.ebbett@doj.state.or.us]
Sent: Wednesday, February 26, 2014 1:11 PM
To: 'Jed TOMKINS'; Roger Alfred; smadkour@clackamas.us; Boderman, Nathan; Alan Rappleyea; Jacquilyn Saito-Moore; Chris Crean
Subject: RE: Urban / Rural Reserves: CoA Decision - Legislation - Next Steps

Sounds like a good idea. I'm free all day tomorrow and Friday morning. I think Jed's list covers biggest remaining issues.

Patrick Ebbett

Senior Assistant Attorney General

DOJ/Appellate Division

(503) 378-4402

From: Jed TOMKINS [mailto:jed.tomkins@multco.us]
Sent: Wednesday, February 26, 2014 12:34 PM
To: Roger Alfred; smadkour@clackamas.us; Boderman, Nathan; Alan Rappleyea; Jacquilyn Saito-Moore; Chris Crean; Ebbett Patrick M
Subject: Urban / Rural Reserves: CoA Decision - Legislation - Next Steps

Fellow Reserves Respondents, are you interested in a teleconference to discuss the CoA decision and next steps? I know that HB 4078 is occupying our time for the moment, but maybe the legislative fray will subside enough for a teleconference on the other aspects of this matter by, say, **this Friday**---what do you think, Roger? Who can set up a call-in number?

What topics do you have for discussion? Here's a start:

- To what extent do reserves still exist in MultCO and ClackCO?
- To what extent did LCDC's Order, or any portion thereof, survive?
- Appeal to Or Sup Ct?
- Can the issues identified by the CoA be addressed at the LCDC level or is further local process required?
    - What if HB 4078 is adopted?
- If further local process is required, what exactly would be needed?
    - What if HB 4078 is adopted?
    - What if, on further local review, MultCO or ClackCO alters is reserve boundaries?

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