

BEFORE THE  
LAND CONSERVATION AND DEVELOPMENT COMMISSION  
OF THE STATE OF OREGON

**IN THE MATTER OF THE REVIEW  
OF THE DESIGNATION OF URBAN  
RESERVES BY METRO AND  
RURAL RESERVES BY  
CLACKAMAS COUNTY,  
MULTNOMAH COUNTY AND  
WASHINGTON COUNTY**

**OPENING BRIEF OF MULTNOMAH COUNTY**

## TABLE OF CONTENTS

I. Introduction .....	1
II. The Deficiency Identified by the Court: Inadequate Explanation. ....	1
III. LCDC’s New Authority to Affirm a Rural Reserve Designation that is Clearly Supported by the Evidence.....	4
A. HB 4078 (2014) .....	4
B. Likely similarities between LCDC’s new authority and LUBA’s analogous authority. ....	5
C. Likely differences between LCDC’s new authority and LUBA’s analogous authority. ....	9
IV. The Record Evidence Clearly Supports the Rural Reserve Designation of Area 9D. ....	10
A. Acknowledging the dissimilarities. ....	11
B. It is “obvious” from the record evidence that both the northern and southern halves of Area 9D are suitable for rural reserve designation. ....	12
1. Farm and Forest Factors.....	13
2. Landscape Features Factors. ....	15
3. The Record is Sufficiently Compelling. ....	18
V. Conclusion .....	21

## **I. Introduction**

With respect to the designation of reserves in Multnomah County, the Oregon Court of Appeals has asked LCDC to address the county's failure to meaningfully explain why, despite differences between the northern and southern halves of Area 9D, the county designated all of the land in that area as rural reserve.

To assist LCDC in this task, the county offers this brief of points and authorities organized into the following three discussion topics:

1. Explanation of the deficiency identified by the court (i.e., inadequate explanation);
2. Explanation of LCDC's new authority to affirm a rural reserve designation that is clearly supported by the evidence; and
3. Explanation that the evidence in the record does indeed clearly support the rural reserve designation of Area 9D.

Ultimately, the county respectfully requests that LCDC utilize its new authority to affirm the county's rural reserve designation of Area 9D instead of remanding the matter to the county.

## **II. The Deficiency Identified by the Court: Inadequate Explanation.**

The court remanded the rural reserve designation of Area 9D due to inadequate explanation:

“We conclude that, because the county failed to meaningfully explain why its consideration of the rural reserve factors yields a rural reserve designation of all land in Area 9D,

LCDC erred in concluding that the county's 'consideration' of the factors was legally sufficient.”

*Barkers Five, LLC v. LCDC*, 261 Or App 259, 345 (2014).

The court concluded that the county’s explanation was not meaningful because it did not explain why consideration of the pertinent factors yielded a designation of *all* of the land in Area 9D as rural reserve despite the fact that application of the reserve factors often yielded different results as to the land in the area *north* of Skyline Boulevard and the land in the area *south* of Skyline.

*Barkers Five*, 261 Or App at 345.

In addition, the court noted that, in the description of how Area 9D “fared” under the factors, only a single sentence pertained to the southern land. *Id.* Similarly, the court noted that the description of “why” Area 9D was designated rural reserve consisted of a single paragraph with broad, unqualified declarations appearing to relate to some of the natural landscape features factors in OAR 660-027-0060(3). *Id.* at 345–346.

From the foregoing assessment, the court concluded that the county should have explained its designation of the entire area in light of the differences between the northern and southern halves of Area 9D:

“a meaningful explanation as to why Area 9D, in its entirety, was designated as rural reserve would have acknowledged that application of the factors failed to yield similar results as to all of the land in the area but explained, nonetheless, why the entire area should be designated as rural reserve.”

*Barkers Five*, 261 Or App at 346.

The court made three additional points relevant to this issue. First, where the evidence supports the designation of an area as either urban reserve or rural reserve, the local government gets to choose *and need not* demonstrate that it has chosen the designation that “better suits” the area. *Id.* at 309–311.

Second, the county *is not* required to justify the designation of the *Barker property itself*. *Id.* Instead, the county was obligated to meaningfully explain why its consideration and application of the factors yielded a rural reserve designation of *all of the land* in Area 9D, especially in light of the dissimilarities between the northern and southern halves of that Area. *Id.*

Third, the explanation “need not be elaborate” but should have *acknowledged* the dissimilarities and *explained* why, nonetheless, a rural reserve designation is suitable for *all* of the land in Area 9D. *Id.*

Thus, in summary, the county’s explanation of its rural reserve designation of Area 9D was inadequate because it failed to acknowledge the dissimilarities between the northern and southern halves of that Area and explain why, nonetheless, a rural reserve designation is suitable for *all* of the land in Area 9D. Simple acknowledgement and explanation would have sufficed: the explanation did not have to be elaborate; did not need to justify the designation of the *Barkers property itself*; and did not need to establish that the county chose the designation that “better suits” the area.

With these rules in mind, the discussion turns to LCDC's new authority on remand of this matter.

### **III. LCDC's New Authority to Affirm a Rural Reserve Designation that is Clearly Supported by the Evidence.**

#### **A. HB 4078 (2014)**

During the 2014 regular session, the legislature granted new authority to LCDC to approve the urban and rural reserve designations despite certain shortcomings of the submittal from Metro and the counties as follows:

“When the Land Conservation and Development Commission acts on remand of the decision of the Oregon Court of Appeals in Case No. A152351, the commission may approve all or part of the local land use decision if the commission identifies evidence in the record that clearly supports all or part of the decision even though the findings of the local government either:

- (1) Do not recite adequate facts or conclusions of law; or
- (2) Do not adequately identify the legal standards that apply, or the relationship of the legal standards to the facts.”

HB 4078, Sec. 9 (2014) (*eff.* April 1, 2014).

Although not identical to LUBA's authority in ORS 197.835(11)(b), this new authority appears similar to LUBA's authority to affirm a decision clearly supported by the record. Accordingly, because the courts have not yet had an opportunity to interpret LCDC's new authority, LUBA's interpretations of its “clearly supports” authority provides a helpful source for insight into the operation of this standard of review. However, as explained further below, the circumstances in which LCDC is authorized to employ its “clearly supports”

standard differ from the typical circumstances in which LUBA is so authorized. Consequently, LCDC's application of this standard will differ to some degree from LUBA's application of the standard.

**B. Likely similarities between LCDC's new authority and LUBA's analogous authority.**

It seems likely that LCDC's "clearly supports" standard operates at least somewhat similarly to LUBA's analogous authority, especially in respect to the points set forth herein.

The "clearly supports" standard applies to "findings," which, in turn, are comprised of three components: (1) decision maker's determination of the approval standard; (2) decision maker's identification of the material facts; and, most relevant here, (3) the decision maker's *explanation* of how the material facts lead to the conclusion that the approval standard has (or has not) been satisfied - i.e., the "conclusions of law" referenced in LCDC's new authority, HB 4078, Sec. 9(1). *Doob v. City of Grants Pass*, LUBA No. 98-006, 34 Or LUBA 480, 483 (1998), *citing Sunnyside Neighborhood v. Clackamas Co. Comm.*, 280 Or 3, 20-21, 569 P2d 1063 (1977).

The purpose of the "clearly supports" standard is to avoid delays resulting from purely technical objections, such as inadequate explanations in findings:

"We view [the "clearly supports" standard as authorizing] this Board to remedy minor oversights and imperfections in local government land use decisions, as a way to eliminate delays

resulting from purely technical objections to a written decision. [The standard does not] permit or require LUBA to perform the responsibilities assigned to local governments, such as the weighing of evidence, the preparation of adequate findings, and the interpretation of comprehensive plans and local land use regulations.”

*Marcott Holdings, Inc. v. City of Tigard*, LUBA No. 95-011, 30 Or LUBA 101, 122–123 (1995).

Further, the “clearly supports” standard is more demanding than the “substantial evidence” standard. *Beck v. City of Tillamook*, LUBA No. 89-096, 18 Or LUBA 587, 602 (1990). In point of fact, LUBA interprets “clearly supports” to mean “makes obvious” or “makes inevitable.” *Marcott Holdings*, 30 Or LUBA at 122.

In practical terms, LUBA implements the “clearly supports” standard through consideration of the following question:

“\* \* \* the question is whether the evidence is sufficiently compelling to allow or require us under ORS 197.835(11)(b) to affirm the county's conclusions despite the inadequacy of its findings.”

*Harcourt v. Marion County*, LUBA No. 97-028, 33 Or LUBA 400, 405 (1997).

Thus, in summary, LUBA will not utilize the “clearly supports” standard to affirm a decision if affirmation would require LUBA to weigh evidence, engage in fact finding, or interpret regulations. In contrast, LUBA *will* employ the “clearly supports” standard to affirm a decision when the record is sufficiently developed and the evidence is sufficiently compelling (i.e.,

“obvious”) to allow LUBA to affirm a county’s conclusion despite the inadequacy of the county’s explanation of how it reached that conclusion.

By way of illustration, LUBA employed the “clearly supports” standard to affirm a city’s approval of a homeless shelter under a regulation authorizing “public facilities” even though the city failed to expressly determine that the shelter qualified as a “public facility” under the city code:

“Because it was disputed below whether the proposed homeless shelter was a public facility, the city erred in adopting no findings explaining why it concluded that the proposed homeless shelter is a public facility. However, if the parties identify evidence in the record which ‘clearly supports’ a finding that the proposed homeless shelter is necessary for the maintenance of public purposes (and therefore is a public facility), then we must affirm the city's decision even though it made no explicit finding that the proposed shelter is a public facility. ORS 197.835(9)(b) [*currently* ORS 197.835(11)(b)].

“The city cites evidence that the proposed shelter is supported by public funds and that it provides shelter to families and individuals who have none. We conclude that this is evidence which clearly supports a finding that the proposed shelter is necessary for the maintenance of public purposes and is, therefore, a public facility within the meaning of the TCZO definition of that term.”

*Beck*, 18 Or LUBA at 592–593.

In contrast, LUBA declined to utilize the “clearly supports” standard to affirm a city’s approval of certain signs under a regulation requiring signs to be “appropriate to the character of the neighborhood” because the evidence in the record was not sufficiently compelling - the evidence gave “nothing more than

an idea of what the signs will look like.” *Hubenthal v. City of Woodburn*, LUBA No. 2000-050, 39 Or LUBA 20, 50 (2000).

Turning to the present matter, the analytical posture here is similar to the circumstances in *Beck* described above. As in *Beck*, because the Barker’s disputed the inclusion of their property in the designation of Area 9D as rural reserve, the Court of Appeals determined that the county erred in failing to meaningfully explain its conclusion, particularly in light of the dissimilarities between the northern and southern halves of Area 9D (the Barker property is in the southern half).

Further, as in *Beck*, LCDC’s new authority allows LCDC to overlook the county’s error and affirm the rural reserve designation of Area 9D if the county cites evidence in the record that is sufficiently compelling to allow LCDC to affirm the county’s designation. More specifically, under LCDC’s new authority, LCDC may affirm the rural reserve designation of Area 9D if LCDC finds that it is “obvious” from the record evidence that both the northern and southern halves of Area 9D are suitable for rural reserve designation.

As explained in Section IV below, the evidence in the record does indeed clearly support the rural reserve designation of both halves of Area 9D.

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**C. Likely differences between LCDC's new authority and LUBA's analogous authority.**

In at least one respect, LCDC's application of its "clearly supports" standard is likely to differ from LUBA's application of the standard.

Typically, LUBA is asked to employ its "clearly supports" standard to affirm a local government conclusion that a land use standard has or has not been *satisfied*. Accordingly, LUBA will decline to affirm a decision pursuant to its "clearly supports" authority where evidence is conflicting or provides a reasonable basis for different conclusions. *See Doob*, 34 Or LUBA at 484, quoting *Waugh v. Coos County*, LUBA No. 93-129, 26 Or LUBA 300, 307 (1993).

Here, LCDC is in a very different position because there is no land use standard that must be *satisfied*. Instead, Metro and the counties were required to consider, weigh and balance various *factors*, which do not operate as criteria that must be satisfied. *Barkers Five*, 261 Or App at 295–301. This is why, as explained above, the choice of designation is left to Metro and the counties in those instances where an area is suitable for designation as either urban and rural reserve.

Therefore, LCDC does not have the same "conflicting evidence" concerns expressed by LUBA in *Doob* and *Waugh*. That is, here, even if the record clearly supports, for instance, an urban reserve designation, LCDC may

still employ its “clearly supports” standard to affirm a rural designation if the record clearly supports such designation as well.

Thus, two points are being made here. First, not all of the jurisprudence regarding the operation of LUBA’s “clearly supports” standard is applicable to LCDC’s new authority.

Second, although Area 9D actually ranks very low for suitability as an *urban* reserve (see below), even if the record showed that Area 9D was highly suitable for urban reserve designation, LCDC may still employ its “clearly supports” authority to affirm the county’s *rural* reserve designation if LCDC finds that it is “obvious” from the record evidence that both the northern and southern halves of Area 9D are suitable for rural reserve designation.

As explained in the next section, the evidence in the record does indeed clearly support the rural reserve designation of both halves of Area 9D.

#### **IV. The Record Evidence Clearly Supports the Rural Reserve Designation of Area 9D.**

As noted by the Court of Appeals, in considering the required factors, the county adopted and relied upon a report prepared by county staff and the county’s Citizen Advisory Committee commissioned for this task. *Barkers Five*, 261 Or App at 345; Rec at 2894–3031 (Mult. Co. Resolution 09-153 adopting CAC Report); *more specifically* Rec at 2993–3003 (excerpt from CAC report setting forth the analysis of Area 9D, referred to as Area 6 in the CAC

Report).<sup>1</sup> For convenience, the relevant excerpt from the CAC Report is appended to this brief.

In the CAC report, the Citizen Advisory Committee and county staff applied each of the rural reserve factors to evaluate all of the land in what is now referred to as Area 9D (a.k.a., Study Area 6) and then ranked how the land in that study area fared under each of the factors. *Barkers Five*, 261 Or App at 345. As noted by the court, the application of the reserve factors to this study area often yielded different results as to the land in the area that is north of Skyline Boulevard and the land that is south of Skyline. *Id.*

Nevertheless, as described in further detail below, the results of the CAC Report clearly establish that application of the rural reserves factors yields a rural reserve designation for *each* half of Area 9D and, thereby, *all of the land* in Area 9D.

**A. Acknowledging the dissimilarities.**

Dissimilarities exist between the northern and southern halves of Areas 9D. The northern half of Area 9D is “primarily forested,” has been mapped by the Oregon Department of Agriculture as containing “wildland forest” and “mixed forest,” “consists of a large block of forest land with few non forest [*sic*] uses,” and contains “high-value habitat, access to recreation, and other values that define the area as a landscape feature important to the region.” Rec

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<sup>1</sup> All citations to the record (i.e., “Rec at xxxx”) refer to the record as submitted to the Oregon Court of appeals.

at 2993, 2995, 2997. This northern half is subject to little risk of urbanization. *Id.* at 2993, 2995.

In contrast, the southern half of Area 9D is “primarily farm area,” has been mapped by the Oregon Department of Agriculture as containing “important” farmland, has certain farming limitations but “good integrity” overall, has “few non-farm uses” and edges compatible to farming, and contains the “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.” Rec at 2993, 2995, 2997. This southern half *is* subject to a risk of urbanization. *Id.* at 2994, 2995.

Both areas “rank high for sense of place” and, like the northern land, the southern land encompasses some important upland habitat areas, albeit of lesser regional value overall than the habitat present in the northern half of this Area. *Id.* at 2997.

**B. It is “obvious” from the record evidence that both the northern and southern halves of Area 9D are suitable for rural reserve designation.**

Despite the dissimilarities between the northern and southern halves of Area 9D, the record reflects that application of the rural reserves factors yields a rural reserve designation for *each* half and, thereby, *all of the land* in Area 9D.

**1. Farm and Forest Factors.**

Except for a few instances noted below, application of the farm and forest protection factors in OAR 660-027-0060(2) to Area 9D yielded a conclusion that this area ranks “high” for rural reserve designation with respect to *both* the northern and southern halves of the area. Rec at 2993–2995. That is, the county determined that *both* halves are highly capable of sustaining long-term agriculture or forestry operations due to the availability of large blocks of land and the clustering of farm or forest operations, adjacent land use patterns, and the sufficiency of agricultural or forestry infrastructure (the county ranked this latter sub-factor as “medium-high” in acknowledgment of some limitation on the movement of farm equipment on rural roads due to traffic). Rec at 2994–2995.

Delving into the details of these “high” rankings, the county explained that forest use predominates in the northern portion of Area 9D and farm use (hay, pasture, Christmas trees, nursery stock, and orchard) predominates in the southern portion - “[n]o limitations to long-term forestry have been noted for areas north of Skyline Blvd” and the southern area “includes few nonfarm uses, limited urban edges, and adequate ‘block’ size to maintain long-term agriculture.” Rec at 2994.

In addition, the county explained that all of Area 9D includes parcels suitable for both small and large scale farm and forest management and that, in the northern half, a buffer exists between resource and non-resource uses in the northern half (except in a few instances) and that very substantial buffers are present in the southern half, including “the Powerline area and Abbey Creek headwaters, the east-west lower Abbey Creek drainage, and Rock Creek running north-south immediately west of the county line.” Rec at 2995.

Where Area 9D did not receive a “high” ranking, it received, with one exception noted below, a “medium” ranking. For instance, with respect to the suitability of the soils and water, the southern half of Area 9D ranked “medium” for rural reserve designation because of its range in soils from Class II to IV and because of some uncertainty on the part of the Oregon Department of Agriculture regarding the abundance of groundwater (the county does not necessarily agree: the CAC Report notes the existence of irrigated fields in the area). Rec at 2994. With respect to these same points, the northern half of the area ranked “high” for soils suitable to forestry and was not ranked for water as water is not understood to be a limitation for forestry. *Id.*

In addition, whereas the northern half of Area 9D is not subject to a risk of urbanization, and therefore received a “low” ranking for that factor, the southern half ranked “high” for this factor, meaning it ranked “high” for protection through rural reserve designation.

Based on the foregoing analysis, the county concluded that “[t]his area is suitable for both farm and forest reserve, as indicated by the ‘important’ farm land and ‘wildland’ and ‘mixed’ forest designations.” Rec at 2995. In particular, with respect to the southern half of Area 9D, the county concluded:

“The primarily farm area south of Skyline, while containing soils and topography that present limitations to intensive cultivation and uncertain groundwater resources, maintains good integrity, has compatible edges, and few non-farm uses. This area is within an area potentially subject to urbanization based on analysis of key urban services. **The area south of Skyline Blvd./Cornelius Pass Rd. intersection should be considered as highly suitable for rural reserve to protect farm and forest resources.**”

*Id.* (emphasis added). Indeed, the CAC then recommended, and the county adopted, a rural reserve designation for Area 9D, *particularly* for the *southern* half of Area 9D. Rec at 2993.

Thus, in summary, the record reflects that a rural reserve designation is appropriate for both the northern and southern halves of Area 9D, with the southern half ranking *slightly higher* for rural reserve designation than the northern half.

## 2. *Landscape Features Factors.*

As with the farm and forest factors above, and except for a few instances noted below, application of the landscape feature factors in OAR 660-027-0060(3) to Area 9D yielded a rural reserve designation for *each* half of Area 9D and, thereby, *all of the land* in Area 9D.

Both halves ranked “high” for rural reserve as providing a sense of place and easy access to recreational opportunities. Rec at 2997. As explained by the county, “[t]he southwest side of the Tualatin Mtns [*sic*] is a large-scale landscape feature that provides a green connection between Portland and the Coast Range.” *Id.* In addition, the Area contains Metro’s Ancient Forest Preserve as well as bicycling and hiking opportunities. *Id.*

With respect to important fish, plant and wildlife habitat, both halves ranked “high” for rural reserve protection, with the exception that that the Kaiser Road and east-of-abbey creek areas ranked “medium” - although these areas are identified locally by both Metro and the county as important habitat areas, they are not mapped by the state or other regional entities. Rec at 2996.

Area 9D did receive some “low” rankings, but not with respect to qualities that dissuaded the CAC, staff or the county from designating this area as rural reserve. For instance, although the northern half of Area 9D ranks high for landslide hazard, the southern half ranks low for landslide or flood hazards. Rec at 2996.

Similarly, regarding the provision of separation between cities, the county adopted a “low” ranking because it understood this factor as applying to separation between Metro UGB cities and cities outside that area. Rec at 2997. That said, the county noted that the southern half of Area 9D is important in

providing separation of urban unincorporated areas to the west and the City of Portland. *Id.*

Further, regarding the area serving as a buffer of conflicts between urban and rural uses, the northern half of the area ranked “low” because such conflicts are not prevalent in that area; however, the southern half of Area 9D ranked “high” for rural reserve protection under this factor due to substantial natural and human-made buffers between urban and rural resources in this area. Rec at 2997.

Similarly, while the county determined that a rural reserve designation is not necessary to protect water quality in the northern half of Area 9D, the southern half ranked “medium” for rural reserve designation to protect Rock Creek and Abbey Creek, which are situated in a way that renders typical planning tools ineffective in protecting these resources if urban development were to occur here. Rec at 2996–2997.

A similar pattern occurs with respect to the risk of urbanization - the risk is “low” for the northern half of Area 9D, but “high” for the southern half.

Based on the foregoing analysis, and as explained in the following summary and conclusion, the county found that its consideration and application of the landscape feature factors to Area 9D yielded a rural reserve designation for *each* half of Area 9D and, thereby, *all of the land* in Area 9D:

“Areas north of Skyline Blvd. rank high for sense of place; they contain high-value habitat, access to recreation, and other values that define the area as a landscape feature important to the region. This area is not however, being studied for urban reserve because it ranks low for efficiency to provide key urban services.

“Areas south of Skyline rank high for sense of place; they contain stream features of the Abbey Creek mainstream, north fork, and headwaters areas that are mapped as important regional resources and that separate urban from rural lands. Upland habitat areas also exist, however there are patches in the landscape features mapping indicating lesser regional value. All areas south of Skyline Blvd. continue to be studied for urbanization. On balance, and considering that the broad objective of the Landscape Features factors is to protect areas that define natural boundaries to urbanization and help define the region for its residents, **the entire south-of-Skyline area should be considered as highly suitable for rural reserve.**”

Rec at 2997–2998 (emphasis added).

Thus, like the record for the farm and forest factors, it is “obvious” from the record for the landscape features factors that a rural reserve designation is appropriate for both the northern and southern halves of Area 9D, with, again, the southern half ranking *slightly higher* for rural reserve designation than the northern half.

### 3. *The Record is Sufficiently Compelling.*

In overall conclusion, the record reflects a much more thorough analysis by the county with respect to both the northern and southern halves of Area 9D than can be gleaned from the explanation that the Court of Appeals found inadequate. For instance, as noted by the court, the county’s explanation tends to rely on the landscape features analysis. Indeed, such analysis did in fact yield

a rural reserve designation. However, the record reflects that the consideration and application of the farm and forest factors clearly yielded a rural reserve designation as well.

Moreover, as set forth above, the record of the county's consideration and application of both sets of factors reflects that *both* the northern and southern halves ranked "high" or "medium" for most rural reserve factors and, if there was any difference at all, the southern half appears to rank *slightly higher* for rural reserve than the northern half.

Importantly, this evidence *is* sufficiently compelling to allow LCDC to affirm the rural reserve designation of *all* of the land in Area 9D. The high/medium overall ranking for rural reserve of all of the land in this area is demonstrated in the county's factor-by-factor analysis and explanation and does not leave any question regarding the propriety of a rural reserve designation for either the northern or the southern half of Area 9D.

In point of fact, the compelling nature of this evidence and the absence of ambiguity therein is highlighted through comparison to the county's consideration and application of the urban reserve factors to this same area. In contrast to the high/medium overall ranking of Area 9D for rural reserve, the CAC Report reflects a "medium/low" overall ranking for Area 9D as urban reserve. More specifically, the northern half of Area 9D was found to be not suitable for urban reserve at all. The southern half of Area 9D was found to

have low suitability to the east and a split between “low” and “medium/low” suitability to the west.

Now, hypothetically, to make the point here, suppose the county was asking LCDC to utilize the “clearly supports” standard to affirm an *urban* reserve designation for this area. LCDC could not do this. The record evidence on the urban factors consists of a suite of “low” rankings bolstered only by the “medium/low” suitability of the southwest corner of the area. Such evidence does not make the propriety of such designation “obvious.”

In contrast, no such uncertainty exists in the county’s consideration and application of the rural reserve factors to Area 9D - both the northern and southern halves of Area 9D were found to have “high” suitability under most of the factors and “medium” suitability under the remaining factors (with the exception of a few unremarkable “low” rankings for the northern half of Area 9D).

In short, it is “obvious” from the record evidence that *all of the land* in Area 9D is suitable for rural reserve designation.

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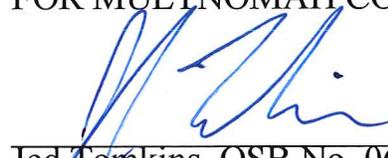
**V. Conclusion**

For the foregoing reasons, the county respectfully requests that LCDC utilize its new authority to affirm the rural reserve designation of Area 9D instead of remanding the matter to the county.

DATED this 25<sup>th</sup> day of September, 2014.

Respectfully submitted,

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## Area 6: West Hills South

### Rural Recommendations

- **CAC:** Designate rural reserve
- **Staff:** Designate the area south of Cornelius Pass Rd./Skyline Blvd. intersection rural reserve to protect farm, forest, and landscape features.

### Urban Recommendations

#### Area 6a

- **CAC:** Not a candidate for urban reserve
- **Staff:** No designation

#### Area 6b

- **CAC:** Do not designate urban reserve
- **Staff:** No designation

### Rural Reserve Analysis

This part of the study area lies south of Cornelius Pass Road, west of highway 30 and the City of Portland and Forest Park. It extends to the Washington/Multnomah county line on the west near the Plainview area, and continues south to the N. Bethany plan area and Abbey Creek. It is divided from Area 7 to the south by a power line corridor. The area abuts the City of Portland for a significant distance along its east edge.

Rural resource land mapping for this area includes “important” farmland in the ODA study Bethany/West Multnomah sub-region, “wildland forest” abutting and north of Forest Park with “mixed forest” south, and parts of Landscape Features units #20 Rock Creek Headwaters and #21 Forest Park Connections.

*CAC Assessment: High suitability West of McNamee; Low suitability east of McNamee*

**Staff Assessment:** High suitability of the area south of Skyline Blvd. for rural reserve to protect farm and forest resources and to protect landscape features.

### Farm and Forest Factors Evaluation

Rural Reserve Factors - Farm/Forest -0060(2)	Factor Ranking	Discussion/Rationale
<b>2. Land intended to provide long-term protection to the agricultural or forest industry, or both.</b>		
2a.	<p>Is situated in an area that is otherwise subject to urbanization due to proximity to a UGB.</p> <p>LOW</p> <p>HIGH –for areas south of Skyline</p> <p><i>CAC:</i> <i>Low – east of</i></p>	<p>Low for areas north of Skyline where it runs east/west from Cornelius Pass Rd. to the City of Portland. This area is ranked low for key urban services due to topography, and there is a significant block of publicly owned land north of Forest Park.</p>

Area 6: West Hills South

		<i>McNamee High – west of McNamee</i>	<p>Low for areas east of Abbey Creek north fork and upper Germantown Rd. – ranked low for key urban services due to topography.</p> <p>High for areas south of Skyline and west of the City of Portland and mid-slope line that crosses Germantown Rd., the Powerline, and Springville Rd. This area remains under consideration for urban reserve.</p> <p><i>CAC: There is urbanization possibility west of McNamee. Part of this area also remains under consideration for urban reserve.</i></p>
2b.	<b>Is capable of sustaining long-term agriculture or forestry</b>	HIGH	<p>Farm/forest resource use of this area generally changes along the east-west segment of Skyline Blvd with primarily forest use north, and farm use with patches of mixed forest use in steeper stream associated topography south.</p> <p>Primary crops grown south of Skyline include hay and pasture, other crops grown include Christmas trees, nursery stock, orchard, berries, wine grapes. Small horse operations are common. This area includes few nonfarm uses, limited urban edges, and adequate “block” size to maintain long-term agriculture.</p> <p>No limitations to long-term forestry have been noted for areas north of Skyline Blvd. Other than a short band of rural residential uses at the north edge of the area along McNamee Rd., areas in private ownership are managed for forest resources or both farm and forest.</p>
2c.	<b>Has suitable soils and water</b>	<p><u>Soils</u> MEDIUM – farm HIGH – forest</p> <p><u>Water</u> MEDIUM - farm</p>	<p>Soils in areas south of Skyline are a mix of Class II, III, and IV, suitable for farm use. Soils above Skyline are suited to forestry.</p> <p>Water is primarily groundwater, and while no specific limitations are noted, the ODA study indicates uncertainty re: the abundance of groundwater to support agriculture, although irrigated farm fields exist in the area.</p> <p>Water is not understood to be a limitation for forestry.</p>
2d.	<b>Is suitable to sustain long-term agricultural or forestry operations, taking into account:</b>		
2d. (A)	<b>Contains a large block of farm or forest land and cluster of farm operations or woodlots</b>	HIGH	<p>Lands south of Skyline make up a large block of farmland with scattered small forest pockets along the east edge and UGB. This area has few rural residential clusters.</p>

**Area 6: West Hills South**

			North of Skyline consists of extensive forest land blocking with rural residential uses scattered along McNamee Rd.
<b>2d. (B)</b>	<b>The adjacent land use pattern, including non-farm/forest uses and buffers between resource and non-resource uses.</b>	HIGH	<p>This area contains few non-farm/forest uses adjacent to managed areas. Zoning limits new dwellings to a greater extent than state laws allow. Land divisions are infrequent.</p> <p>In forested areas north of Skyline Blvd., the hilly topography results in localized situations where there is no buffering between older existing dwellings, and forest land in some areas.</p> <p>South of Skyline, noted buffers or edges include the Powerline area and Abbey Creek headwaters, the east-west lower Abbey Creek drainage, and Rock Creek running north-south immediately west of the county line.</p>
<b>2d. (C)</b>	<b>The land use pattern including parcelization, tenure and ownership</b>	HIGH	This area includes parcels suitable for both small and large scale farm and forest management.
<b>2d. (D)</b>	<b>Sufficiency of agricultural or forestry infrastructure</b>	MEDIUM/HIGH	No limitations to farm or forest infrastructure are noted, except for problems moving farm equipment on rural roads due to traffic, including cut-through urban traffic. The roads are arranged such that Germantown and Cornelius Pass Rd. carry traffic east-west and north-south along the edges of this area.

<b>Rural Reserves Factor -0060(4) Foundation or Important agricultural land within 3 miles of a UGB qualifies for designation as rural reserve.</b>			
	<b>Foundation</b>	No	
	<b>Important</b>	Yes	
	<b>Within 3 miles of a UGB</b>	Yes	All areas are within 3 miles of Portland UGB

**Staff Summary and Conclusion – Suitability for rural reserve to protect farm and forest resources:**

This area is suitable for both farm and forest reserve, as indicated by the “important” farm land and “wildland” and “mixed” forest designations. The primarily forested area north of Skyline Blvd. consists of a large block of forest land with few non forest uses, mainly associated with McNamee Rd. This area is not however, potentially subject to urbanization based on urban suitability assessments to date. The primarily farm area south of Skyline, while containing soils and topography that present limitations to intensive cultivation and uncertain groundwater resources, maintains good integrity, has compatible edges, and few non-farm uses. This area is within an area potentially subject to urbanization based on analysis of key urban services. The area south of Skyline Blvd./Cornelius Pass Rd. intersection should be considered as highly suitable for rural reserve to protect farm and forest resources.

An alternative for this area is to designate all areas within 3 miles of the UGB as rural reserve under the safe harbor provision.

**Landscape Features Factors Evaluation**

Rural Reserve Factors - Landscape Features -0060(3)	Factor Ranking	Discussion/Rationale
<b>3. For land intended to protect important natural landscape features, consider areas on the Landscape Features Inventory and other pertinent information and consider whether the land:</b>		
3a.	Is situated in an area that is otherwise subject to urbanization due to proximity to a UGB.	LOW/HIGH – for areas south of Skyline  See 2a. above
3b.	Subject to natural disasters or hazards such as flood, steep slopes, landslide	LOW  HIGH – for areas north of Skyline.  The significant majority of the area rates “low” for relative hazard on the regional composite hazard map. However, the regional landslide map indicates areas with rapidly moving landslide hazard associated with drainages north of Skyline. In addition, areas north of Skyline/Cornelius Pass Rd intersection and northeast of Skyline Blvd contain extensive areas mapped as slope hazard areas on Multnomah County maps. These elements suggest a ranking of high for landslide hazard relative to other areas in the region.
3c.	Has important fish, plant or wildlife habitat	HIGH  MEDIUM for the Kaiser Rd. and east-of-Abbey Creek areas.  Areas north of Skyline are mapped on the ODFW, PNW ERC, and TNC maps. This area contains headwaters streams within the Willamette River watershed, and a wildlife corridor between the coast range and Forest Park.  South of Skyline, the Abbey creek mainstem, north fork, and headwaters areas are mapped on PNW ERC, Perennial Stream Buffers maps. Abbey creek is within the Tualatin watershed. 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.  Additional information relevant to ranking this factor includes the Metro acquisition target areas as an indicator of habitat value. This area contains an acquisition area encompassing the Abbey Creek watershed. Also, the Multnomah County plan protects the area as wildlife habitat under Goal 5. Together, these designations reflect regional and local assessment that valuable habitat exists in this area.
3d.	Is necessary to protect water quality such as streams, wetlands and riparian areas	LOW  MEDIUM – Abbey Creek headwaters  North of Skyline, this area ranks low because it is not under consideration for urban use. South of Skyline, the area contains all or part of two important Tualatin basin stream systems, Rock and Abbey Creeks. In most areas, stream protection rules applicable to urban development are understood to provide protection to streams

**Area 6: West Hills South**

			and riparian areas. In this area, the concentration of small drainages in the Abbey Creek headwaters area in the vicinity of the Powerline corridor suggests difficulty protecting these values were urban development to occur there.
3e.	<b>Provides a sense of place to the region</b>	HIGH	The southwest side of the Tualatin Mtns is a large-scale landscape feature that provides a green connection between Portland and the Coast Range that is visible from large areas of the west side including Hwy 26.
3f.	<b>Can serve as a boundary or buffer to reduce conflicts between urban and rural uses or between urban and natural resource uses</b>	LOW  HIGH for areas south of Skyline	Areas north of Skyline form the south end of an un-interrupted expanse of rural land that connects to the Coast Range – no urban potential for this area is recognized. South of Skyline, Landscape Features mapped areas can separate existing and potential urban areas. The southwest slopes form a large-scale buffer between urban areas to the west and Forest Park. Other features within this area that provide buffers between urban and farm/forest/natural resources include: <ul style="list-style-type: none"> <li>• Abbey Creek headwaters, and the east-west lower Abbey Creek drainage</li> <li>• Rock Creek running north-south immediately west of the county line.</li> </ul>
3g.	<b>Provides separation between cities</b>	LOW	The south of Skyline separates urban unincorporated areas to the west from the City of Portland. That said, the intent of this factor is to consider separation between Metro UGB cities and cities outside of that area.
3h.	<b>Provides easy access to recreational opportunities in rural areas such as parks and trails</b>	HIGH	This area includes recreational opportunities adjacent to the urban area including bicycle routes along Skyline and Germantown Roads. The area also contains the Metro “Ancient Forest Preserve.” Within the reserves planning horizon, additional trails proposed for the area are likely to become accessible to the public.

**Staff Summary and Conclusion - Suitability for rural reserve to protect landscape features:**

Areas north of Skyline Blvd. rank high for sense of place; they contain high-value habitat, access to recreation, and other values that define the area as a landscape feature important to the region. This area is not however, being studied for urban reserve because it ranks low for efficiency to provide key urban services.

Areas south of Skyline rank high for sense of place; they contain stream features of the Abbey Creek mainstream, north fork, and headwaters areas that are mapped as important regional resources and that separate urban from rural lands. Upland habitat areas also exist, however there are patches in the landscape features mapping indicating lesser regional value. All areas south of Skyline Blvd. continue to be studied for urbanization. On balance, and considering that the broad objective of the Landscape Features factors is to protect areas that define natural boundaries to urbanization and help define the

**Area 6: West Hills South**

region for its residents, the entire south-of-Skyline area should be considered as highly suitable for rural reserve.

**Urban Analysis for Area 6a: North of Cornelius Pass Rd/Skyline Blvd**

The CAC indicated that areas north of Skyline/Cornelius Pass Rd, and the portion of this area that is north of the power lines and above the mid-slope line, had low overall efficiency for key urban services, and should therefore not continue to be studied for urban reserve. The factors evaluation below addresses this northern portion of Area 6. Areas to the south – the areas designated for further study as candidate urban reserve – are evaluated as Area 6.b.

*CAC Assessment: Do not study further for urban reserve*

**Staff Assessment:** Low suitability for urban reserve

Urban Reserve Factors -0050 (1) – (8)	Factor Ranking	Discussion/Rationale
<b>When identifying and selecting land for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:</b>		
1.	Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;	<p>LOW</p> <p>Transportation – this area was unranked for suitability for providing transportation services due to topography consisting predominately of slopes greater than 25%. Numerous small streams also limit efficient connectivity. Also noted is low suitability for an RTP level connectivity system. Transportation ranking is Low.</p> <p>Sewer – rated difficult to serve due to topography, and substantial/difficult improvements would be required both inside and outside of the area. Sewer ranking is Low</p> <p>Water - rated low due to topography.</p>
2.	Includes sufficient development capacity to support a healthy economy;	<p>LOW</p> <ul style="list-style-type: none"> <li>• Area has no suitable employment land or opportunities for same in area due to steep topography.</li> <li>• Poor job access to and from area.</li> <li>• Constrained area for establishing transp. system to support employment uses.</li> </ul>
3.	Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service	<p>LOW</p> <ul style="list-style-type: none"> <li>• See key services efficiency information under 1. above</li> <li>• No assessments for schools, stormwater, parks, etc.</li> <li>• Most likely service provider for this area is Portland since the area is adjacent at it's south and east edges.</li> </ul>

## Area 6: West Hills South

	providers;		
4.	Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers	LOW	<ul style="list-style-type: none"> <li>• Limited potential to form walkable neighborhoods that require higher density and mix of services due to topography.</li> <li>• Very constrained land for developing a connected transp. system due to steep slopes.</li> <li>• The topography and associated low street connectivity, density, and low diversity of uses is not conducive to good transit service.</li> </ul>
5.	Can be designed to preserve and enhance natural ecological systems	LOW	Very little usable buildable land makes it difficult to avoid creeks, including headwaters areas, and to avoid forest canopy systems that exist throughout the area.
6.	Includes sufficient land suitable for a range of needed housing types	LOW	Very limited and constrained land for accommodating a variety of housing, including topographic constraints for developing a connected transp. system to serve such uses.
7.	Can be developed in a way that preserves important natural landscape features included in urban reserves	LOW	Very little usable buildable land makes it difficult to avoid the landscape features areas of Rock Creek Headwaters and Forest Park Connections which together cover all of this area.
8.	Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.	MEDIUM	<p>Features that could be used as edges exist, such as Cornelius Pass Rd./McCarthy Creek canyon, and Abbey Cr drainage in the powerlines area.. Buffers from land set-asides would be workable generally.</p> <p>Urban scale development on visible slopes will impact the visual quality of adjacent undeveloped areas and would be difficult to avoid/mitigate.</p>

### Staff Summary and Conclusion:

This area ranks low for urban reserve due to a number of factors, driven in large part by topography. The area ranks low for key urban elements including sewer service, transportation services, for potential to develop a well connected transportation system, transit, employment land and low potential for urban density. It is relatively isolated from existing urban areas as well. Taken together, these limitations indicate the area is not a good area for urban reserve.

## Urban Analysis for Area 6b: South of Cornelius Pass Rd/Skyline Blvd

This north edge of this area is defined by Skyline Blvd. where it runs east – west between Cornelius Pass Rd. and the City of Portland. The area extends south between the Multnomah County/Washington County line on the west, and the City of Portland on the east, down to the N. Bethany plan area and Abbey Creek. It is divided from Area 7 to the south by a powerline corridor. The area is ranked in the key urban services assessment as “high” efficiency for water, and includes areas with both high and low efficiency for sewer

**Area 6: West Hills South**

service. The CAC recommended that this subarea, together with land to the south in area 7.b, should continue to be studied as a “candidate” urban reserve area. The CAC indicated that areas north of Skyline had low suitability for key urban services and should not be studied further for urban reserve. The Area 6a factors evaluation includes this northern area.

*CAC Assessment: Split between medium and low suitability. Most agreed to low suitability for the subarea east of the north fork of Abbey Creek. Members were split between low and medium/low suitability for subarea west of Abbey Creek.*

**Staff Assessment:** Low suitability for subarea east of the north fork of Abbey Creek; Medium/Low suitability for subarea west of Abbey Creek

Urban Reserve Factors -0050 (1) – (8)	Factor Ranking	Discussion/Rationale
<b>When identifying and selecting land for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:</b>		
1.	<p><b>Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments</b></p>	<p>LOW/MEDIUM – except LOW along N. fork Abbey Creek and eastward</p> <p><i>CAC: LOW for entire area</i></p> <p>Transportation – this is part of a larger area that was unranked for suitability for providing transportation services due to topography consisting predominately of slopes greater than 25%. Steep slopes exist along the east third of this area, moderating to slopes predominately in the 10 – 25% range west to the county line.</p> <p>Further considerations include:</p> <ul style="list-style-type: none"> <li>• Suitability of isolated areas with flatter slopes in west portion dependent on as yet unplanned connectivity system in adjacent areas.</li> <li>• Limited connectivity potential to the east, other areas will have higher costs to connect pockets of development land due to slope and stream crossings.</li> <li>• Relatively limited amount of developable land relative to assumed higher road costs.</li> <li>• High off-site impacts to rural and limited urban roads including Cornelius Pass Rd and Skyline Blvd.</li> </ul> <p>Transportation ranking is low/medium for areas west of the N. Abbey Creek drainage, and low to the east.</p> <p>Sewer – rated low suitability to serve east of Abbey Creek N. fork, high suitability to the west.</p> <p>Water - rated high suitability.</p> <p><i>CAC</i> <i>Area has lower transportation potential than Area 4; only small pockets are developable</i></p>
2.	<b>Includes sufficient</b>	<p>LOW</p> <ul style="list-style-type: none"> <li>• Area has very little suitable employment land</li> </ul>

Area 6: West Hills South

	development capacity to support a healthy economy		<p>or opportunities for same in area due to slopes predominately greater than 10%.</p> <ul style="list-style-type: none"> <li>• West of Abbey Creek area (high suitability for sewer area) along northern Kaiser Rd contains approximately 800 acres gross area.</li> </ul>
3.	Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers	MEDIUM – except LOW along N. fork Abbey Creek and eastward	<p>See key services efficiency information under 1 above.</p> <ul style="list-style-type: none"> <li>• No assessments for schools, stormwater, parks.</li> <li>• Appropriate service provider is unclear, but most likely would be Portland since the area is adjacent, especially for upper areas along Skyline.</li> <li>• Beaverton has indicated “aspiration” for urban reserve along the west edge of this area up to Kaiser Rd. may be able to provide services within an undetermined future timeframe.</li> </ul>
4.	Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers	LOW	<ul style="list-style-type: none"> <li>• Limited areas, mostly in west section, with slopes less than 10% to form walkable neighborhoods that require higher density and mix of services.</li> <li>• For most part, the topography and associated low street connectivity, density, low diversity of uses, is not conducive to good transit service.</li> </ul>
5.	Can be designed to preserve and enhance natural ecological systems	HIGH <i>CAC: MEDIUM</i>	<ul style="list-style-type: none"> <li>• Landscape features mapping does not cover the majority of this area, and there is adequate land area to protect the few small streams in the area.</li> <li>• Areas east of Abbey Creek N. fork and along the mainstem could be avoided.</li> </ul> <p><i>CAC:</i></p> <ul style="list-style-type: none"> <li>• <i>Development would be difficult without impacting ecological systems; there may not be enough land to protect small streams</i></li> </ul>
6.	Includes sufficient land suitable for a range of needed housing types	LOW-MEDIUM	Limited pockets of unconstrained land for accommodating a variety of housing, found predominately along the west edge of the area, upper Kaiser Rd.
7.	Can be developed in a way that preserves important natural landscape features included in urban reserves	LOW	Urban development on visible slopes will impact the sense of place quality of the Rock Creek (Tualatin Mtns) landscape feature and would be difficult to mitigate.
8.	Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape	MEDIUM	<ul style="list-style-type: none"> <li>• Farm/forest – yes buffers exist along the east, south, north, and northwest edges, adequate area to use set asides in other areas.</li> <li>• Landscape features – visual impacts from development on higher areas would need to be managed to avoid reducing overall sense of</li> </ul>

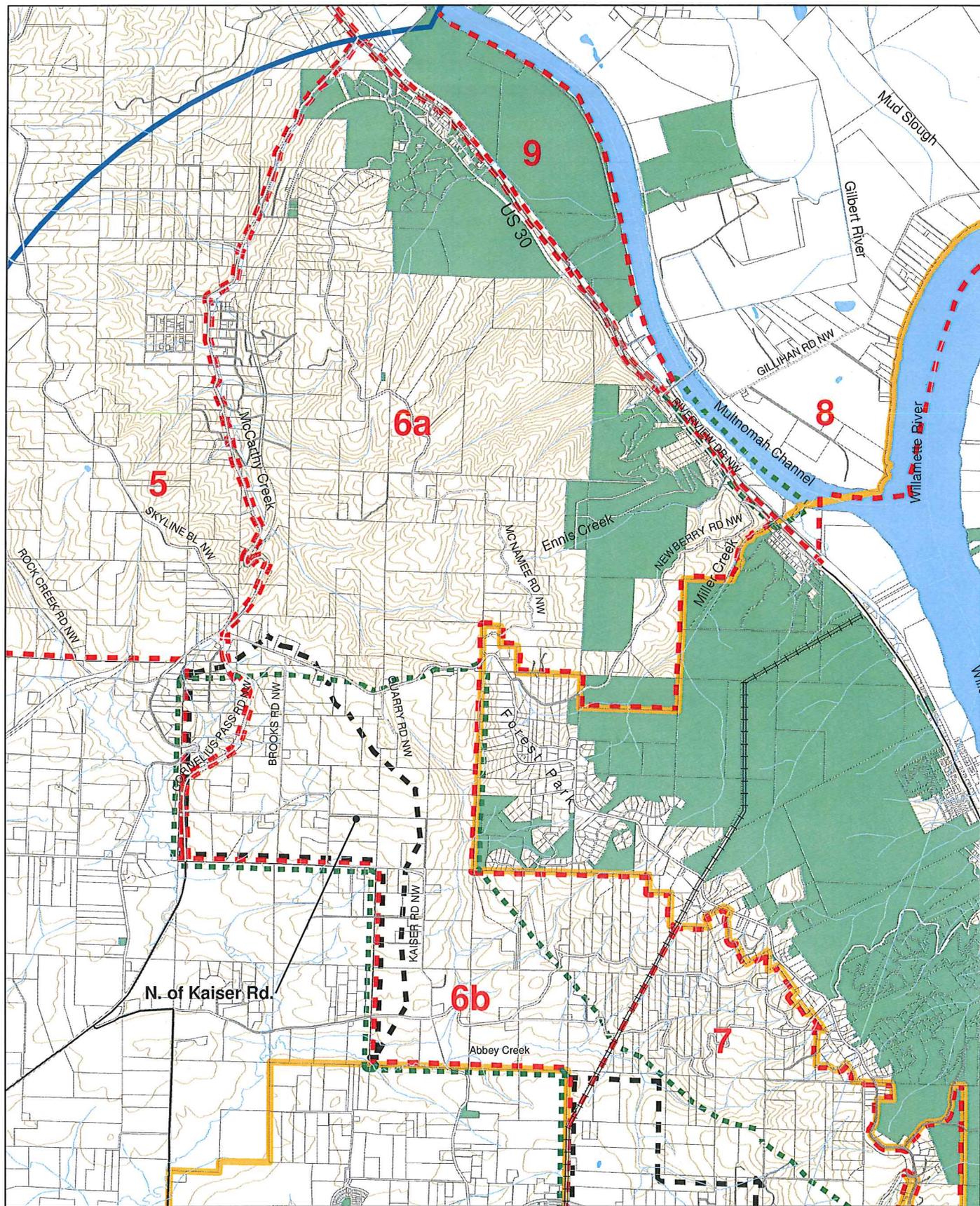
**Area 6: West Hills South**

	<b>features, on nearby land including land designated as rural reserves.</b>		place values the ridge provides.
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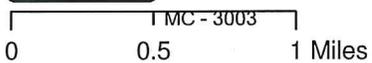
**Staff Summary and Conclusion:**

This subarea contains two main areas with different results of this factors evaluation. The area along and including the north fork of Abbey Creek east to the City of Portland, rates low for key services of transportation and sewer. It also rates low for other important elements including employment land and the urban form elements in factor 4, and as well as housing and visual impacts from development of the higher sloped areas.

The area west of the Abbey Creek drainage system in the N. Kaiser Rd. area, contains relatively small pockets of developable land constrained by moderately high slopes and drainages in the central and northwest sections. These characteristics would result in higher costs to develop transportation system connectivity that is less than the ideal "grid" system. Added consideration/cost is off-site impacts to existing roads, including Cornelius Pass and Skyline Blvd. Other key systems of water and sewer rank easy for this area, land suitable for housing exists in the area and impacts to ecological systems and nearby farm/forest practices are manageable. Careful consideration to visual impacts from development on upper slopes should occur for this area. Overall, while this area could provide additional urban growth area, limitations suggest it should not be the highest priority.



Multnomah County Candidate Area Maps:  
Potential Urban and Rural Reserves Areas  
Area 6 - NW Hills South



Draft (Rev. 08/03/09)

- Streams/Water Bodies
- Study Area Boundary
- UGB 3-mi Buffer
- Tax Lots
- Urban Candidate Area
- Rural Candidate Area
- 50 ft Contours
- Public Lands



**CERTIFICATE OF FILING AND SERVICE**

I certify that on the date indicated below, I filed the original of the  
**OPENING BRIEF OF MULTNOMAH COUNTY** to:

Land Conservation and Development Commission  
635 Capitol Street, NE, Suite 150  
Salem, OR 97301-2540

by email to casaria.taylor@state.or.us.

DATED this 25<sup>th</sup> day of September, 2014.

JENNY M. MADKOUR, COUNTY ATTORNEY  
FOR MULTNOMAH COUNTY, OREGON



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Jed Tomkins, OSB No. 065290

Assistant County Attorney

*Of Attorneys for Multnomah County*