

June 1, 2011

Urban and Rural Reserves Specialist  
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*Sent via e-mail*

Re: Metro Urban and Rural Reserves; Ordinance No. 11-1255

The following are objections to Metro Ordinance No. 11-1255, titled "For The Purpose of Revising the 'Urban Growth Boundary and Urban and Rural Reserves Map' in Title 14 (Urban Growth Boundary) of the Urban Growth Management Functional Plan," which includes, among other things, the new Intergovernmental Agreement executed by Metro and Washington County on March 15, 2011 proposing revisions to Washington County urban and rural reserves, as well as the intergovernmental agreements previously adopted by Metro and the counties of Clackamas, Multnomah, and Washington in 2010.

These objections are submitted, jointly and individually, by the individuals and organizations listed at the end of this document. Their signatures are scanned and attached. All testified orally and/or in writing during the proceedings leading to adoption of this ordinance, including but not limited to testifying orally and/or in writing at the March 15, 2011 joint hearing of the Metro Council and the Washington County Board of Commissioners and testifying orally and/or in writing at the April 21, 2010 hearing of the Metro Council on Ordinance No. 11-1255.

These Objections are divided into the following sections:

- I. General Objections
- II. Objections to Specific Geographical Areas
  - A. Areas North of Council Creek
    - North of Forest Grove: Failure to remove urban reserve designation from northern portion of area 7B
    - North of Cornelius: Failure to designate entire former area 7I as rural reserve
  - B. Areas North of Highway 26 (Helvetia):
    - Area 8B (former Area 8B plus 352 more acres): designated as urban reserve
    - Area 8-SBR: adjacent undesignated area (233 acres)
  - C. Rosedale Road area: Newly converted from rural reserve to undesignated (383 acres)

The Objectors also incorporate herein by reference and renew all the objections and exceptions they made to the original Metro Ordinance No. 10-1238A and Washington County Ordinance No. 733, including all documents and exhibits that are part of the record of those proceedings.<sup>1</sup> In

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<sup>1</sup> See Objections and Exceptions at [http://www.lcd.state.or.us/LCD/state\\_review\\_of\\_metro\\_reserves.shtml#Objections\\_for\\_State\\_Review](http://www.lcd.state.or.us/LCD/state_review_of_metro_reserves.shtml#Objections_for_State_Review) and [http://www.lcd.state.or.us/LCD/state\\_review\\_of\\_metro\\_reserves.shtml#Exceptions\\_to\\_Staff\\_Report](http://www.lcd.state.or.us/LCD/state_review_of_metro_reserves.shtml#Exceptions_to_Staff_Report).

particular, we renew the objections and exceptions made to inclusion of all of Area 8A (Evergreen),<sup>2</sup> to inclusion of the Peterkort property,<sup>3</sup> and to moving roads at the edge of urban reserves in Washington County to the rural reserve or undesignated side of an area, thereby including far more Foundation farm land,<sup>4</sup> as well as previous objections and exceptions to Areas 8A, 8-SBR, 8B, 7I, and 7B, and to Metro's need analysis.

The Land Conservation and Development Commission (LCDC) heard these and other objections and exceptions in October 2010 and provided oral direction to Metro and the local governments. LCDC has not issued a written order of those proceedings.

This document focuses on those decisions and matters that are new, revised, or unaddressed in the most recent set of proceedings by Metro and the counties. This document uses the term "Metro" to refer to the decisions made by all four local governments unless otherwise noted.

## I. General Objections

**Objection 1: Metro's decision fails to meet the "balancing" required by OAR Chapter 660, division 27 between urban and rural reserves. This is particularly reflected in Metro's attempt to "make up" for lands "lost" by LCDC's October 2010 decision; in Metro's treatment of so-called "undesignated" lands; in discounting alternative lands; in designating as rural reserves lands not threatened by urbanization; and in not considering reducing the urban reserve time period. ORS 195.137-.145; OAR Ch. 660, div. 27.**

Metro and Washington County incorrectly treated the Commission's oral remand as one of "making up" for "lost acres;" they compounded that error by looking only to Washington County for specific types of land, an analysis that is not appropriate for an urban reserve decision.

ORS 195.145(4) provides that if designated, urban reserves shall be for a period of time that is at least 20 years, but not more than 30 years, beyond the 20-year time period for the urban growth boundary (UGB).

If urban reserves are designated under this statute, then rural reserves must also be designated. However, rural reserves can be designated alone – that is, there is no requirement to also designate urban reserves. ORS 195.143(3)

In contrast with urban reserves, there is no set time period or acreage for establishing rural reserves. Rather, it is a *qualitative* requirement (ORS 195.137(1)):

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<sup>2</sup> See Objections and Exceptions filed by the Washington County Farm Bureau, 1000 Friends of Oregon, and Dave Vanasche on July 12 ([http://www.oregon.gov/LCD/docs/murr/objections/Mary\\_Kyle\\_McCurdy.pdf](http://www.oregon.gov/LCD/docs/murr/objections/Mary_Kyle_McCurdy.pdf)) and October 8, 2010 ([http://www.oregon.gov/LCD/docs/murr/objections/Mary\\_Kyle\\_McCurdy.pdf](http://www.oregon.gov/LCD/docs/murr/objections/Mary_Kyle_McCurdy.pdf)).

<sup>3</sup> See Objections and Exceptions filed by Cherry Amabisca and Carol Chesarek on July 14, 2010 ([http://www.oregon.gov/LCD/docs/murr/objections/Carol\\_Chesarek-Amabisca.pdf](http://www.oregon.gov/LCD/docs/murr/objections/Carol_Chesarek-Amabisca.pdf)) and on October 8, 2010 ([http://www.oregon.gov/LCD/docs/murr/exceptions/Carol\\_Chesarek-Amabisca\\_100810.pdf](http://www.oregon.gov/LCD/docs/murr/exceptions/Carol_Chesarek-Amabisca_100810.pdf)).

<sup>4</sup> See Objections filed by Linda Peters on July 14, 2010. [http://www.oregon.gov/LCD/docs/murr/objections/Linda\\_Peters.pdf](http://www.oregon.gov/LCD/docs/murr/objections/Linda_Peters.pdf)

“‘Rural reserve’ means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.”

The statute and this Commission’s rule go on to describe in detail the qualities of land and surrounding characteristics that would qualify an area as rural a reserve. (ORS 195.141(3); OAR 660-027-0010(1), (6); 660-027-0060))

These qualities are based on scientific and economic data, to meet the Legislature's findings that rural reserves must “offer long-term protection of large blocks of land with characteristics necessary to maintain their viability” for the “agricultural and forest industries.” ORS 195.139(1)(a) This is reflected in, among other things, the Legislature's direction to this agency to consult with the Oregon Department of Agriculture (the only state agency so singled-out) and this Commission’s recognition of the Oregon Department of Agriculture’s 2007 report to Metro titled *Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands* as the basis for identifying and designating rural reserves. (OAR 660-027-0010(1), (2))

Those “necessary” characteristics include soil type, water where needed, large blocks of farm land, and the existence of agricultural infrastructure. (ORS 195.141(3); OAR 227-027-0060(2)) The “long-term” protection for the industry includes designating lands as rural reserves that are “subject to urbanization” during the period of time chosen for urban reserves. (ORS 195-141(3)(a); OAR 660-027-0060(2)(a))

Thus, the law and this Commission recognize that meeting the requirement of protecting the long-term viability of the agricultural industry is *not a matter of acres*, but of the *quality and location* of that land. And therefore, the balancing between urban and rural reserves required by law cannot be measured in acres of rural versus urban reserves or any other simply numerical comparison. Nor is the legal requirement of balancing one of looking at each county individually; rather, it is a regional requirement.

OAR 660-0027-0005(2) explains:

“The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.”

LCDC directed Metro to remove the urban reserve designation from 623 acres north of Council Creek, north of Cornelius, and to re-evaluate whether the area north of Council Creek and north of Forest Grove (approximately 200 gross acres) was properly designated as an urban reserve. The Commission took this action based on the *qualitative* nature of these agricultural areas. In addition, LCDC’s direction provided the region the ability to evaluate whether the urban and rural reserve designations met the balancing requirement of law, which the region would have to

do in any event under the law. It was *not* a direction for an acre-for-acre replacement. Yet, that is how Metro and Washington County handled it.

Metro's findings contain many statements showing a fundamental misunderstanding of the balancing and qualitative requirements of law, which lead Metro and Washington County to create additional urban reserves and undesignated areas.

Metro states:

“The amount of Urban Reserves acres [sic] is connected to a determination of the long-term need for potential urban land. There is no corresponding need requirement for Rural Reserves; only that *some* rural reserves must be designated if Urban Reserves are designated.”

The findings go on to state that “there is no overall ‘need’ requirement for Rural Reserves.”<sup>5</sup>

This is an astoundingly inaccurate statement. Actually, there are *two* need requirements: (1) to protect the long-term viability of the region's agricultural industry, and (2) to ensure the viability and vitality of the agriculture and forestry industries and natural landscape features while balancing with urban needs. ORS 195.139(1)(a); 195.141(2), (3); OAR 660-027-0005(2), -0060.

This lack of understanding of the agricultural industry and the law's requirements is displayed in Metro's meaningless comparisons of the percentages of farm land designated for urban reserves versus the amount studied and the amount of EFU land designated as urban reserves.<sup>6</sup> None of these comparisons has anything to do with the *quality or location* of the land, and in particular its threat from urbanization. How uninformative this is can be illustrated by applying a similar standard to urban reserves: What if Metro designated most of the 29,000 acres of urban reserves in areas 3 miles or more from the current UGB? It would still be only an 11% increase in the UGB area, but would be located in an area that is useless for urbanization. Or what if Metro designated most urban reserves on steep slopes? Washington County has already lost a greater percentage of its agricultural land base (46%) than the state as whole (22%).<sup>7</sup> So perhaps even less farm land should be designated in Washington County as urban reserves than elsewhere in the region?

Using this misunderstanding of the law, Metro approached the oral direction from LCDC as requiring it to “replace... lands lost” [to urban reserves] in the Cornelius area by converting other acres from undesignated to urban, and from rural to undesignated.<sup>8</sup> The deliberations of the Metro Councilors and Washington County Commissioners, as reflected in the findings, show that the “replacement” was intended to be approximately acre-for-acre; there was no qualitative

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<sup>5</sup> Ex. B to Ord. No. 11-1255, p. 169.

<sup>6</sup> Ex. B, pp. 3-4. US Census of Agriculture

<sup>7</sup> Farmland loss; 1954-2007; US Census of Agriculture: Washington County: 108,219 acres = 46%; Oregon: 4,647,693 acres = 22%

<sup>8</sup> Ex. B, p. 170. Metro converted 352 acres in Helvetia from undesignated to urban reserve, and converted 383 acres south of Rosedale Road from rural reserve to undesignated. It also left 363 acres north of Cornelius undesignated rather than as rural reserve. *Id.*, pp. 170-73.

assessment of the impact of doing so on the viability of the agricultural industry or the other purposes of rural reserves.

For these reasons, Metro's choice of lands to convert from rural to undesignated and from undesignated to urban do not meet ORS 195.137-.145 and OAR chapter 660, div. 027.

Regarding the balancing requirement of the reserves law, on remand Washington County and Metro improperly evaluated only whether there was a balance within the county.<sup>9, 10</sup>

This is compounded by Metro's and Washington County's acknowledged use of "undesignated" as a holding zone for future urbanization of lands that would otherwise qualify as rural reserves; in particular because those lands are threatened by urbanization. Thus, some areas were intentionally left as "undesignated" *because of their future urbanization potential* – not because they did not qualify as either rural or urban reserves.<sup>11</sup> (For example, south of Rosedale Road; specific examples are described in Part II of these Objections.) This is in contrast to how Clackamas County approached implementation of the law.<sup>12</sup>

Metro's findings on how its use of "undesignated" lands fits into its requirement to balance urban and rural reserves consist of this statement, made in the course of evaluating one area:

“The decision to leave 363 acres undesignated is ultimately best explained by the record of Metro and Washington County's joint public hearing on March 15, 2011. It was at that joint hearing that Metro and Washington County elected officials fulfilled the balancing objective of OAR 660-027-0005(2).”<sup>13</sup>

That hearing was 9 hours long. This “finding” does not meet Metro's legal obligation for any use of “undesignated.” Because Metro views undesignated lands as providing a future urban potential, that should be taken into account in its balancing analysis, but it was not.

Finally, Metro explains why, in general, it designated *any* Foundation agricultural land as urban reserves, and why it did not designate various other areas.<sup>14</sup> This misses the point. The Objectors do not and never have disputed that some Foundation agricultural land would be designated as urban reserves – that was well understood from the beginning.

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<sup>9</sup> Ex. B, p. 108: “Following the oral remand, Washington County and Metro continued their efforts to balance the reserves *in the county*...” (Emphasis added.)

<sup>10</sup> Some of the contortions in the resulting decision are an attempt to ensure that the issue of balancing was *not* reopened because of the risk of failure to agree among the four local governments; it did not have to do with legal requirements or the qualitative needs of the agricultural industry *See, e.g.*, in Objections of Robert Bailey, e-mail from then -Washington County Commissioner Tom Brian to Andy Duyck, Dennis Mulvihill, and others, dated November 2, 2010.

<sup>11</sup> See, for example, the findings regarding the Rosedale Road area, which was previously designated as a rural reserve but was converted to undesignated so it can move up the queue towards urban reserve designation. Ex. B, p. 173. *See also* the findings on North Plains and Banks.

<sup>12</sup> Clackamas County left as “undesignated” those lands that did not qualify as either urban reserves or rural reserves.

<sup>13</sup> Ex. B, p. 173.

<sup>14</sup> Ex. B, p. 4-10.

However, the rationale for designating some Foundation lands as urban reserves and discounting non-Foundation lands are conclusory or legally flawed. Significantly, in several instances, Metro improperly substitutes a UGB expansion analysis for a reserve analysis. A UGB is designed to meet specific needs for residential, employment, schools, institutions, and other urban land needs. In contrast, urban reserves are to meet only a *general* urban need:

“‘Urban reserve’ means land outside an urban growth boundary that will provide for:  
(a) Future expansion over a long-term period; and  
(b) The cost effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.”

ORS 195.137(2)

Metro’s findings fail to meet the legal requirements as follows:

- Metro declined to designate some non-Foundation lands as urban reserves because the current “low density rural residential development” pattern would be “very expensive” to convert into mixed-use communities.<sup>15</sup> This statement might be relevant to a UGB expansion, but not for a designation of a general land supply that *might* be urbanized over 50 years. In addition, there is no evidence in the record that it would, in fact, be very expensive to convert low density rural houses on septic systems and wells to a suburban development pattern over the urban reserve time period.
- Metro states these areas would also be “politically difficult” to urbanize.<sup>16</sup> That is a legally irrelevant factor and without any evidentiary base.
- Metro states those cities without large expanses of flat farm land around them stated they did not want urban reserves, while those cities with flat farm land did want that land for urban reserves. Metro explained that had it “not designated some Foundation Land as urban reserves in Washington County, it would not have been possible for the region to achieve the ‘livable communities’ purpose of reserves in LCDC rules.”<sup>17</sup> This improperly assumes that *only by designating significant areas of Foundation farm land near certain cities can the region be livable*, that is, that more raw land is the only method to achieve a livable community . This fails to recognize, among other things:
  - Those cities without large areas of adjacent farm land use other tools to maintain their livability.
  - It fails to compare the cost of servicing new land with the cost of accommodating the same number of people and employees inside the existing UGB.

Again, this is not about whether *any* Foundation land should be designated as urban reserves, but the *quality* of that land and whether a robust set of alternatives was really examined and balanced.

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<sup>15</sup> Ex. B, p. 5.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

Metro failed to meet the balancing requirement of law. Instead, it focused on approximating an acre-for-acre replacement of the urban reserves “lost” by LCDC’s decision; it made quantitative rather than qualitative comparisons; it improperly relied on “undesigned” lands as a future urban reserve holding zone; it failed to demonstrate that the decision meets the balancing requirements of law; and it improperly discounted alternatives to Foundation lands.

Washington County’s designating rural reserve lands that extend to the edge of the county boundary where there is no threat of urbanization fails to provide the “balance” contemplated by the rule. Providing protection for lands that are not threatened is simply cynical; it does not serve to offset the large amount of urban reserve assigned to lands directly adjacent to the existing UGB.

Metro does have a way to balance urban and rural reserves that it never examined: reduce the number of years for which it is designating urban reserve from the upper limit, where it is now, of 30 years to something closer to 20 years. This would remove Foundation farm land currently in urban reserves, and would therefore lessen the balancing requirement. This is also what the nine state agencies recommended.<sup>18</sup>

**Remedy:** These can be applied separately or in combination. Direct Metro to reduce the urban reserve period from 30 to 20 years; reduce the amount of Foundation Agricultural lands designated as urban reserves;<sup>19</sup> and/or designate certain areas now left as “undesigned”<sup>20</sup> as rural reserves.

## II. Specific Geographic Areas

### A. Areas North of Council Creek

#### North of Forest Grove Area

**Objection 2: Designation of the Foundation Agricultural Land north of Council Creek and north of Forest Grove (northern portion of Area 7B) as an urban reserve violates the reserves statute and rule. ORS 195.137-.145; OAR Ch. 660, div. 27.**

Metro originally designated over 400 gross acres of land north of Forest Grove as urban reserves; the original area was Area 7B. This land is bounded by Forest Grove to the south and west, Highway 47 to the east, and Purdin Road to the north. It is bisected by a tributary of Council Creek that runs east-west.<sup>21</sup> There are two other stream tributaries running more north-south in the area.

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<sup>18</sup> State Agency letter of October 14, 2009.

<sup>19</sup> As explained in part II, this could include the 352 acres in Helvetia that were converted to urban reserves and the area north of Council Creek, north of Forest Grove.

<sup>20</sup> As explained in Part II, this includes the 363 acres north of Cornelius, and the 383 acres south of Rosedale Road.

<sup>21</sup> See map at Ex. B p. 143.

The Washington County Farm Bureau, individual farmers, and others objected to including the land north of the east-west tributary of Council Creek, which we will call here “7B North.” The land area objected to comprises about half the gross acreage but *less than half of the net* – or buildable – acreage.<sup>22</sup>

*Area 7B North meets all the rural reserve factors; no evidence demonstrates it meets the urban reserve factors. Metro’s and Washington County’s findings focus on the wrong area.*

Area 7B North qualifies for rural reserve designation, which Metro’s findings acknowledge and about which there has been no dispute. It is Foundation Farm Land, comprised predominantly of Class II soils; it is rated as “high value farmland” by Washington County,<sup>23</sup> and lies within the Tualatin Valley Irrigation District. The land is currently in nurseries, orchards, grass seed, hay, and other crops.<sup>24</sup> Washington County and Metro acknowledge that this area is “a large block of agricultural resource land with a concentration of farm operations.”<sup>25</sup>

LCDC directed the region to re-examine area 7B North. Commissioners’ comments included observations that the area was very similar to the area north of Council Creek in the Cornelius area that the Commissioners found did not qualify as an urban reserve; one Commissioner observed that the rationale for using Council Creek as the boundary was perhaps even stronger in area 7B because of the lack of any other meaningful boundary north of the city; and its key location relative to Washington County’s core agricultural region was noted.<sup>26</sup>

There has been apparent confusion by some as to the Commission’s direction; this confusion is reflected in staff reports and in the findings. The Commission’s discussion clearly was about the over 200 acres north of the east/west branch of Council Creek; representatives from Forest Grove present at the LCDC meeting gave that information to the Commission orally when asked to clarify the amount of land within 7B that lies north of Council Creek.<sup>27</sup> The LCDC Commissioners discussed the northern portion of the area as bisected by the east-west tributary.<sup>28</sup> Individual Commissioners opined that just as Council Creek provided both the practical and legal boundary north of Cornelius, it did north of Forest Grove as well.

Instead, the proposal leaves all but 28 acres (Area A) as urban reserves. Metro converted the 28 acres to “undesignated” for the sole purpose of making a future road improvement that the County believes may not be possible if that 28 acres is in any sort of reserve.<sup>29</sup> This is not responsive to LCDC’s directive.

It derives at least in part from Washington County’s use of the wrong tributary in its analysis. Washington County’s underlying decision acknowledged and agreed with LCDC that “using

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<sup>22</sup> North of the tributary includes 133 net acres; south of the tributary includes 169 net acres. Ex. B, p. 143.

<sup>23</sup> Ex. B, pp. 148-50.

<sup>24</sup> *Id.* p. 149.

<sup>25</sup> *Id.*

<sup>26</sup> Audio of October 29, 2010 LCDC hearing.

<sup>27</sup> Audio of October 29, 2010 meeting; remarks of Forest Grove Planning Director Jon Holan.

<sup>28</sup> *Id.*

<sup>29</sup> Ex. B, p. 147.

Council Creek as a boundary would be appropriate.”<sup>30</sup> However, the County then went on to remove the urban reserve designation from only 28 acres “on the east side of Council Creek.”<sup>31</sup> That is the wrong tributary; the only stream that meets the County’s description is in the northeast corner of Area 7B. The stream in the northeast corner runs north-south. It does not resemble in any way the east-west tributary that the Commission and the Forest Grove staff discussed at the October 29 hearing. That discussion was based on the objection before LCDC, an objection which contained photos and a description of the east-west Council Creek.

In addition, although Washington County acknowledged that “using Council Creek as a boundary would be appropriate,” the tributary it chose was *not* picked for boundary or buffering purposes, as required by law (OAR 660-027-0060(3)(f)), it was done to build a traffic circle.<sup>32</sup>

The Metro Ordinance and underlying findings reflect this confusion about the area LCDC directed the governments to re-evaluate. The correct Area 7B North qualifies as a rural reserve. To the extent the Ordinance and findings can be construed as referring to 7B North, they do not justify the continued designation of Area 7B North as an urban reserve.

#### *Metro’s Focus on a Specific Use of Land Not a Legal Justification*

Metro’s justification for designating all of Area 7B as an urban reserve is for “employment expansion, particularly industrial,” with one site in mind, “a 115-acre parcel located in the northwest portion of Area 7B.”<sup>33</sup>

- As the Commission has already determined in other urban reserve cases that have come before it, this is an impermissible level of specification for the time frame of a reserve decision, and this one – at 30 years – is longer than perhaps any other the Commission has considered. Choosing specific parcels of land for specific uses is a UGB consideration, not one for reserves, especially not on the scale of a *regional* reserve. The scale and time period in this decision makes such a particularized parcel choice a bit absurd, in addition to being contrary to law. ORS 195.137(2), 195.145; OAR 660-027-0050(2), -0010(11), -0050.
- Metro’s primary justification for designating land north of Council Creek as urban reserve is to include the 115-acre parcel, because it does not require any lot assembly and because the owner “has indicated that the orchard currently on the property is nearing the end of its useful life and would be available for development within the next 2 to 5 years.”<sup>34</sup> Neither of these is the basis for an urban reserve decision, or even a UGB decision. Oregon land use law is not about the preference of current owners, their interest in continuing farming, or their business acumen. Imagine making land use decisions inside a UGB based on that; it would create an unacceptable level of

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<sup>30</sup> Staff report of December 6, 2010 from Dept of Land Use & Transportation to Board of Commissioners, p. 3; Staff report of Dec. 14, 2010, p. 2.

<sup>31</sup> *Id.*

<sup>32</sup> Ex. B, p. 147.

<sup>33</sup> Ex. B, p. 134-35.

<sup>34</sup> Ex. B, p. 135.

uncertainty for neighboring residents and businesses, just as it would outside the UGB. There is even more buildable land in the area south of Council Creek; over a 30-year reserve timeframe those parcels will consolidate if that makes investment sense.

- Even if this were a permissible consideration, Washington County’s findings – incorporated in Metro’s ordinance – describe “large lots” as 50 acres or more.<sup>35</sup> However, Metro defines a large lot as 25 acres or more.<sup>36</sup>

*Findings Based on Infrastructure Fail to Meet Urban Reserve Factors, Lack Substantial Evidence, and Fail to Meet the Balancing Requirement of Law*

- The findings state that designating area 7B “optimizes major public improvements to Martin Road and Highway 47. Martin Road...provides the most direct access to the Sunset Highway corridor via Verboort Road, Cornelius-Schefflin, Zion-Church and Glencoe Roads.”<sup>37</sup> However, those improvements were planned, financed, and constructed without reliance on any urban reserves or UGB expansions, and to use them to shoehorn in an urban reserve designation is impermissible. Moreover, the route described is on the farm roads that lie in the heart of the Tualatin Valley farm country – creating exactly the type of conflict that *rural* reserves are suppose to stop. This actually supports rural reserves north of Council Creek.
- Metro’s findings describe at length how Area 7B can be designed to avoid or mitigate adverse effects on farm and forest practices by using Purdin Road as the northern boundary of Area 7B, rather than Council Creek. It is claimed that Purdin Road will be a better buffer than the Creek because the road can be widened from 22 feet to 52 feet, with a 98-foot right of way, allowing for shoulders so farm equipment would have room to pull over and out of the way of faster commuter traffic.<sup>38</sup> Thus, Metro’s argument goes, since “Purdin Road is already carrying urban levels of traffic,” which is expected to increase regardless of urban reserves, designation of the whole area as an urban reserve will somehow decrease future traffic levels and “allow for needed future road improvements,” because development in the area will “help defray the costs of roadway improvements.”<sup>39</sup>

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<sup>35</sup> Ex. B, p. 142.

<sup>36</sup> Metro *Urban Growth Report*, Appendix 4, *Forecast-based large employer/large lot analysis*, 2002; pp. A4-1, A4 5.

<sup>37</sup> Ex. B, p. 136.

<sup>38</sup> Ex. B, pp. 139-41. For example: “[T]his road [Purdin] would need to be at least a three lane road with wide shoulders and bike lanes. The wide shoulders would allow slower farm traffic to operate on the roadway.”

<sup>39</sup> Ex. B, pp. 146-47. Metro’s findings state: “In addition, development along the south side of Purdin Road would help defray the costs of the roadway improvement. The City would receive Transportation Development Tax funds from the development to assist in construction. Leaving this road within the Rural Reserve or undesignated would require the County to make future improvements which may be difficult due to other pressing needs for limited County funds. Improvement of this road would likely be a low priority given demands in the more urbanized (and urbanizing) portions of Washington County.”

**This circular argument is an excellent example of the deeply flawed “balancing” approach in the overall findings:** Here, the traffic generated by future development will be routed through bigger roads in rural areas; roads that will be created by paving over more farm land. These bigger roads will attract more commuter traffic to the Sunset Highway along farm roads. The bigger roads are only necessitated by urban development, not rural, and yet the solution to more urban development is to look at where and how to widen rural roads. The findings never consider alternatives to rural roads, such as not locating more development north of the Creek, or developing in ways and places that reinforce alternatives to driving such as transit (which should be looked at due to the hoped-for high capacity transit line to Forest Grove and Cornelius); or widening or creating more road capacity inside the UGB so they farm road route is not as attractive. If the needs of the agricultural industry were addressed, it would be by making farm roads – such as those described as the cut-through route to Highway 26 – *less attractive* to urban commuters, not more.

- The findings cite infrastructure that exists inside Forest Grove that could be extended to Area 7B. Those justifications apply, perhaps even more strongly, to the portion of 7B that is *south* of Council Creek. There is no evidence that serving Area 7B North is necessary for the infrastructure extensions, and in fact stopping at the Creek would lessen the cost.
- The findings rely on certain other road improvements (a traffic circle) at Highway 47 and Purdin Road, which can be made without designation as an urban reserve.<sup>40</sup>

Metro’s findings regarding the area north of Council Creek do not refer specifically to the area LCDC directed Metro to re-evaluate. To the extent road improvements are contemplated in Area 7B, they do not require an urban reserve designation; in fact, that will only exacerbate the need for more road “improvements.” No legal or factual justification has been provided to designate Area 7B North as an urban reserve.

#### *A Road is Not a Better Buffer than a Creek*

Metro’s findings state: “To date, there has not been any explanation why a stream course makes a better buffer than a roadway.”<sup>41</sup>

- Contrary to this statement, there has been almost 4 years of testimony at every level of the reserves decision-making process describing the problems with roads in and acting as buffers to rural reserves. Recently, it has been in the Washington County Farm Bureau presentation, including photos, made to LCDC in October 2010 and to the joint meeting of the Washington County Board of Commissioners and Metro Council in March 2011. It has been made by various objectors and Save Helvetia concerning Washington County’s last-minute action to move the boundaries of urban reserves to the far side of roads. This testimony has described numerous incidents traffic conflicts, accidents, harassment over farm operations and vehicles, and more. Here, Metro and Washington

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<sup>40</sup> *Id.*, and pp. 146-47.

<sup>41</sup> Ex. B, p. 146.

County state that because the Council Creek tributary buffer is 69 feet wide, and the proposed, urban-level Purdin Road right-of-way would be up to 98 feet wide, that the road would be the better buffer because it would be wider.<sup>42</sup> This illustrates a lack of knowledge of the agricultural industry, agricultural practices in Washington County, and the nature of the conflicts between urban and agricultural uses – which frankly further undermines the entire rural reserves analysis in Washington County. It also illustrates exactly why the certainty of rural reserves are critical to the agricultural industry.

- As the Farm Bureau and individual farmers have testified, the major conflict with roads is traffic, and roads used by commuters to the UGB are the most significant source of conflicts in farming areas. A bigger road increases those conflicts by attracting more non-farm users to it, causing accidents and blocking the necessary movement of farm equipment. This does not happen with streams, plus streams and riparian areas absorb sounds, dust, and light that those not familiar with farming sometimes object to.
- The road as a buffer paves over existing farm land. That larger right-of-way then impacts an even larger farming area, because farmers do not farm “up to the line” due to the turning radius needed for equipment, keeping sprays and other materials off public rights-of-way, etc...

Area 7B North qualifies as a rural reserve; there is no disagreement on that. It does not qualify as an urban reserve; as described above, none of the justifications used by Metro stand up upon examination. The proposed urban reserve south of Council Creek, which is larger than that north, is also located on Foundation farm land and also qualifies for rural reserve designation. However, in the balancing required by the reserves statute and rule, and to keep Council Creek as the practical and natural buffer between rural and urban throughout this agricultural area, designating the southern portion as urban reserve can fit as part of an overall reserve decision.

**Remedy:** Remand with direction to remove the urban reserve designation for Area 7B North, located north of the east-west Council Creek tributary, and re-designate it as Rural Reserve.

### **North of Cornelius Area**

**Objection 3: Leaving 360 acres in former area 7I as “undesigned” fails to comply with the reserves statute and rule; it should be designated as rural reserves.**

Area 7I originally contained 623 acres, all of which was located north of Council Creek, north of Cornelius. LCDC directed Metro to remove the urban reserve designation from Area 7I. Metro did so, redesignating the northern portion of the area (263 acres) as rural reserves (now part of Area 8E), but leaving the southern portion (360 acres) as undesigned (which we will call Area 7I South). The dividing line between the north and south is formed by lot lines; that is, lines on a map. There is no use of a natural or any other type of buffer.

Leaving the area undesigned fails to meet the reserves statute and rule. The undesigned area qualifies for rural reserves designation for two reasons: as both Foundation farm land and as a

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<sup>42</sup> Ex. B, p. 146-47.

significant landscape feature. It does not qualify as “undesigned,” and leaving it as undesigned impairs the integrity of the rural reserve area to the north.

- Area 7I South meets all rural reserve factors: it is Foundation farm land; it is “highly” subject to urbanization during the time period; it is capable of and does sustain long-term agricultural operations; it is primarily Class I, II, and III soils; it is an intact large block of farm land; and the farm use and ownership patterns demonstrate long-term stability. It is in the Tualatin Valley Irrigation District.
- Written and oral testimony from the Washington County Farm Bureau and from individual farmers, some of whom farm north of Council Creek in this area, attest to the fact that this area is the heart of the Tualatin Valley agricultural industry and contains some of the most productive blocks of farm land in the state.
- The area has significant and irreplaceable agricultural business “infrastructure” in and near it, which depend on these lands and on which the farmers in the area, in turn, depend.<sup>43</sup> These include, among others: Tualatin Valley Irrigation District infrastructure; VanDyke Seed, a seed-cleaning plant; Jacobsmuhlen’s Meats, a meat processor; Spiesschaert Enterprises; and Duyck Produce.
- The entire area north of Council Creek, but in particular *this* area of 7I South, also qualifies as rural reserves because it is a mapped significant natural landscape feature under the rural reserves statute and rule.<sup>44</sup> Council Creek and its floodplain form a natural boundary separating urban and rural uses, and qualify as an important natural landscape feature. Crossing Council Creek would be a significant intrusion into the heart of Tualatin Valley agricultural land and industry, without any other logical, natural boundary.
- Metro’s findings do not explain why this area was left as undesigned, including *why lot lines* were chosen as the boundary between undesigned and rural reserves. This is the entirety of Metro’s findings:

“For the reasons above under the discussion of “Undesigned Lands” and because LCDC invited Metro and Washington County to provide more Undesigned lands, ultimately 363 acres directly north of the city of Cornelius were left Undesigned. \* \* \* The decision to leave 363 acres undesigned is ultimately best explained by the record of Metro and Washington County’s joint public hearing on March 15, 2011. It was at that joint hearing that Metro and Washington county elected officials fulfilled the balancing objective of OAR 660—27-0005(2).”<sup>45</sup>

As explained earlier, that was a 9-hour hearing. This statement does not qualify legally as findings explaining why land that qualifies as rural reserve on two grounds, and has been found by LCDC to not qualify as urban reserves, and is Foundation land, has been left undesigned. This mistaken “undesigned” category is compounded by the fact that

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<sup>43</sup> See, e.g., testimony of Fisher Farm & Lawn; Ag West Supply; Rick’s Independent Crop Consulting Services; Wilco; Winfield LLC; Metro New Holland; Western Ag Improvements.

<sup>44</sup> Metro *Natural Landscape Features Map*; *Washington County Map 5 Natural Landscape Features Inventory* – Metro (February 2008)

<sup>45</sup> Ex. B, p. 173.

Area 7I South contains the natural buffer of Council Creek and its riparian area, and qualifies as the “boundary or buffer...between “urban uses and natural resource area.” OAR 660-027-0060(3)(f). Lot lines do not qualify as a boundary or buffer.

The only possible “reason” is to keep this area as a potential future UGB expansion area which, as explained above, would cause the overall reserves decision to violate the balancing requirement of the statute and rule. It is certainly not a permissible reason for an area that qualifies on *two* grounds as a rural reserve.

**Remedy:** Remand and direct Metro to designate Area 7I South as Rural Reserve.

## **B. Helvetia: Areas North of Highway 26**

### *Introduction*

In the original 2010 reserves decision, Area 8B contained 88 acres located at the northwest corner of NW Helvetia Road and NW Groveland Drive and was designated an urban reserve. Save Helvetia and others objected to these 88 acres as urban reserves, arguing instead that it better satisfies the rural reserves factors.

In 2011, Metro Ordinance 11-1255 expanded Area 8B to 440 acres: the “original” 88 acres plus an additional 352 acres. This Objection is to the entire 440 acres as urban reserves, arguing instead that it better satisfies rural reserves factors.

Area 8-SBR is 233 acres of Foundation Agricultural Land left “undesigned.” It is located to the west of Area 8B and separated from Area 8B by NW Groveland Road. These objections will refer to this area as “Area 8-SBR” for convenience.

All prior testimony, objections and exceptions contained in the record in Washington County, Metro and DLCDD for Metro Ordinance No. 10-1238A (2010) are hereby incorporated, applied, and preserved in these Objections to Metro Ordinance No. 11-1255.

### **Area 8B**

**Objection 4: The findings in support of designating of Area 8B as an urban reserve violate the reserves statute (ORS 195.137-.145), rules (OAR chapter 660, div. 027), and Goal 2, adequate factual base, and are not supported by substantial evidence in the whole record.**

1. The decision lacks findings and substantial evidence for designating Area 8B as urban reserves, rather than other non-Foundation Lands

Area 8B consists of 440 acres of Foundation farm land located north of Highway 26. The Metro decision fails to satisfy the urban reserve factors of OAR 660-027-0050. When designating Foundation Agricultural Lands for urban reserve, OAR 660-027-0040(11) requires “findings and statement of reasons” that explain, in reference to OAR 660-027-0050, “why Metro chose the

Foundation Agricultural Land for designation as urban reserves rather than other land considered.” *This provision imposes an extra obligation* of identifying what it is about this land that satisfies the urban reserves factors and why that obligation cannot be satisfied by other non-Foundation Lands. Metro’s decision lacks this necessary alternative lands analysis.

For example, there is no analysis of whether the “St. Mary’s” property in South Hillsboro could serve for industrial purposes, instead of Area 8B’s Foundation Agricultural Land.<sup>46</sup> The St. Mary’s land contains over 400 acres in a single ownership with no pre-existing development. It is located near rail and a major transportation line, and would enable employees in the surrounding residential areas to live near work, reducing vehicle miles traveled and emissions. Exactly the rationale Metro uses to justify other urban reserves (see, for example, the Evergreen area), and they are even stronger here. Instead, employees in the large residential areas surrounding St. Mary’s will travel many miles north, cross US-26, to Area 8B, far from the urban core, increasing already congested traffic on north-south routes.

In addition, Metro and Washington County did not evaluate Important and Conflicted Agricultural Lands as an alternative to Area 8B’s Foundation Agricultural Land.

Finally, the approximately 2,500 acres of “undesigned” land reserved by Washington County were not considered as an alternative to Area 8B’s Foundation Agricultural Land, even though this option was proposed by the Washington County Farm Bureau. Metro’s decision lacks any of this alternative lands analysis.

When considered in its entirety, on balance and against other lands around the Metro region, the area located north of US-26 and west of NW Helvetia Road is much more suitable for rural reserve designation, given its high quality soils, its high productivity for farm use, its relative separation from the urbanized portions of the county, and its existing protective boundaries of already existing US-26 and NW Helvetia Road, ensuring the continued operation and profitability of these agricultural lands.

Area 8B is not only Foundation Agricultural Land; it is high-value farmland. While the most productive farmland is often the easiest to convert to industrial uses - Area 8B is generally flat, has good drainage, and is in close proximity to a freeway interchange - that alone does not satisfy the purpose of urban and rural reserves in ORS 195-137-.145 and OAR chapter 660, division 27.

The Area 8B findings do not identify any unique or limited property characteristic that requires an urban designation. OAR 660-027-0040(2) requires that urban reserves be limited to the amount necessary to “accommodate the estimated urban population and employment growth.” Although this does not require mathematical certainty, it does require a connection between the need for additional urban lands and the amount of land designated to meet the need. There are no general or particular findings suggesting that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area.

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<sup>46</sup> In fact, the reason the St. Mary’s area was *not* analyzed for industrial use is because Hillsboro contemplates that the area will be mostly residential. That is not a legal justification under the reserves law and, in fact, is another example of this decision’s illegal use of a UGB evaluation standard.

With the addition of 28,256 acres of urban reserves, which is on the high end of Metro's recommendation of 15,000 to 29,000 acres, Metro and the four governments believe the region can accommodate 50 years of employment growth. The Metro Findings state: "The existing UGB has sufficient capacity - on vacant land and through re-development over the 50-year reserves period - for overall employment growth in the reserves period. However, this supply of land does not account for the preferences of some industrial employers for larger parcels."<sup>47</sup>

Rather than take Area 8B's Foundation Agricultural Land out of production, Metro could use some of the thousands of acres of Important and Conflicted Agricultural Lands it reserved to "remain undesignated for possible designation as urban reserve if the region's population forecast proves too low".<sup>48</sup>

Clackamas Heights  
East Wilsonville  
West Wilsonville  
Southeast of Oregon City  
Southwest of Borland Road  
Between Wilsonville and Sherwood  
Powerline /Germantown Road-South"

Metro's acknowledgment that these Important and Conflicted farm lands could be urbanized belies any argument that they are not suitable. In addition, there is nothing unique about Area 8B that will make it easier or less-expensive to develop than any other area within the Metro area. This analysis was never conducted and Metro made no attempt to compare other locations to determine if the same services and objectives could be met by avoiding Foundation Lands.

## 2. Hillsboro's Pre-Qualified Concept Plan did not analyze Area 8B adequately

When the City of Hillsboro submitted their Pre-Qualified Concept Plan, Area 8B's 440 acres were a miniscule portion (5%) of the 7,890 gross acres of land under consideration for proposed Urban Reserves in the North Hillsboro study area. Because it was lumped into a huge area, Hillsboro's Pre-Qualified Concept Plan did not adequately assess Area 8B for urban or rural reserves. There is no rational basis for selecting an initial 88 acres, increasing that amount to 440 acres without any further explanation. Even when the North Hillsboro urban reserves were reduced to 2,754 acres, Area 8B was never analyzed independently. Metro's reliance upon the city's Pre-Qualified Concept Plan as a reason for designating Area 8B as urban reserves is flawed and not supported by substantial evidence.

**Remedy:** Remand Area 8B for re-designation as Rural Reserve.

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<sup>47</sup> Ex. B, p. 14.

<sup>48</sup> Ex. B, p. 8.

**Objection 5: Area 8B does not meet any of the urban reserve factors. The findings in support lack an adequate legal or factual basis.**

The reserve rule, OAR 660-027-0050 describes 8 factors to use in evaluating whether an area qualifies as an urban reserve. Area 8B meets none of these.

“Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

**“(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments....”**

Metro’s findings for Area 8B do not meet this requirement.

1. Area 8B was lumped into 7,890 acres and was not analyzed in the first instance

Metro’s findings state that Hillsboro’s Pre-Qualifying Concept Plan outlines “the City’s infrastructure service availability to Area 8B and the entire North Hillsboro Urban Reserves areas.”<sup>49</sup> However, the PQCP does **not** refer to Area 8B, only to the North Hillsboro study area (an area of 7,890 acres as noted above).<sup>50</sup> This results in misleading information about the availability and cost of providing services to Area 8B specifically. For example, the Metro findings regarding plans for a new reservoir to serve existing underserved area customers refers to areas north to Highway 26, not north of Highway 26. The reservoir capacity is not planned to accommodate the increased needs from areas north of Highway 26. The additional investment required to serve these areas far from the urban core would be useful and required information for this decision, given that it will cost taxpayers more and may not be an efficient use of public and private infrastructure investments, but it is not here.

Metro findings that “Area 8B has the necessary infrastructure readily available” and that “Hillsboro has a track record of successfully delivering infrastructure services to UGB expansion areas...” are conclusory and belied by all the evidence contained in the record...<sup>51</sup> According to Metro findings,<sup>52</sup> a 51-acre site north of Highway 26 brought into the UGB in 2002 cannot be developed for high tech until upgrades to the West Union substation are made. This potential large lot site is languishing *inside* the UGB for lack of infrastructure while valuable Foundation Agricultural Land in Area 8B has been proposed as urban reserves for large lot industrial sites.

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<sup>49</sup> Ex. B, p. 155.

<sup>50</sup> Washington Co. record, p. 3120.

<sup>51</sup> Ex. B, p. 156.

<sup>52</sup> Ex. B, p. 159.

## 2. Infrastructure improvements can be made without Area 8B being an Urban Reserve

Metro's findings describe why the original Area 8B was designated urban reserve:

“Why This Area was Designated Urban Reserve: Urban Reserve Area 8B sits at the northwest corner of a major highway interchange which has recently received funding commitments for significant improvements. This interchange is located at the northwestern edge of a very large technology-based industrial area. This area will provide flexibility in planning for needed interchange improvements as well as other infrastructure needs (e.g. sewer and stormwater management) for developing urban lands to the east.”<sup>53</sup>

This is not an accurate statement. To the extent that the planned improvements to the Highway 26/Brookwood Interchange at NW Helvetia Road and NW Groveland Drive have been identified, it is designed to address *only existing* capacity issues related to land *inside* the current UGB.<sup>54</sup> ODOT has been clear that additional traffic resulting from any new urban reserves north of Highway 26 will require *additional* investment in the interchange and associated roads. The only funding available is \$45 million, which will cover only a portion of the planned improvements to address current capacity within the *current UGB*. Another \$25 million to address the remaining needed improvements for current capacity is unfunded. Designating urban reserves on another 2,700 acres in Areas 8A (Evergreen) and 8B, when funding to serve traffic generated from the existing UGB is inadequate and underfunded does not demonstrate compliance with ORS 195-139, .145(5) or OAR 660-027-0050.

## 3. Improvements can be accommodated in Rural Reserves

None of the urban reserve factors of OAR 660-027-0050 contemplates potential demands for urban freeway interchange expansion. There is no evidence to suggest that Area 8B must be designated urban reserves to meet Metro's identified objectives. Similarly, there is nothing in OAR 660-027-0050 that allows designating land urban reserves for a freeway. The policy of creating livable communities does not include any reference to expanded highway access.

Moreover, Area 8B does *not* have to be designated urban reserves in order to accommodate a roadway interchange or provide sewer or stormwater management. ORS 215.213(2)(q) expressly authorizes the expansion of travel lanes and roadways in areas zoned for exclusive farm use, which is presumably the designation that would remain on these lands if they were designated rural reserves. Similarly, utility facilities such as stormwater collection or sewer pump stations are allowed outright on lands zoned for exclusive farm use under ORS 215.283(1)(c). Retaining the EFU zoning and designating the land rural reserve does not impose a planning limitation of any sort.

Area 8B does not legally have to be designated as an urban reserve to meet any identified sewer or stormwater need, or freeway interchange improvements, and no evidence in the record supports a different conclusion. There is no evidence that operation of an urban-scale

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<sup>53</sup> Ex. B, p. 87.

<sup>54</sup> Ex. B, p. 156.

interchange in this area is inconsistent with farming activities likely to occur if Area 8B is designated for rural reserves. In fact, the *only* evidence in the record shows the opposite: the overpass at NW Jackson School Road over Highway 26 - the next interchange to the west of Highway 26/Brookwood Road/Helvetia Interchange - operates with minimum impact to the surrounding farm uses currently zoned EFU. Nothing in the urban/rural reserve factors provide that areas planned for roadway expansions must be zoned for urban use.

4. State Agencies Recommended Rural Reserves for Area 8B; ODOT does not need Urban Reserve designation in Area 8B

In a letter dated October 14, 2009, nine Oregon state agencies recommended **rural reserves** for what is now Area 8B:

“The area north of Highway 26 to the west of Helvetia and east of Jackson School roads should be designated rural reserves to form a ‘hard edge’ to the boundary in this important agricultural region, except for area just east of the City of North Plains, which could remain “undesigned.”<sup>55</sup>

The state agencies’ letter made an exception for the original 88 acres of Area 8B in the northwest corner of the Shute Road interchange (now Highway 26/Brookwood/Helvetia Interchange), declining to state whether this 88 acres should be undesigned or urban reserves based on the understanding that “...additional transportation investments are anticipated.” In 2010, Metro designated Area 8B’s original 88 acres as urban reserve “...for needed interchange improvements.”<sup>56</sup>

In the hearings leading to this most recent Metro decision, ODOT made very clear that an urban reserve is *not* necessary for any interchange improvements. In a March 29, 2011 letter from ODOT to Washington County Chair Andy Duyck and Metro President Tom Hughes, ODOT stated:

“Also, we wish to set the record straight that ODOT does not need an urban reserve designation in order to make currently proposed or future improvements at this interchange. The Transportation Planning Rule sections -0065 and -0070 provide for certain transportation improvements to be made on rural lands without and with exceptions to Statewide Planning Goals 3, 4, 11 and 14. In fact, an Urban Reserves designation does not affect any of the applicable requirements for interchange improvements.”<sup>57</sup>

This is the only substantive evidence in the record relating to this intersection other than conclusory assumptions made by the County and Metro. Furthermore, ODOT needs only 5.05 acres for an interchange - not 88 acres (or the now 440 acres that is the new 8B). ODOT’s design team “...calculated that approximately 5.05 acres of property (220,000 square feet) would

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<sup>55</sup> Washington Co. Rec., p. 774.

<sup>56</sup> Ex. B, p. 87.

<sup>57</sup> Wash. Co Rec., VIIIb, p. 633 of 790, at 11107.

be needed in fee for the proposed project in the northwest quadrant...,” not even the 88 acres designated as urban reserves by Metro in 2010.<sup>58</sup>

Metro’s 2010 Findings for designating the original 88 acres of Area 8B as urban reserve were based on wrong information - the interchange improvements can be done in a rural reserve. As a result, the designation of urban reserve for the rest of Area 8B bootstrapped onto a flawed decision, resulting in designating high-value Foundation Agriculture Land as urban reserve.

Therefore, the findings do not satisfy OAR-660-027-0050(1), are inconsistent with OAR 660-027-0040(11), violate Goal 2, and are not supported by substantial evidence.

**“(2) Includes sufficient development capacity to support a healthy economy”**

The evidence in the record does not support a finding that Area 8B meets the factor – alone or in conjunction with land inside the UGB, that it supports a healthy economy. In fact, evidence supports the opposite finding – that including Area 8B will harm the economy by perpetuating a pattern of inefficient use of land in this area.

1. Hillsboro city comparisons unrealistic

Metro’s findings rely upon evidence submitted by Hillsboro. The city retained CH2M/ HILL and Johnson Reid to study large industrial sites in the Hillsboro area and other markets they believe are competitive with Hillsboro.<sup>59</sup> Comparing Hillsboro to the much larger cities of Austin, Colorado Springs, Albuquerque, and Raleigh is unrealistic and has led to erroneous conclusions. Austin, at 271 square miles, eclipses Hillsboro’s 21.6 square miles and is almost twice as large as Portland’s 145 square miles. Regardless of its larger land mass, Austin has much to offer that Hillsboro does not and, given the most optimistic circumstances, will not: it is the state capitol of Texas, it has no state income tax, it is a major hub for pharmaceuticals and biotech firms (85 companies), and it has an extensive University of Texas campus whose graduates feed its extensive high-tech industry. Colorado Springs is also larger than Hillsboro, at 186 square miles. It is the home of NORAD, a major defense industry sector and two universities: the Air Force Academy and the University of Colorado.

Comparing Hillsboro to substantially larger cities is a false proposition: amassing land availability does not equate to economic value - it is the utilization of that land that creates value. There are many cities around the country today with lots of land, but little economic activity,<sup>60</sup> and with limited land, but thriving economic activity.

The Hillsboro experience has already shown that more land doesn’t guarantee success in high tech or other industries. In the last Metro UGB expansion in this area, Hillsboro took in some of the best agricultural land in the county and state: It is flat and next to a major east-west freeway (US-26) and a major north-south road (Cornelius Pass). This land, south of West Union Road,

<sup>58</sup> Wash. Co Rec., VIIIb p. 631 of 790, at 11544.

<sup>59</sup> Ex. B, p. 156.

<sup>60</sup> For example, Buckeye, Arizona, has a land area of 400 square miles, 18 times larger than Hillsboro. It has almost zero economic value: no university, no industry, but lots of unbuilt planned communities.

was promoted as providing high-tech, high wage R&D jobs - over 7,000 jobs were expected. Ten years later, there is *no* high tech anchor or ripple clusters. The only subsidies offered are free rent for four months. Non-industrial uses have moved in to fill up the empty warehouses and office buildings, and this area has the *lowest economic value* of any studied by Hillsboro's consultants and lobbyists.

That UGB decision destroyed hundreds of acres of Foundation Agriculture Land that had been a steady, stable producer of traded sector crops for decades. The basis of Hillsboro's comparisons is flawed, inaccurately fueling Hillsboro's request for even more thousands of acres of prime agriculture land to take from the stable productive agriculture industry.<sup>61</sup>

## 2. Metro overstates future large lot needs

Metro's findings state that West Washington County will need approximately 1,200 acres for large lot industrial use north of Hillsboro in the next 20 years.<sup>62</sup> Metro alleges this is due to "the preferences of some industrial employers for larger parcels."<sup>63</sup> There is no substantial evidence in the record to support this; in fact, it is contrary to past experience and evidence.

Over the past 30 years, which included two decades of boom growth, only three high tech companies purchased large lots over 50 acres in Hillsboro, for a total of 680 acres (Intel, Solarworld, Genentech).<sup>64</sup> Even assuming boom growth for the next two decades (which is highly unlikely), the need based on past experience would be for 450 acres of large lot sites over the next 20 years, about one-third of land area as the 1,200 acres proposed.

One could argue that Hillsboro has done very well with the allotment of 680 acres for large lot industrial sites over the past 30 years. It has, according to the CH2M /HILL analysis, established Hillsboro as the "heart of the Silicon Forest" and "its economic importance for the region cannot be overstated." Based on this historical usage, Hillsboro and the region need only 1133 acres for the next 50 years for large lot industrial sites. However, the urban reserves in this area are about *200% more* than historically used for large lots, even with two decades of boom growth. Even assuming there is a preference for large lots that must be met in this urban reserve decision, no evidence supports the amount of land provided. And it certainly does not justify the 440 acres of Foundation Agriculture Land in Area 8B *north* of Highway 26, in addition to the proposed urban reserves to the south.

Finally, as described above, a reserve analysis that is too-focused on specific site needs is improper. That is a UGB expansion analysis.

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<sup>61</sup> Wash. Co Rec., VIIIc page 315 of 870 at 12018.

<sup>62</sup> Ex. B, p. 156. The study was paid for by Hillsboro.

<sup>63</sup> Ex. B, p. 14.

<sup>64</sup> Wash. Co Rec., VIIIc p. 385 of 870, at 12088.

### 3. Subsidies and tax breaks are more important than land availability

Metro's findings justify the higher need of 1,200 acres by citing the number of inquiries Hillsboro has received from siting brokers.<sup>65</sup> However, inquiries do not represent solid candidates or even demand and, in any event, are irrelevant to a reserves decision.

Even if this was a relevant consideration for a reserve decision, to truly understand if Hillsboro or the region was losing candidates to other cities and if so, why, one would need to follow-up with each prospect to determine where they actually ended up locating and why. Otherwise, the list is misleading. Many factors are at work in where a company decides to locate. Land availability is just one. Subsidies are a major factor not illustrated by Hillsboro's use of a coded list of prospects. For example, SpectraWatt is listed as a prospect for 20-25 acres. Based on their own press accounts, land availability was not an issue: they were *given* 20 acres by their lead investor, Intel. They chose not to locate on this land north of Highway 26 for two reasons: (1) it was too expensive to develop raw farmland, and (2) they did not receive enough subsidies from the State of Oregon. They relocated to New York State, where they received \$65 million in subsidies and leased existing facilities from IBM. What the region *should* have taken from this example is that the cost of developing raw land justifies a smaller urban reserve.

Apricus, listed as wanting 250 to 300 acres, is a code name for a solar company that ended up locating in Singapore, which is not a location with either cheap land or large lots. So, Hillsboro did not lose this prospect to another U.S. city because of land, but rather due to subsidies and low labor costs. Subsidies are not even listed on Hillsboro's list of seven requirements of high-tech companies. Hillsboro, and consequently Metro's findings, would have decision-makers believe that these were "lost" opportunities they could have won if only the city had more raw land. This is disingenuous at best - an adequate follow-up of these prospects by an unbiased evaluator will show that there are multiple factors in play besides land availability.

### 4. Metro and Hillsboro fail to mention subsidies as important factor

Save Helvetia presented evidence that the reason Hillsboro is not securing solar and bio-pharma companies is because of lack of subsidies, *not* because of lack of land. Out of the ten solar companies to come to Oregon, Hillsboro attracted one (SolarWorld), but the last five have gone to Gresham and North Portland due to more attractive subsidies and not because of a lack of land. In fact, these last five companies are not buying raw land in large lots but are going into existing facilities of less than 25 acres. Hillsboro has over 1.5 million square feet of available manufacturing, R&D and flex space advertised for lease right now and another 1.0 million square feet of commercial office space.<sup>66</sup> Hillsboro does not really have a bio-pharma cluster: it has one packaging and fill company and one medical device company. The evidence is that bio-pharma companies locate where they receive large subsidies.

Metro's findings state that West Washington County is uncompetitive for large lot industrial employers because it does not have enough development-ready sites.<sup>67</sup> This is an improper scale

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<sup>65</sup> Ex. B, p. 157.

<sup>66</sup> Wash. Co Rec., VIIIc, pp. 332-341, at 12035-12044

<sup>67</sup> Ex. B, pp. 158-59.

of evaluation for reserves; the reserves statute and rule do not provide for a specific type of site, only that an adequate supply of land be reserved for the region. Additionally, the reserves statute and rule do not require that a specific type of land be provided, i.e. employment or residential. It is only when considering a UGB expansion that the type of land is determined.

#### 5. UGB north of Highway 26 is a poor economic performer

Metro's findings cite the Economic Productivity of Employment Mapping Pilot Project as demonstrating the economic benefits of industrial lands, especially those currently located in North Hillsboro.<sup>68</sup> However, this Project shows that the area inside the UGB north of Highway 26 performed the *lowest* in market value, payroll, and property tax revenue, averaging 2.95 employees per acre and not coming close to the statistics stated in the decision on page 158. In fact, the economic data in the project were based on 2005 data, at the height of the boom, so the economic impact portrayed is much less. Hillsboro's Helvetia Concept Plan, which details the plan for the area north of Highway 26, is for warehouses and distribution centers, which tend to have lower economic benefits.

Again, land does *not* equate to economic value - it is the utilization of that land that creates value. The evidence shows that the Foundation farm land north of Hwy. 26 is one of the last two remaining concentrations of Class 1 soils in Washington County; it now contributes to the production of traded-sector products. Converting this to urban reserves for a speculative and likely low-value use is not a permissible justification for designating Foundation farm land as urban reserves.<sup>69</sup>

#### 6. Area 8B provides few buildable acres

Metro's findings state that Area 8B "will provide for an additional 340 buildable acres of large, seismically stable, vacant sites for industrial uses...".<sup>70</sup> Evidence has been presented that four property owners in Area 8B oppose having their properties included in the urban reserve and oppose annexation to Hillsboro.<sup>71</sup> These properties represent seven tax lots totaling 161 acres. One property spans the width of Area 8B, from NW West Union Road on the north to NW Groveland Drive on the south, effectively bifurcating Area 8B.<sup>72</sup> Subtracting 161 acres of potentially unavailable land leaves 179 acres. It is questionable whether sufficient site sizes can be stitched together out of the non-contiguous parcels to warrant converting high-value Foundation Agriculture Land.

This factor requires a finding that the land has sufficient development capacity to support a healthy economy. Metro's decision lacks any analysis, simply concluding that 8B will provide "additional development capacity to support a healthy economy." There are no findings as to

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<sup>68</sup> Ex. B, pp. 157-58.

<sup>69</sup> Wash. Co Rec. p. 353-384 at 12056.

<sup>70</sup> Ex. B, p. 159.

<sup>71</sup> It is unclear why the desires of the property owners and the political difficulties associated with designating 363 acres of rural residential for urban use north of Council Creek was adequate to leave this area undesignated when nearly a majority of the owners of acreage within Area 8B are similarly opposed. See Ex. B, p. 5.

<sup>72</sup> Wash. Co. Rec., VIII p. 7274, 10885, 10886.

how the original area, or the net 179 acres available for private development after rezoning, will support a healthy economy.

Therefore, the findings do not satisfy OAR-660-027-0050(2).

**(3) Can be efficiently and cost-effectively served with public school and other urban-level public facilities and services by appropriate and financially capable service providers;**

Metro findings state that “Area 8B would be targeted for industrial uses and, as such, schools and parks would be prohibited in the area by applicable provisions in the Metro Code and City Industrial Zoning rules.”<sup>73</sup> This is a problematic provision, since the West Union Elementary School has been at their 11-acre site on the northeast corner of Area 8B for the past 62 years. This rural school, which prides itself on its historic, country roots, hosts city-wide baseball league games on its athletic fields, resides adjacent to actively-farmed grass seed, clover and wheat fields.

This finding does not support Metro’s designation of Area 8B as an urban reserve.

**(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;**

Metro findings show limited multi-modal transportation options for Area 8B; a potential east/west bike route traverses the area.<sup>74</sup> The findings note that opportunities will be studied to bring transit to Area 8B and further refine transportation options but there are no current approved plans or funding to achieve them. Urbanizing Area 8B will be entirely auto-focused with no realistic alternative transportation opportunities. The closest Tri-Met bus service is 4.52 miles away at Evergreen/Shute. Figure 1 suggests a Tri-Met stop might be placed on the south side of Highway 26, requiring commuters to trek over the Highway26/Brookwood Interchange overpass and walk several more miles to access facilities inside Area 8B. The closest Max station is 7.2 miles away. Metro’s recently approved HCT (High Capacity Transit) plan has the closest potential stop/station at NW Evergreen and NW Brookwood, but that is still well over 3 miles away; and not within the recommended one-half mile walking distance to HCT.

Metro’s own finding describe Area 8B as an isolated industrial block largely accessible today and in the future only by car, further contravening the purpose identified in OAR 660-027-0005 that urban and rural reserve designations result in the creation of “livable communities.” Just because land is flat enough to accommodate alternative transportation does not mean it will, and the findings show this area will not accommodate during the reserves period.<sup>75</sup>

Therefore, the findings do not satisfy OAR-660-027-0050(4).

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<sup>73</sup> Ex. B, p. 160.

<sup>74</sup> Ex. B, p. 160, Figure 1.

<sup>75</sup> Interchange improvements can be done without Area 8B being designated as urban reserves, as noted above.

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

Metro's findings state that "an outline identifying natural resources within Area 8B is provided in the PQCP (Washington County Record page 3133).<sup>76</sup> The table provided does *not* reference Area 8B, but rather summarizes the natural resources in the entire study area of 7,890 acres. There is no independent break-out of Area 8B's natural resources. This factor requires a finding that land can be designed to preserve and enhance natural ecological systems and landscape features. The Metro findings makes no mention of what natural resources exist on-site in Area 8B, only that "It is Hillsboro's intent to preserve and incorporate these areas as open space into future neighborhoods." There is no explanation of what these natural resources are, how they will be protected, or how much land will be developable after protective measures are installed. This violates OAR 660-027-0050(5).

Furthermore, Metro's findings assert that the riparian and upland resources in the undesignated area to the immediate west of Area 8B will serve to further this factor and will "remain untouched."<sup>77</sup> Stating that undesignated land will remain "untouched" is misleading and has no basis in fact, especially in Washington County. As described above, this decision considers undesignated land, at least in Washington County, as an extension of urban reserves

We do not understand the comment in Metro's findings: "Moreover, these extensive natural areas along the westerly edges of Area 8B will provide a strong, protected and enduring buffer between future industrial activities in the balance of Area 8B and the agricultural uses/activities north and west of, and beyond these natural areas."<sup>78</sup> There are *no* extensive natural areas along the westerly edges of Area 8B - Groveland Road is the western edge of Area 8B and there are farmed fields along the western edge but no natural resources. NW Groveland Road is not serving as a buffer. There is no factual basis for this conclusion.

This urban reserve factor is not met.

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

Metro's findings state that "...this area would be targeted for large-lot industrial and employment uses if urbanized and annexed to the City."<sup>79</sup> Making the assumption that certain urban reserve lands will be used for certain purposes during the reserves process is legally flawed, as earlier described. Urban reserves are to create a general land supply for needs 20 to 30 years beyond the current 20-year UGB, so as a practical matter, specific needs for specific lands cannot possibly be determined now.

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<sup>76</sup> Ex. B, p. 161.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Ex. B, p. 161.

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

It is undisputed that Area 8B contains approximately 28 acres of natural resources located both within and beyond the floodplain of Waibel Creek.<sup>80</sup> Metro's Habitat Protection Map shows this area consists of "High habitat conservation area."<sup>81</sup> Metro's Inventory of Regionally Significant Habitat map shows the following resources on this site: Class I Riparian (highest value habitat), Class 2 Riparian (medium value habitat), Class 3 Riparian (lower value habitat, Class B Upland (Wildlife) habitat and Class C Upland (Wildlife) habitat. In addition, Area 8B contains an expansive oak woodland of over 200 old-growth Oregon white oak trees.<sup>82</sup> The Oregon Department of Fish and Wildlife (ODFW) has identified Oregon white oak woodlands as "Strategy Habitats" and Metro has identified Oregon white oak woodlands as "Habitats of Concern."<sup>83</sup>

Metro's findings do not even mention these resources in Area 8B. Therefore, there is no indication that these resources can or will be protected. No evidence in the record shows that Washington County or Hillsboro has been successful in preserving and enhancing these strategic woodlands within an urban setting. Washington County has standards for tree removal but not for tree preservation.<sup>84</sup>

Nothing in these findings suggests that these resources or features are necessary to serve urban-scale development (especially when slated for industrial uses), nor is there any evidence of how Metro will protect these resources. Additionally, there is no comparative analysis of whether other lands that contain fewer significant natural resources could not serve the same purpose.

Metro findings say "These protection/preservation provisions would apply to the extensive natural resource areas along the west edges of Area 8B if and when it is urbanized."<sup>85</sup> Again, there **are no natural resources along the west edges of Area 8B** - the west edge of Area 8B is NW Groveland Road and farmed fields. There are extensive floodplains and natural resources along the east edges of Area 8B, as discussed in the above paragraphs.

Metro findings claim that the undesignated area to the immediate west of Area 8B will serve to protect these resources and serve as a buffer.<sup>86</sup> However, nothing in law requires that undesignated land provide such protection: new roads can be built on that land, development can occur on that land, the city and county and Metro can jump over other land in urban reserves if cities can show they need it. Undesignated status provides no certainty on how long this land will remain rural.

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<sup>80</sup> Wash. Co. Rec. p. VIIIc p. 289-290 at 11992.

<sup>81</sup> Wash. Co. Rec. VIIIc p. 291 at 11994.

<sup>82</sup> Wash. Co. Rec. pp. 5976 - 5993.

<sup>83</sup> Wash. Co. Rec. p. 5965.

<sup>84</sup> "Comparison of Key Tree Code Provisions Across Jurisdictions" Link: <http://www.washcotreegroup.org/docs/matrixsummary-rl.2.pdf> with "Regional Urban Forestry Assessment" June 2009, p. 26-27, prepared by Audubon Society of Portland and Portland State University's Department of Environmental Science and Management with funding from Metro

<sup>85</sup> Ex. B, p. 162.

<sup>86</sup> Ex. B, p. 162.

This urban reserve factor is not met.

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

Metro's findings discuss the concept of buffering, how it can be achieved through planning decisions and the use of planning controls, and how buffering standards have potential suitable application to the future urban use of Area 8B if it is designated urban reserve.<sup>87</sup> However, none of it is certain to happen. There are no rules, ordinances, or legislation to assure the farming community that if Area 8B becomes urban reserves, that any of the protections will be in place to adequately buffer the surrounding rural reserves.

Metro's findings list three ways that "Area 8B can be adequately buffered..."<sup>88</sup>

1. Natural Features. The findings suggest that the natural features (wooded area) on the 233 acres of undesignated land west of Area 8B will serve as a buffer between urban reserves of Area 8B and rural reserves to the west. As mentioned above, undesignated land has no protection and no certainty it won't be used for urban purposes.
2. Industrial use. The findings suggest that industries' landscaping and berms serve as buffers. The Farm Bureau has documented actual situations of conflicts with industries - such as being asked to stop harvesting due to dust. High tech clean room operations are sensitive to large amounts of dust generated next to their buildings.
3. Man-made buffering. The findings suggest that West Union Road and vegetative buffering could reduce conflict between urban and rural industrial uses. However, this has not been done in Washington County or the region. There is nothing in place to define adequate buffers - no ordinances, no plan.

The Objectors submitted testimony about the inadequate buffer of NW West Union Road further east.<sup>89</sup> The abandoned fields held by speculative owners inside the UGB east of NW Helvetia Road blow noxious weed seeds onto the farms on the north side of NW West Union Road, reducing crop purity. NW West Union Road, a two-lane rural road only 35 feet wide, is not a buffer on the east side of NW Helvetia Road. It will not be a buffer on the west side of NW Helvetia Road.

Based on all the above, the findings applying the Urban Reserve Factors do not satisfy OAR-660-027-0050, are inconsistent with OAR 660-027-0040(11), violate Goal 2, adequate factual base, and are not supported by substantial evidence in the whole record.

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<sup>87</sup> Ex. B, pp. 162-63.

<sup>88</sup> Ex. B, p. 163.

<sup>89</sup> Wash. Co Rec. at VIII p. 6170, 5710.

**Remedy:** Remand Area 8B's 440 acres of Urban Reserves to Metro for re-designation as Rural Reserve and remand the undesignated area to the west of Area 8B (233 acres) to be re-designated as Rural Reserve.

**Objection 6: Area 8B should be designated as a rural reserve. Metro's findings demonstrate that Area 8B meet all the rural reserve factors, OAR 660-027-0060(2), (3). However, some of Metro's findings are inaccurate or incomplete in addressing the rural reserve factors.**

OAR 660-027-0060 provides the factors to be considered when evaluating an area for rural reserve designation. Area 8B meets every factor for designation as a rural reserve, both on agriculture and natural resource grounds.

Area 8B meets the *agricultural* land factors for rural reserves:

“(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation:”

**(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land.**

Metro's findings conclude that Area 8B is highly subject to urbanization.<sup>90</sup> However, that very pressure has artificially led to an urban reserve designation for this area. Efforts to urbanize the area have been unending for over a decade.

The current owner of the two parcels constituting the original 88 acres of 8B, in the corner of NW Groveland Drive and NW Helvetia Road, bought these parcels for investment. In 1995, he attempted to sell the property as a hotel and conference center.<sup>91</sup> Area 8B is subject to redevelopment pressure not because it is ill-suited for agricultural preservation, but because it is the next domino in the line to fall to urbanization, and it must be assumed that Area 8-SBR domino would fall shortly thereafter.

Area 8B meets this rural reserve factor.

**(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land.**

**(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations.**

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<sup>90</sup> Ex. B, p. 164.

<sup>91</sup> Wash. Co. Rec. p. 7179.

Evidence presented by Save Helvetia shows that Area 8B contains one of the last two remaining concentrations of Class 1 soil in Washington County - 28% of Area 8B is Class 1 soil, far better than Sauvie's Island, for example. Area 8B's high concentration of Class 1 soil is not merely "suitable" but superb. The Oregon Department of Agriculture testified that using the Huddleston method of assigning soil capability, which relies on data from the 1970s, as Washington County and Metro did, is of questionable validity given more recent data. No testimony was presented to discredit the Department of Agriculture findings. A far more accurate method of assigning soil capability is the more recent data from the Natural Resource Conservation Service. Reliance on an outdated classification system, contrary to the expert state agency and updated studies, does not meet the test for substantial evidence.<sup>92</sup>

Area 8B produces high-value traded sector crops using available water. According to the Oregon Department of Agriculture's testimony, Washington County, and hence Metro, placed too much emphasis Washington County on the value of irrigation, thus ranking land that does not need irrigation to produce high-value crops lower than it should be. In this era of sustainability and finite resources, land that can produce high-value crops without irrigation is of greater value than land that requires higher inputs, uses more natural resources, reduces the water supply, generates greater carbon emissions, and requires more energy to produce.

Area 8B meets these two rural reserve factors.

**(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:**

- (A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots.**
- (B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses.**

Metro's Findings state that Area 8B has been farmed for at least the last several decades.<sup>93</sup> This understates the long-term agricultural production of Area 8B. The Grossens' 125 acres has been in agricultural production for over 100 years. The Schoen hazelnut orchard has produced traded-sector hazelnuts for over 60 years.

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<sup>92</sup> Reliance on the outdated Huddleston report to contradict expert and current information from the Oregon Department of Agriculture and US Natural Resource Conservation Service, which Washington County did, is not substantial evidence. This legal and factual error infects the entire agricultural lands evaluation done by Washington County and relied upon by Metro. The entire rural reserves analysis and balancing between rural and urban reserves is therefore legally flawed. See Objections and Exceptions of Washington County Farm Bureau and 1000 Friends of Oregon, 2010.

<sup>93</sup> Ex. B, p. 165.

The 440 acres of Area 8B is part of a larger block of surrounding Foundation Agriculture Land that comprises over 5,000 acres. Testimony presented by Save Helvetia demonstrates that the thirty or so farming families who farm within those 5,000 acres produce high-value crops and earn their living solely from agriculture activities.

As described above,<sup>94</sup> the Oregon Department of Agriculture (ODA) presented testimony critical of Washington County's use of an artificial ranking system that the County devised called "Tiers," which is based on an outdated method of soil analysis (Huddleston) and an arbitrary 35 acres to determine parcelization.<sup>95</sup> Area 8B was ranked as Tier 3 because the surrounding Helvetia area had slightly smaller parcels than other agricultural areas of the county.<sup>96</sup> Because this conclusion is based on an outdated study and arbitrary definition of "parcelized," no factual basis exists. Even so, to get an accurate representation of the parcelization in Area 8B, one should look at *only* Area 8B, and not the surrounding 7,000 acres that go north into the foothills of the Tualatin Mountains.

Furthermore, Washington County included the Meek Road neighborhood to the *south* of Highway 26 in the same area. There are no farming operations occurring in the Meek Road neighborhood, since it is comprised of many rural residences. This artificially reduces Area 8B's ranking in their artificial and out-of-date "tier" system.<sup>97</sup>

As noted above, the findings apply the Huddleston soil methodology, which is considered antiquated by today's standards, and results in an incorrect rating of Area 8B. Using the modern data bases found in the online Natural Resource Conservation Service, and relying on the expertise of the Oregon Department of Agriculture, shows Area 8B has the highest concentration of Class 1 soil than any other reserve area in Washington County. Given the obligation under OAR 660-0027-0005(2), to protect the quality of the farmland and resilience of farmers in this area, Areas 8B should be first on the list for protection.

Washington County ranked all forest lands within the Wildland Forest designation as Tier 1 based on Oregon Department of Forestry's analysis. The ODA submitted testimony showing the fallacy of doing this - it understates the value of Foundation Agriculture Land. There are no Wildland Forestlands in Area 8B.

Area 8B meets this rural reserve factor.

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<sup>94</sup> Washington County's agricultural lands rating system is also the subject of Objections and Exceptions from 1000 Friends of Oregon and the Washington County Farm Bureau in 2010; those Objections and Exceptions are continued and incorporated herein.

<sup>95</sup> Among other flaws, the Washington County "method" fails to recognize that many farmers in Washington County lease land, enabling them to successfully farm hundreds of acres.

<sup>96</sup> Ex. B, p. 165.

<sup>97</sup> September 2009 staff report Tier map.

**(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns.**

Metro Findings correctly identify that 16 tax lots are located within Area 8B.<sup>98</sup> However, not noted is that *3 tax lots comprising 125 acres are in one ownership; 2 tax lots comprising 69 acres are in one ownership; and 4 tax lots are in one ownership.* This illustrates the fallacy of using an artificial 35 acres to determine parcelization. In Area 8B, over 50% of the area is owned by two owners. Area 8B meets this rural reserve factor.

**(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.**

Metro's findings determined that Area 8B has sufficient agricultural infrastructure.<sup>99</sup> But it is even greater than stated in the findings. Not noted is the considerable investment in sub-surface drainage farmers have made over the past 100 years. The Washington County Farm Bureau submitted evidence that the cost to install field drainage systems (also known as field "tiling") ranges from \$500 to \$1,000 an acre, not including the cost to maintain it.<sup>100</sup> Area 8B represents an investment of at least \$400,000 in field drainage by the local owners. Area 8B meets this rural reserve factor.

Area 8B also meets every rural reserve factor based on its *natural resource* area characteristics.

"(3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural resource features, a county must consider those areas identified in Metro's February 2007 "Natural Landscape Features Inventory" and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:"

**(a) Are situated in an area that is otherwise subject to urbanization during the applicable period described in OAR 660-027-0060(2) or (3);**

As stated above, Area 8B is highly subject to urbanization: one property owner has been trying to urbanize it since buying two parcels in 1995 for investment purposes, the state of Oregon tried to site a prison on it, the City of Hillsboro recently asked for it to be included in their UGB expansion for 2011. This factor is met.

**(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;**

Metro's Findings completely ignore the hazard resulting from the 100-year FEMA floodplains of Waibel Creek (incorrectly termed called "Waibel Gulch" in Metro's Findings) in the eastern portion of Area 8B.<sup>101</sup> According to Washington County, 28 acres of Waibel Creek floodplains

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<sup>98</sup> Ex. B, p. 166.

<sup>99</sup> *Id.*

<sup>100</sup> Wash. Co. Rec. at 10699.

<sup>101</sup> Ex. B, p. 167.

are considered constrained and not developable. Prior testimony and photos show these floodplains range as wide as 250 feet, obstructing NW Helvetia Road on multiple occasions, not just at 100-year intervals. Area 8B meets this rural reserve factor.

**(c) Are important fish, plant or wildlife habitat;**

Metro's "Inventory of Regionally Significant Habitat" map shows that Area 8B contains high-value, medium value, and lower value Class 1, 2, and 3 Riparian habitat as well as Class 2 and 3 medium and lower value Wildlife habitat.<sup>102</sup> The Oregon white oak tree woodlands contain over 200 native white oaks, some as old as 250 years. No evidence in the record indicates these resources will be protected. There is no evidence in the record that Washington County or the City of Hillsboro has been successful in preserving and enhancing these strategic trees within an urban setting. Washington County has standards for tree removal but not for tree preservation. There is nothing in these findings suggesting that these resource or features are necessary to serve urban-scale development (especially when slated for industrial uses), nor is there any evidence of how Metro will protect these resources. Additionally, there is no comparative analysis of whether other lands that contain fewer significant natural features could not serve the same purpose.

**(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;**

As noted in Metro Findings, Waibel Creek is a tributary of McKay Creek. Maintaining water quality and quantity in the tributaries to McKay Creek is therefore important to the viability and vitality of wildlife populations using this resource.<sup>103</sup> Waibel Creek traverses from the east side of Helvetia Road to the west side of Helvetia Road onto Area 8B. It serves as a collector source of water from the uplands, serving as a cache for thousands of acres upland

**(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands**

The seasons of the year provide a familiar rhythm to the visitors and residents to Area 8B: the stubbled fields in January frost, the tufts of green sprouting in March, the expanse of multi-colored hues of crimson clover, spring wheat, grass seed by May, the busy, dusty harvest in June and July with boxy bales dotting the landscape. This rural landscape of Area 8B and its surrounding farmlands that have seen the passage of 150 years of harvests is a key defining feature for Washington County and for that reason should be preserved.

A primary objective for designating land as rural reserve, as provided by OAR 660-027-0005(2), includes "protection of the important natural landscape features that define the region for its residents." The overwhelming amount of evidence shows that the agricultural area surrounding historic Helvetia provides a sense of place not only to Helvetia residents but to the County and region as a whole. The properties along NW Helvetia Road serve as the key gateway to the unblemished vistas and rolling hills of Helvetia. The low density rural development in the area

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<sup>102</sup> Save Helvetia's 2010 Objection regarding Area 8B, p. 9.

<sup>103</sup> Ex. B, p. 168.

allows visitors to walk back in time and behold activities that have sustained Northwestern Oregon for generations. This rural landscape is a key defining feature for Washington County and for that reason should be preserved.

Beyond natural resources, Area 8B serves an important cultural function in defining Washington County. Area 8B, along with the Helvetia area in general, provides the first opportunity for Oregonians to enjoy an unencumbered view of farmland when leaving the urban area westbound on US-26, the most heavily traveled route in Washington County. NW Helvetia Road also provides the first view from US-26 of forested Tualatin Mountains, stately Oregon white oak savannas (some as old as 500 years) and historic, majestic 60-foot tall Swiss Linden trees (dating from 1892) dotting the original Swiss settlers' farms, and historic, active, productive Century Farms.<sup>104</sup>

The Washington County Oregon Visitors Association and ODOT have invested in signage and publicity to promote the Helvetia loop as part of its "Vineyard and Valley" Scenic Tour Route. NW Helvetia Road, starting at the US-26 exit, is the beginning of the Helvetia portion of the scenic tour, proceeding north past the Area 8B properties and continuing past the Helvetia Tavern, winding west to Jackson Quarry Road, then to Jackson School Road and across US-26 to the south. In fact, ODOT provided funds as part of its "Discover Oregon Scenic Byways" program.<sup>105</sup> Developing Area 8B would destroy the pastoral vistas of rural farmland that is part of the attraction of Helvetia's countryside and Helvetia's recognized sense of place throughout the Metro region.<sup>106</sup> Metro's findings do not acknowledge how any of these objectives could or would be preserved if Area 8B is designated urban reserves.

Area 8B meets this rural reserve factor.

**(f) Can 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;**

The key to improving the interface between urban and agricultural lands is providing an adequate buffer between the two uses. Designating Area 8B for urban uses would remove the existing buffer between farm and urban uses in the east/west direction, currently buffered by NW Helvetia Road, by moving the boundary further west to NW Groveland Road, a one-lane rural gravel road only 21 feet wide. With no buffer, farming activities on adjacent farmland will be impacted. Commuter traffic will increase on NW Helvetia Road, NW Groveland Road, and NW West Union Road. As noted above, previously developed rural roadways do not serve as suitable buffers. Additionally, traffic traveling at high speeds on rural roads is a hazard to the slow-moving farm equipment.

Waibel Creek, its associated floodplains, the approximately 220 foot high slope which rises on its westerly edge and which parallels NW Helvetia Road, and NW Helvetia Road together serve as a buffer to the existing agricultural operations of Area 8B and beyond.<sup>107</sup> Replacing Area

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<sup>104</sup> Wash. Co. Rec. pp. 6032, 7031, 6158, 6159.

<sup>105</sup> Wash. Co. Rec. pp. 6154, 6155.

<sup>106</sup> Wash. Co. Rec. p. 7141.

<sup>107</sup> Wash. Co. Rec. p. 6170.

8B's agricultural activities with urban uses removes these buffers and exposes the surrounding rural reserves to these urban uses with no buffer. Metro's Findings state that NW West Union Road can function as a buffer as it currently does further east.<sup>108</sup> This is incorrect. NW West Union Road, at only 35 feet wide, is *not* an adequate buffer to farms on the north side of the road. Area farmers submitted testimony that the untended vacant lots located inside the UGB south of NW West Union Road spread noxious weed seeds across NW West Union Road, contaminating their seed crops, reducing the purity of the crops, causing loss of income. Noxious weed seeds can travel long distances and can remain in the soil for up to 20 years.

NW Groveland Road, a one-lane gravel road only 21 feet wide, is no buffer to the undesignated land west of Area 8B. Furthermore, since nothing prohibits new roads from being built in undesignated areas, the 233 acres of undesignated land west of Area 8B is no guarantee of serving as a buffer. Because Metro and Washington County (improperly) use undesignated lands as a "safety valve" for more urban land, there is no guarantee that the 233 acres of undesignated land will stay undesignated for very long.

**(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.**

Designating Area 8B as urban reserve, with its associated development as an urban industrial center, will create more traffic on NW Helvetia Road and NW West Union Road, key roads used by thousands of bicyclists and runners who use the Helvetia area on a daily basis. NW Helvetia Road is the entry to the "Vineyard and Valley Scenic Tour" promoted by Washington County. Adding thousands of commuter vehicles to the rural county roads of NW Helvetia Road and NW West Union Road will not only diminish the scenic value of the area, but it will destroy the iconic farmland vistas that make this area attractive to visitors to the heart of historic Helvetia. In addition, the inflow of thousands of commuter vehicles, especially with many companies running two and three shifts per day, adds a dangerous element to the roads where farm equipment, sight-seeing visitors, and bicyclists have maintained a tenuous balance for many years. Local farmers submitted testimony on the accidents they have experienced when commuters do not have the patience to wait for bicyclists or slow-moving farm equipment - commuters tend to pull out quickly to pass a bicyclist or farm equipment, but end up causing accidents instead.

Metro's Findings state that a Rural Reserve designation may preclude future infrastructure improvements, such as increased road width.<sup>109</sup> This is not true. As stated above, the reserve rules allow for lane widening and road improvements to existing roads within rural reserves.

Based on the above, Area 8B does not satisfy the factors of OAR 660-027-0050 and should not be designated as urban reserves. Area 8B better satisfies the factors of OAR 660-027-0060 for rural reserve designation.

**Remedy:** Remand Area 8B for designation as rural reserves.

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<sup>108</sup> Ex. B, p. 168.

<sup>109</sup> Ex. B, p. 169.

## Area 8- SBR

**Objection 7: Metro left area “8-SBR” in Helvetia as “undesigned.” This fails to meet the requirement “to provide long-term protection for large blocks of agricultural land” of OAR 660-027-0005(2), OAR 660-027-0050, and ORS 195.137-.145.**

Metro’s Findings do not apply an identifying label to the 233 acres of undesigned land located to the west of Area 8B.<sup>110</sup> The Objectors have chosen to refer to it as “Area 8-SBR,” consistent with the 2010 Objections. Area 8-SBR is an integral part of the large swath of rural reserve lands surrounding Area 8B to the north and west. Area 8-SBR is comprised entirely of Foundation Agricultural Land. It is bordered by NW West Union Road on the north, NW Groveland Road on the east, NW Groveland Drive and Highway 26 on the south, and a line of trees on the west. On the other side of the line of trees, the same block of contiguous Foundation Agricultural Land continues west to NW Jackson School Road.

Area 8-SBR is primarily composed of productive farming operations containing some of the most fertile, well-drained soils in the Metro area. Metro sandwiches this area between an urban reserve and a rural reserve area to serve as a buffer. In fact, the division between the western boundary of the non-designated area and the concurrent eastern boundary of the rural reserves designated area directly west appears to follow property lines. Property lines, or worse, arbitrary lines drawn on maps, make extremely poor boundaries between urban, rural, and undesigned lands. It is impossible to make the case that the eastern portion of this arbitrary line qualifies as undesigned or urban reserve and the western portion of the line qualifies for a rural designation when there are *no physical or logical boundaries between the areas*. For a boundary to exist, it must provide a rational basis for imposing a dividing line based on the factors contained in OAR 660-027-0005. These are Foundation Lands and no physical or natural topographic exists in the area north of U.S. 26 and west of NW Helvetia Road that could provide the same rational, hard boundary currently provided by U.S. 26, a four-lane highway, and NW Helvetia Road.

With no buffer, farming activities in and around Area 8-SBR will be impacted. Fields bought by speculators often lay fallow, allowing weed seeds to contaminate the purity of the grass seed crops on adjoining farmlands.<sup>111</sup> Employees in the adjacent urban area to the east will object to the dust and noise from discing, plowing and tilling, and chemical spraying, limiting the activities of the adjacent farms.

Leaving this large block of Foundation Agricultural Land “Undesigned” will have an adverse impact on farming activities in that block of land. Under the undesigned status, this land is next in line to be included in the UGB, causing speculation and driving land prices higher. Farmers will not invest in crops and infrastructure. Landlords will sign farmers to shorter leases,

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<sup>110</sup> Ex. B, p. 171.

<sup>111</sup> Metro Rec. p. 6170.

if they lease land at all, in case the land will come into the UGB.<sup>112</sup> Farmers need certainty to continue to invest in farming and leaving land “Undesignated” creates uncertainty.<sup>113</sup>

Nine Oregon state agencies recognized the importance of a buffer protecting this area and recommended this area for *rural reserves* in their letter: “The area north of Highway 26 to the west of Helvetia and east of Jackson School roads should be designated rural reserves to form a “hard edge” to the boundary in this important agricultural region...”<sup>114</sup> Leaving the area undesignated is arbitrary.

Metro and the four governments have reserved thousands of acres of Important and Conflicted Agricultural Lands as “undesignated” to accommodate future urban reserves. It is not necessary to compromise Area 8-SBR’s Foundation Agricultural Land with uncertainty by reserving it as undesignated land without any analysis of why this land is not suitable for protection as rural reserve.

Finally, Metro would have us believe that the 233 acres of Area 8-SBR can be left undesignated for two purposes: as a buffer for Area 8B *and* as land that is potentially available for urbanization.

In Metro's 2010 findings, Area 8-SBR was determined to meet both urban and rural reserves, but Washington County opted to leave it undesignated for ease of accommodating future potential urbanization. In Metro's 2011 findings, Washington County adds another purpose for Area 8-SBR's undesignated status: As a buffer between Area 8B and the rural reserves to the west of Area 8-SBR. It cannot be both; these are inconsistent purposes. It is disingenuous at best to suggest that Area 8-SBR can serve as a buffer, which should connote some sense of permanence between urban and rural reserves, when we saw how quickly Washington County took 352 acres of Area 8-SBR that was undesignated just *last* year and converted it to urban reserves *this* year to “replace” land “lost” north of Cornelius. The undesignated status of 352 acres inside Area 8-SBR lasted less than 6 months before being converted to urban reserves as part of an expanded Area 8B. Neither purpose given by Washington County for this undesignated area is found in the statute or rule.<sup>115</sup>

**Remedy:** Remand Area 8-SBR to be designated rural reserve.

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<sup>112</sup> Farmers in the Helvetia area and the Washington County Farm Bureau have testified frequently on the difficulty of farming in areas where urban speculation is occurring, as it will here if the land is left undesignated.

<sup>113</sup> Metro Rec. pp. 7277, 7151, 7152, 7150, 7122-7124.

<sup>114</sup> Wash. Co. Rec. p. 7674

<sup>115</sup> This also potentially violates Goal 3, which requires the preservation of Agricultural Lands. Rather than explaining how leaving Area 8-SBR undesignated furthers the Goal 3 obligation of protecting farmlands, the County’s 2010 goal findings are unresponsive, concluding only that the designation of urban and rural reserves “does not change or affect comprehensive plan designations.” Although this statement is correct, Goal 3 requires that lands be preserved and maintained for farm use. There is no reasonable basis to assume that Goal 3 does not require the same protections of Foundation Lands that are imposed on other neighboring lands without any further explanation.

**Objection 8: Throughout the consideration of Areas 8B and 8-SBR, the decision fails to accurately apply the rural and urban reserve factors “concurrently and in coordination with one another,” as required by OAR 660-027-0040(10).**

The Metro decisions fail to satisfy the OAR 660-027-0040(10) requirement to apply the urban and rural reserve factors “concurrently and in coordination with one another.” Therefore, the decision improperly considered lands solely on their urbanization potential without simultaneously considering whether these same lands might be more suitable for rural reserve protection.

Evidence in the record shows that Washington County applied the factors as follows: “the requirement to accommodate urban land need was the deciding element in choosing between an Urban Reserve designation rather than Rural Reserve designation, where the underlying suitability analysis would otherwise support either designation.”<sup>116</sup> However, the concurrency obligation requires deciding whether the land more closely satisfies rural objectives over urban and if so, the land must be protected for agricultural purposes consistent with the rural reserve factors. Areas 8B and 8-SBR clearly are far more qualified as rural reserves than as urban reserves.

**Remedy:** Remand to re-designate Areas 8B and 8-SBR as rural reserves.

### C. Rosedale Road Area

**Objection 9: Metro improperly converted the Rosedale Road rural area from rural reserve to undesignated, contrary to ORS 195.137-.145 and OAR chapter 660 division 27, and without substantial evidence in the record.**

Metro proposes to “make up” for lands removed from urban reserve designation by converting 383 acres located south of Rosedale Road from rural reserve to undesignated. This area *meets* every rural reserve criterion and does *not meet* the criteria for an urban reserve, as evidenced by its original designation by Metro and Washington County as rural reserve. It is Foundation farm land, is in farm production, it contains large blocks of agricultural land, and is part of a larger farming area.

In fact, the current urban reserve area (Hillsboro South, Area 6A), which is north of the new area, already represents an enormous compromise by the agricultural community. The nine state agency letter noted that compromise – the Oregon Department of Agriculture recommended that the urban reserve extend only to Butternut Creek ( a natural boundary), but agreed to go along with the other state agencies to use Rosedale Rd. as the *southern* boundary of Area 6A – if needed. This decision enlarges the area potentially subject to urbanization. Previously, the area south of Rosedale Road was used as the buffer and boundary to the Hillsboro South (Area 6A) urban reserve area to the north. Converting these 383 acres removes that edge.

Converting this area is also not responsive to LCDC’s directive. The Commission said the region could, but did not have to, consider whether to add additional urban reserves or

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<sup>116</sup> Wash. Co. Rec. p. 8247.

undesigned lands after designating the area north of Council Creek as rural reserves. In doing so, several LCDC Commissioners made the following observations:

- The region should look to agricultural lands that are categorized as conflicted to re-designate as undesigned or urban.
- There is a great deal of flexibility in Metro's projections as to the rate and amount of growth and the time projection; to meet its balancing obligation, Metro could shorten the time frame to something less than 50 years.
- Commissioners expressed surprise regarding the amount of rural reserves designated in Washington County that are far from any urbanization threat; however, the Commission did not express any direction that Foundation farm land actually threatened by urbanization and originally designated as rural reserves should be changed to urban or undesigned by this remand.

Metro has converted the Rosedale area to undesigned to put it in the queue for possible urbanization in a future UGB or urban reserve decision: it is to "replace" previously undesigned lands in Helvetia because those acres were converted to urban reserve (expanded Area 8B).<sup>117</sup>

Undesigned lands should be those that meet neither the urban or rural reserve criteria; that is how Clackamas County applied the law and thereby, that is how Metro did so in at least part the region. To implement the reserves statute and rule differently in Washington County is inconsistent with both the substantive requirements of the rural reserve factors, and with the balancing requirements of the law. OAR 660-027-0005(2); -0060.

Further, there is nothing in the Commission's directive or law permitting looking only to lands in Washington County for additional urban reserves or undesigned lands. The "balancing" test required by rule is looking at reserves in their "entirety," considering the "region."<sup>118</sup> This has not been done.

Converting these 383 acres of Foundation farm land from rural reserves to undesigned is contrary to the reserves state and rule and is not supported by substantial evidence.

**Remedy:** Remand to designate the 323 acres in the Rosedale area as rural reserves.

### III. Conclusion

Remand the decision with direction to Metro to:

- Designate Area 7B North (Forest Grove north of Council Creek) as rural reserves.
- Designate Area 7I South (Cornelius north of Council Creek) as rural reserves.
- Designate all of Area 8B as rural reserves.
- Designate all of Area 8-SBR as rural reserves
- Designate the Rosedale area as rural reserves

<sup>117</sup> Ex. B, p. 173; *see also* Ex. B, p. 8.

<sup>118</sup> "The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important landscape features that define the region for its residents." OAR 660-027-0005(2)

This could be accomplished in several ways, including by directing Metro to reduce the urban reserve period to 40 years and make these consequent changes in reserve designations. The rationale for going to 40 years has been explained in this Objection, as well as in the Objectors' 2010 Objections regarding Metro's overestimating the "need" for large lots and its underestimating the capacity of the current UGB. We renew our other objections and exceptions, the remedies for which also included removing the Peterkort property from urban reserve, shaving the Evergreen urban reserve area (Area 8A) back to Waibel Creek (consistent with the nine state agency letter), and, where applicable, moving the urban reserve borders back to the urban side of roads.

Thank you for consideration of our comments.

Very truly yours,

Washington County Farm Bureau  
Save Helvetia  
Friends of Council Creek  
1000 Friends of Oregon  
Allison Stewart Amabisca  
Cherry Amabisca  
Robert Bailey  
Miki Barnes  
Anna Becker  
Brian Beinlich  
Tom Black  
Carol Chesarek  
Ethel J. Duyck  
Larry Duyck  
Philip Duyck  
Matthew J. Evans  
William Evans  
Matt Furrow  
Elizabeth Furse  
Pamela Gates  
DeLoris Grossen  
Glenna Grossen  
Faun Hosey  
Steve Hunker  
Theresa Hunker  
Karen Jackson  
Melissa Jacobsen  
Lorretta Krautscheid  
Charles F. Kutilek  
Greg Mecklem  
Amy Moreno

Warren Moreno  
Linda Peters  
Dave Tonges  
Donald Schoen  
Joe Strasburg  
Dave Vanasche  
James C. Young  
Bob VanderZanden

*The signatures of the above individual Objectors are attached.*



Carrie Richter  
on behalf of Save Helvetia



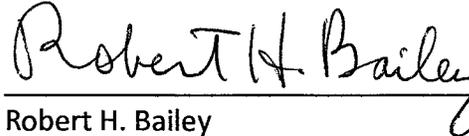
Mary Kyle McCurdy  
on behalf of the Washington County Farm Bureau, 1000 Friends of Oregon, and Dave Vanasche

Attachments  
Signatures of individual Objectors

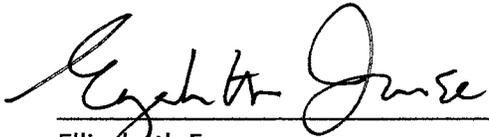
The undersigned individuals have participated in at least one Urban & Rural Reserves hearing and/or submitted written testimony and therefore have standing to submit Objections. These individuals wish to join the attached Objections opposing Metro Ordinance No. 11-1255.

 5/24/11

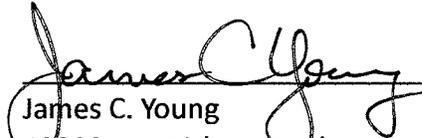
Cherry A. Amabisca  
13260 NW Bishop Road  
Hillsboro, OR 97124

 5/25/11

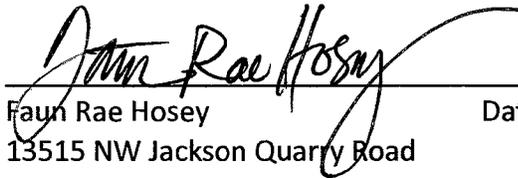
Robert H. Bailey  
7455 NW Helvetia Road  
Hillsboro, OR 97124

 5/24/11

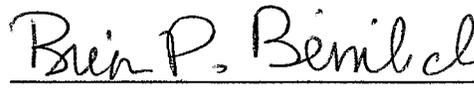
Elizabeth Furse  
22485 NW Yungen Road  
Hillsboro, OR 97124

 5/24/11

James C. Young  
13310 NW Bishop Road  
Hillsboro, OR 97124



Faun Rae Hosey  
13515 NW Jackson Quarry Road  
Hillsboro, OR 97124

 5/26/11

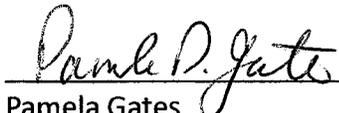
Brian Beinlich  
15060 NW Mason Hill Road  
North Plains, OR 97133

 5/26/11

Allison S. Stewart Amabisca  
1221 NE 51st Avenue #350  
Hillsboro, OR 97124

 5/26/11

Greg Mecklem  
12995 NW Bishop Road  
Hillsboro, OR 97124

 5.26.11

Pamela Gates  
27007 NW West Union Road  
Hillsboro, OR 97124

 5/25/11

Matt Furrow  
25877 NW West Union Road  
Hillsboro, OR 97124



The undersigned individuals have participated in at least one Urban & Rural Reserves hearing and/or have submitted written testimony and therefore have standing to submit Objections. These individuals wish to join the attached Objections opposing Metro Ordinance No. 11-1255.

DeLoris Grossen 5-26-11  
DeLoris Grossen Date  
8320 SW Canyon Drive  
Beaverton, OR 97225

Donald R. Schoen 5-26-11  
Donald R. Schoen Date  
7380 NW Groveland Road  
Hillsboro, OR 97124

Tom Black 5/24/11  
Tom Black Date  
870 NW Garibaldi Street  
Hillsboro, OR 97124

Carol Chesarek 5-24-11  
Carol Chesarek Date  
13300 NW Germantown Road  
Portland, OR 97231

Miki Barnes 5/24/11  
Miki Barnes Date  
48100 NW Dingheiser Road  
Banks, OR 97106

Glenna Grossen 5/26/11  
Glenna Grossen  
17888 NW Sue Ct  
Beaverton, OR 97006

Anna Becker 5/26/2011  
Anna Becker Date  
14199 NW Logie Trail  
Hillsboro, OR 97124



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**Cherry Amabisca** <[cherryamabisca@gmail.com](mailto:cherryamabisca@gmail.com)>  
To: Cherry Amabisca <[amabisca@helvetia.us](mailto:amabisca@helvetia.us)>

**Mon, May 30, 2011 at 1:22 PM**

----- Forwarded message -----

From: **Linda Peters** <[lindabpeters@gmail.com](mailto:lindabpeters@gmail.com)>  
Date: Thu, May 26, 2011 at 3:45 PM  
Subject: Re: Your authorization for Objections  
To: Cherry Amabisca <[cherryamabisca@gmail.com](mailto:cherryamabisca@gmail.com)>

Here's my authorization:

"I have participated in at least one Urban and Rural Reserves hearing and/or submitted written testimony and therefore have standing to submit Objections. I wish to join the attached Objections opposing Metro Ordinance No. 11-1255. I am out of the country until after the submission deadline of June 1, 2011, and authorize my name to be included in the attached Objection."

Linda B. Peters  
25440 NW Dairy Creek Road  
North Plains, OR 97133

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The undersigned individuals have participated in at least one Urban & Rural Reserves hearing and/or submitted written comments and therefore have standing to submit objections. These individuals wish to join the attached objections opposing Metro Ordinance No. 11-1255.

Dave Vanasche 5-25-11  
Date  
Dave Vanasche  
36130 NW Wren Road  
Cornelius, OR 97113

Bob VanderZanden 5/25/11  
Date  
Bob VanderZanden  
8065 NW Jackson School Road  
Hillsboro, OR 97124

Larry Duyck 5/25/11  
Date  
Larry Duyck  
34203 NW Mountindale Road  
North Plains, OR 97133

Dave Tonges 5/25/11  
Date  
Dave Tonges  
16895 NW Walker Road  
Beaverton, OR 97006

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Main body of handwritten text, consisting of several lines.

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The undersigned individuals have participated in at least one Urban & Rural Reserves hearing and/or have submitted written testimony and therefore have standing to submit Objections. These individuals wish to join the attached Objections opposing Metro Ordinance No. 11-1255.

Ethel J. Duyck 5/26/11  
ETHEL J. DUYCK Date  
2125 NW Cornelius Schefflin Road  
Cornelius, OR 97113

Philip H. Duyck 5-27-11  
PHILIP DUYCK Date  
36600 NW Long Road (36600)  
Cornelius, OR 97113

Steve Hunker 5/26/11  
STEVE HUNKER Date  
5160 NW Cornelius Schefflin Road  
Cornelius, OR 97113

Theresa Hunker 5/26/11  
THERESA HUNKER Date  
5160 NW Cornelius Schefflin Road  
Cornelius, OR 97113

William Evans  
WILLIAM EVANS Date  
36495 NW Wren Road  
Cornelius, OR 97113

Matthew J. Evans 5-26-11  
MATTHEW J. EVANS Date  
P.O. BOX 1905  
North Plains, OR 97133

Karen Jackson 5-26-11  
KAREN JACKSON Date  
2324 14<sup>th</sup> Avenue  
Forest Grove, OR 97116

Warren Moreno 5-29-11  
WARREN MORENO Date  
2746 Boyd Lane  
Forest Grove, OR 97116

Amy Moreno 5/29/11  
AMY MORENO Date  
2746 Boyd Lane  
Forest Grove, OR 97116

Loretta Krautscheid 5/27/11  
LORRETTA KRAUTSCHEID Date  
6273 SW 154<sup>th</sup> Place  
Beaverton, OR 97007



"The undersigned individuals have participated in at least one Urban and Rural Reserves hearing and/or have submitted written testimony and therefore have standing to submit Objections. These individuals wish to join the attached Objections opposing Metro Ordinance No. 11-1255."

Print Name                      Signature                      Address                      Date

---

Melissa Jacobsen *Melissa J. Jacobsen* 1650 NW Susbauer Rd, Cornelius 5/30/11 (letter/petition)

CHARLES F. KUTILEK *Charles F. Kutilek* 1675 N. W. HOBBS RD. CORNELIUS 5/31/11 (phone)

~~Joe Strassberg~~ *Joe Strassberg* 1495 NW Hobbs Rd Cornelius 5-31-11 (e-mail)

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1000 Friends of Oregon  
534 SW Third Ave., # 300  
Portland, OR 97204



# 0000012702



Urban and Rural Reserve Specialist  
DLCD  
365 Capitol Street Suite 150  
Salem OR 97301

Please reply to CARRIE A. RICHTER  
crichter@gsblaw.com TEL EXT 3118

**VIA OVERNIGHT COURIER**

Mr. Richard Whitman  
Director and Urban and Rural Reserves Specialist  
Department of Land Conservation & Development  
635 Capitol Street NE, Ste. 150  
Salem, OR 97301

Re: Objection to Adoption of Urban Reserves for Area 8B and  
Undesignated Status of Area 8-SBR

Dear Mr. Whitman:

This firm represents Save Helvetia, a coalition of farmers, business owners, concerned citizens, neighbors, and residents who are working to protect the agricultural lands of the Helvetia community. The Helvetia area is in Washington County, north of US Highway 26 and generally, east of NW Helvetia Road extending west toward the City of North Plains.<sup>1</sup> Save Helvetia's specific objections relate to two areas within Helvetia: Area 8B, located just northwest of the intersection of US-26 and Helvetia Road, and Area 8-SBR, a 556.5 acre area that never received a specific designation by Metro or Washington County. See Maps attached as Ex. 1.

Save Helvetia Steering Committee Members and supporters testified orally and in writing at the following hearings regarding urban and rural reserves when the matter was considered before Metro as well as Washington County. The listing of Save Helvetia members who participated below and who support these objections are attached as Ex. 2. This participation included, but was not limited to, the following dates:

1. Washington County Reserves Coordinating Committee Hearing - August 20, 2009
2. METRO Council Hearing - September 24, 2009
3. METRO Council Hearing - October 15, 2009

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<sup>1</sup> See [www.savehelvetia.org](http://www.savehelvetia.org).

4. Washington County Board of Commissioners Hearing - December 8, 2009
5. Washington County Board of Commissioners Hearing - December 15, 2009
6. METRO Council Hearing - January 20, 2010

On June 23, 2010, Metro and the three Metro counties mailed notice of adoption of urban and rural reserves. Metro adopted Ordinance No. 10-1238A on June 3, 2010. Washington County adopted Ordinance 733 on June 15, 2010. (The findings supporting these decisions are very nearly identical and therefore, are referred to collectively as the “Metro decisions,” unless stated otherwise.) These amendments have been submitted to DLCD pursuant to ORS 197.628 to 197.650. This objection is timely filed within 21 days after the notice was mailed.

To resolve Save Helvetia’s objections, the Department should not acknowledge the submittal. Instead, the submittal should be returned to Metro and Washington County (hereinafter referred to collectively as “Metro”) with instructions to develop a proposal that is completely consistent with the relevant statutes, goals, administrative rules and Metro regulations. We believe the result of application of these criteria would result in Areas 8B and 8-SBR being designated Rural Reserves.

These objections are organized listing the area-specific issues first and then concluding with more general objections that apply not only to Areas 8B and 8-SBR, but also to the joint designation of reserves in their entirety.

#### OBJECTIONS TO AREA 8B – URBAN RESERVES

Objection 1: The Metro Decisions Contain Factual Misstatements that Violate Goal 2, Adequate Factual Base, and are Not Supported by Substantial Evidence in the Whole Record.

The “Area 8B” designated properties are located at the northwest quadrant along NW Helvetia Road and NW Groveland Road near the intersection of Highway 26 and NW Helvetia Road. The affected tax lots include the following:

Tax Lot 900	29.57 acres	1N2 15	Also known as the “Standing” property
Tax Lot 901	39.37 acres	1N 215	Also known as the “Standing” property
Tax Lot 100	2.39 acres	1N2 21AA	
Tax Lot 1100	.42 acres	1N2 21AA	
Tax Lot 1200	.45 acres	1N2 21AA	
Tax Lot 1300	.53 acres	1N2 21AA	
Tax Lot 1400	<u>.40 acres</u>	1N2 21AA	
TOTAL	73.13 acres		

The Metro and Washington County reserve ordinances misstate the location and area designated Area 8B. The following discrepancies are noted on page 78 in the General Description of Exhibit E to Metro Ordinance No. 10-1238A (1), and attached as Ex. 3:

- 1) “Urban Reserve Area 8B is located at the northwest quadrant of the intersection of Sunset Highway and NW Shute Road.” NW Shute Road is located several miles to the south of Highway 26 (Sunset Highway). NW Helvetia Road is on the north side of the intersection; the same road is named “NW Brookwood Parkway” on the south side of the intersection.
- 2) On page 78 of Exhibit E, this site is described as totaling approximately 88 acres. On page 53 of Exhibit E, this site is described as totaling 78.5 acres. Exhibit E does not explain how it arrives at either 78.5, or 88 acres. The County’s Ordinance 733 also lists Area 8B as occupying 88 acres. By adding up the area of each tax lot, Save Helvetia has determined the area occupies 73.13 acres.
- 3) Metro and Washington County find support for an urban reserves designation by stating that “[t]he existing UGB and the corporate limits of Hillsboro run along the eastern border of the site...” The eastern border of the site is actually a collector road,<sup>2</sup> NW Helvetia Road, which serves as a highly effective hard edge between the agricultural land of Area 8B and the undeveloped lands of the UGB to the east. Again, these misstatements undermine the conclusions drawn by Metro and Washington County in designating the area is suitable for urban reserves. Area 8B is NOT contiguous to Urban Reserve Area 8A; the definition of contiguous is “being in actual contact” or “touching along a boundary or at a point.”<sup>3</sup>
- 4) “Lands to the north and west of the site are agricultural lands.” Area 8B also contains lands designated as “Foundation Agricultural Lands” and is zoned for Exclusive Farm Use.<sup>4</sup> Foundation Agricultural Lands are those lands which provide “the core support to” and “anchor” the region’s agricultural base. They “incubate and support the larger agricultural industry and are vital to its long-term viability.”<sup>5</sup> Historically, Area 8B has been farmed for many years and has been in farm deferral for many years. Historically it has successfully grown a range of crops, such as wheat, barley and crimson clover and currently produces high-quality grass seed.<sup>6</sup> The findings fail to acknowledge these highly relevant facts.

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<sup>2</sup> Metro Ordinance No. 10-1238A, Exhibit E, p. 96.

<sup>3</sup> Black’s Law Dictionary, Seventh Edition. See also Map, Washington County Urban & Rural Reserves Record, May 6, 2010, p 8614.

<sup>4</sup> Issue Paper 4 of the May 11, 2010 staff report to the Washington County Board of Commissioners

<sup>5</sup> Oregon Department of Agriculture, “Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands,” January 2007.

<sup>6</sup> Long Term Agricultural Operations, Washington County Urban & Rural Reserves Record, August 21, 2009, p 5710.

Without accurate facts, Ordinance No. 10-1238A and Washington County Ordinance No. 733 lack an adequate factual base. Further, when corrected, these facts will lead to a different outcome when the appropriate rural and urban reserve factors are correctly applied as explained in greater detail below.

Remedy: The 8B area must be correctly identified and an accurate description of the land and its surroundings are necessary before any legal standards can be evaluated. These facts must be corrected.

**Objection 2: Designating Area 8B Urban Reserves Misapplies the Urban Reserve Factors of OAR 660-027 -0050, Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.**

According to Exhibit E to Metro Ordinance No. 10-1238A, Reasons for Designation of Urban and Rural Reserves, Area 8B, the sole reason for designating Area 8B for urban uses was the identification of a future road improvement. It states that Area 8B "...ranked favorably as both an urban or rural reserve. The properties in the urban reserve area (8B) were identified as the location for future interchange improvements." The County's findings provide "Urban Reserve Area 8B sits at the northwest corner of a major highway interchange which has recently received funding commitments for significant improvements." Ex. 4. Although ODOT was unable to specify how much acreage is required to accommodate the interchange, the following calculation can be used to arrive at a reasonable estimate of the net acreage available for development. From the Area 8B's 73.3 acres, subtract 20 acres for Waibel Creek floodplains<sup>7</sup> and subtract an estimated 10 acres for interchange improvement, which leaves 43 acres. Using Washington County's assumed average of 40 percent overhead for employment lands, results in net buildable acres of 25.8 acres for Area 8B.<sup>8</sup> Although utility demands are a basis for an exception to add lands to the UGB, one need not put the whole of the property in the UGB to allow only some of it for highway improvements. Further, there is no evidence that the needed improvements can be made so as to preserve the integrity of the remaining agricultural land Exhibit E of Metro Ordinance No. 10-1238A added "This site will provide flexibility in planning for needed interchange improvements as well as other infrastructure needs (e.g. sewer and storm water management) for developing urban lands to the east." No evidence in the record supports the statement that Area 8B is necessary to meet any identified sewer and stormwater management demands. This approach would not meet the standards for the exception to the criteria of ORS 197.298.

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<sup>7</sup> Washington County advises that 100-year floodplains be excluded for development. See "Determining Capacity", Planning Directors, Washington County Urban & Rural Reserves Project, April 6, 2009, p 685. For map of Area 8B floodplains, see Metromap Area 8B floodplains Link: <http://metromap.metro-region.org/metromap.cfm?Accept=accept>.

<sup>8</sup> Urban and Rural Reserves Technical Analysis, Attachment 1, Washington County Urban & Rural Reserves Record, June 4, 2009, p 8276.

When considered in its entirety, on balance and against other lands around the Metro region, the area located north of US-26 and west of NW Helvetia Road is much more suitable for rural reserve designation given its high productivity for farm use and its existing protective boundaries of US-26 and NW Helvetia Road, ensuring the continued operation and profitability of these agricultural lands. Area 8B is not only Foundation Agricultural Land; it is high-value farmland.<sup>9</sup> It is true that the most productive farmland is often the easiest to convert to industrial uses - Area 8B is generally flat, has good drainage and is in close proximity to a freeway interchange. But these facts alone do not satisfy the purpose of urban and rural reserves set out first in Oregon Laws 2007, chapter 723 or Senate Bill 1011, and subsequently implemented by OAR Section 660-027 and the various reserve factors discussed in greater detail below.

First, none of the urban reserve factors of OAR 660-027-0050 contemplate potential demands for urban freeway interchange expansion. To the contrary, the administrative rules authorize designating rural or urban lands for “roads, highways, and other transportation and public facilities and improvements.” OAR 660-027-0070(4). There is no evidence to suggest that Area 8B must be designated urban reserves in order to meet Metro’s identified objectives. Similarly, there is nothing in OAR 660-027-0050 that allows designating land urban reserves when necessary for a freeway. The policy of creating livable communities does not include any reference to expanded highway access.

Second, Area 8B does not have to be designated Urban Reserves in order to accommodate a roadway interchange or provide sewer or stormwater management. ORS 215.213(2)(q) expressly authorizes the expansion of travel lanes and roadways in areas zoned for exclusive farm use, which is presumably the designation that would remain on these lands if they were designated rural reserves. Similarly, utility facilities such as stormwater collection or sewer pump stations are allowed outright on lands zoned for Exclusive Farm Use under ORS 215.283(1)(c). There is no planning limitation to achieve the above stated goals by retaining the EFU zoning and designating the land rural reserve.

To the contrary, it is more likely that re-designating the area for urban uses will not achieve the desired ends. An urban reserve designation will only increase the pressure for urban, non-utility based uses, without any legal prohibitions against construction of such non-utility uses. Rather, it is much more likely that the area would serve its utility and infrastructure function if it is designated rural where it would retain its Exclusive Farm Use designation for the next fifty years and be protected to serve public infrastructure uses.

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<sup>9</sup> Map, Washington County Urban & Rural Reserves Record, p 2333, August 3, 2009. High Value Farmland is defined in ORS 215.710(1), (3) and (4) and OAR 660-033-0020(8)(a), (c), (d) and (e). “High Value Farmland” is land in a tract composed predominantly (50.1%) of certain specified soils commonly referred to as “High Value Farmland Soils.” ODA Identification and Assessment. January 2007, p 9.

Considering the facts in the record, there is no evidence that operation of an urban-scale interchange is inconsistent with farming activities likely to occur if Area 8B is designated for rural reserves. The evidence in the record is that the overpass at NW Jackson School Road over Highway 26, the next interchange to the west of NW Helvetia Road Interchange, operates with minimum impact to the surrounding farm uses currently zoned for Exclusive Farm Use. Nothing in the urban/rural reserve factors provide that areas planned for roadway expansions must be zoned for urban use. Such land can be any designation.

Third, the 73 acre property (or 88 acres as Metro states) is much larger than necessary to accommodate enlargement of the interchange and stormwater / sewer improvements.

Remedy: Based on the above, Area 8B does not satisfy the factors of OAR 660-027-0050 and should not be designated for urban reserves.

**Objection 3: The Findings Applying the Urban Reserve Factors are Inconsistent with OAR 660-027-0040(2), OAR 660-027-0040(11), Violates Goal 2, Adequate Factual Base, and are not Supported by Substantial Evidence in the Whole Record.**

The Metro decisions fail to satisfy any of the urban reserve factors of OAR 660-027-0050. When designating Foundation Agricultural Lands for urban reserve, OAR 660-027-0040(11) requires “findings and statement of reasons” that explain, in reference to OAR 660-027-0050, “why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered.” This provision imposes an extra obligation of identifying what it is about this land that satisfies the urban reserves factors and why that obligation cannot be satisfied by other non-Foundation Lands. The Metro decisions are utterly lacking in any of this necessary alternative lands analysis.

*Lack of Identified Need for Area 8B – OAR 660-027-0040(2)*

There is nothing in the findings addressing Area 8B that identify any unique or limited property characteristic that requires an urban designation. OAR 660-027-0040(2) requires that urban reserves be limited to the amount necessary to “accommodate the estimated urban population and employment growth.” Although this does not require mathematical certainty, it does require a connection between the need for additional urban lands and the amount of land designated to meet the need. There are no findings which suggest that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area.

With the addition of 28,615 acres of urban reserves, which is on the high end of Metro's recommendation of 15,000 to 29,000 acres, Metro and the four governments believe the region can accommodate 50 years' of employment growth. Exhibit E states, "The existing UGB has sufficient capacity - on vacant land and through re-development over the 50-year reserves period - for overall employment growth in the reserves period." However, Metro found that additional Foundation Lands were necessary to attract large industry.<sup>10</sup> Ex. 5.

The 73 acres of Area 8B contain 20 acres of 100-year floodplain of Waibel Creek. Excluding floodplains, interchange improvements, roads and other infrastructure<sup>11</sup> and using the County's general guidelines for calculating developable portions the net buildable acres of Area 8B amount to approximately 25.8 acres. The small amount of net buildable acres of Area 8B will not serve for large-lot industrial sites (identified as more than 50 buildable acres in a single site).<sup>12</sup> Since Area 8B will not accommodate even one of these large-lot sites, it is unreasonable to believe that it, as opposed to any other potential expansion area, is necessary for inclusion.

Rather than take Area 8B's Foundation Agricultural Land out of production, Metro could utilize some of the thousands of acres of Important and Conflicted Agricultural Lands it reserved to "remain undesignated for possible designation as urban reserve if the region's population forecast proves too low:

Clackamas Heights  
East Wilsonville  
West Wilsonville  
Southeast of Oregon City  
Southwest of Borland Road  
Between Wilsonville and Sherwood"<sup>13</sup> Ex. 5.

*Area 8B Does not Satisfy Any Single Urban Reserve Factor*

The first and third urban reserve factors, OAR 660-027-0050(1) and (3) require a finding that the area can be developed in a way that makes efficient use of existing and future public and private infrastructure investments and services. Metro's findings explain that this area could be "developed at urban densities and served efficiently and cost effectively by public facilities and services." Ex. 3. There is nothing unique about Area 8B that will make it easier or less-expensive to develop than any other area within the Metro area, and Metro made no attempt to

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<sup>10</sup> Metro Ordinance No. 10-1238A, Exhibit E, June 3, 2010, p 10.

<sup>11</sup> Staff Report, Washington County Urban & Rural Reserves Record, August 3, 2009, p 230.

<sup>12</sup> Metro Ordinance No. 10-1238A, Exhibit E, Attachment 3 to Staff Report Ordinance 10-1238A, May 5, 2010, p 172.

<sup>13</sup> Metro Ordinance No. 10-1238A, Exhibit E, June 3, 2010, p 5.

compare other locations to determine if the same services and objectives could be met by avoiding Foundation Lands.

The second Urban Reserve Factor, OAR 660-027-0050(2), requires a finding that the land has sufficient development capacity to support a healthy economy. Metro's decision lacks any analysis of this factor concluding that it will provide "additional development capacity to support a healthy economy." Ex. 3. There are no findings as to how the net 25.8 acres available for private development after rezoning will support a healthy economy. Any claim that Area 8B, along with the other approximately 28,000 acres of lands designed as urban will support a healthy economy is unsupported as such a conclusion fails to justify why this particular 73 acres as opposed to any other area is necessary for inclusion.

The fourth Urban Reserve Factor, OAR 660-027-0050(4), considers alternative transportation objectives that can be realized by an urban designation. Again, Metro's finding is a conclusion: "In conjunction with existing urban lands to the east, this area could be designed to be walkable and to include pedestrian facilities along with a well connected system of streets, bikeways, recreation trails and public transit service." Nothing about the area north of US-26, especially when dominated by a large freeway interchange on the edge of the urban growth boundary (UGB), suggests that development of this area will provide any of the multi-modal opportunities identified by this factor. The closest Tri-Met bus service is 4.52 miles away (Evergreen/Shute). The closest Max station is 7.2 miles away. Metro's recently approved HCT (High Capacity Transit) plan has the closest stop/station at Cornelius Pass and West Union Roads - almost 2 miles away and not within the recommended one-half mile walking distance to HCT. Urbanizing this area will be entirely auto-focused with no realistic alternative transportation opportunities. Locating additional industrial lands will serve to further separate uses contravening the purpose identified in OAR 660-027-0005 that urban and rural reserve decisions result in the creation of "livable communities." Again, land cannot be removed from Foundation status just because it is flat enough to accommodate alternative transportation when the decision contains no finding describing whether other non-Foundation sites are available and no alternative transportation modes are planned to locate in this area.

Regarding the fifth and sixth factor, OAR 660-027-0050(5) and (6), requires a finding that land can be designed to preserve and enhance natural ecological systems and landscape features. Other than identifying the existence of Waibel Creek, the Metro decisions make no mention of what natural resources exist on-site. Although the findings claim that "ecological systems" can be protected through planning, they are silent on what these systems are, how they will be protected, or how much land will be developable after protective measures are installed.

It is undisputed that Area 8B contains about 20-25 acres of natural resources located both within and beyond the floodplain of Waibel Creek.<sup>14</sup> Metro's Habitat Protection map shows that about one-third of Area 8B consists of "High habitat conservation area."<sup>15</sup> Metro's "Inventory of Regionally Significant Habitat" map shows about one third of Area 8B consists of the highest-value habitat, Class 1 Riparian.<sup>16</sup> In addition, the following resources are on the site: Class 1 Riparian (highest value habitat), Class 2 Riparian (medium value habitat), Class 3 Riparian (lower value habitat), Class B Wildlife (medium value habitat), and Class C Wildlife (lower value habitat).<sup>17</sup> In addition, Area 8B contains an expansive oak woodland of over 200 old-growth Oregon white oak trees.<sup>18</sup> There are less than 1% of historic Willamette Valley native oak habitats left. The Oregon Department of Fish and Wildlife (ODFW) has identified Oregon white oak woodlands as "Strategy Habitats" and Metro has identified Oregon white oak woodlands as "Habitats of Concern."<sup>19</sup> The Reserve decisions findings do not mention any of these resources even though they are recommended for protection by Metro. There is no indication that these resources will be protected. There is no evidence in the record that Washington County or the City of Hillsboro has been successful in preserving and enhancing these strategic trees within an urban setting. Washington County has standards for tree removal but not for tree preservation.<sup>20</sup> There is nothing in these findings suggesting that these resources or features are necessary to serve urban-scale development (especially when tentatively slated for industrial uses), nor is there any evidence of how Metro will protect these resources. Additionally, there is no comparative analysis of whether other lands that contain fewer significant natural features could not serve the same purpose.

The primary objective for designating land within reserve areas as provided by OAR 660-027-0005(2) includes "protection of the important natural landscape features that define the region for its residents." The overwhelming amount of evidence shows that the agricultural area surrounding historic Helvetia provides a sense of place not only to Helvetia residents but to the County and Region as a whole. The Standing properties serve as the key gateway to the unblemished vistas and rolling hills of Helvetia. The low density rural development in the area allows visitors to walk back in time and behold activities that have sustained Northwestern

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<sup>14</sup> See <http://metromap.metro-region.org/metromap.cfm?Accept=accept>.

<sup>15</sup> Council's Recommendation on Habitat Protection:  
<http://www.oregonmetro.gov/index.cfm/go/by.web/id=8385/level=5>

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> Oregon White Oak Survey, Washington County Urban & Rural Reserves Record, August 21, 2009, pgs 5976 – 5993.

<sup>19</sup> Oregon White Oak Survey, Washington County Urban & Rural Reserves Record, August 21, 2009, p 5965.

<sup>20</sup> "Comparison of Key Tree Code Provisions Across Jurisdictions" Link:  
<http://www.washcotreegroup.org/docs/matixsummary-r1.2.pdf> with "Regional Urban Forestry Assessment" June 2009, p 26-27, Prepared by Audubon Society of Portland and Portland State University's Department of Environmental Science and Management with funding from Metro.

Oregon for generations. This rural landscape is a key defining feature for Washington County and for that reason should be preserved.<sup>21</sup>

Beyond just natural resources, Area 8B serves important cultural features that work to define Washington County. Area 8B along with the Helvetia area in general, provides the first opportunity for Oregonians to enjoy their first unencumbered view of farmland when leaving the urban area westbound on US-26, the most heavily traveled route in Washington County. NW Helvetia Road also provides the first view from US-26 of forested Tualatin Mountains, stately Oregon white oak savannas (some as old as 500 years) and historic, majestic 60-foot tall Swiss Linden trees (dating from 1892) dotting the original Swiss settlers' farms, and historic, active, productive Century Farms.<sup>22</sup>

The Washington County Oregon Visitors Association and ODOT have invested in signage and publicity to promote the Helvetia loop as part of its "Vineyard and Valley" Scenic Tour Route. NW Helvetia Road, starting at the US-26 exit, is the beginning of the Helvetia portion of the scenic tour, proceeding north past the Area 8B properties and continuing past the Helvetia Tavern, winding west to Jackson Quarry Road, then to Jackson School Road and across US-26 to the south. ODOT provided funds as part of its "Discover Oregon Scenic Byways" program.<sup>23</sup> Developing Area 8B would destroy the pastoral vistas of rural farmland that is part of the attraction of Helvetia's countryside and Helvetia's recognized sense of place throughout the Metro region.<sup>24</sup> Metro's findings do not acknowledge how any of these objectives could or would be preserved if Area 8B is designated urban reserves.

Finally, regarding the eighth factor, OAR 660-027-0050(8) requires efforts to avoid or minimize adverse impacts on farm and forest practices. The Metro decisions finding on this point is: "Adjoining lands are not designated rural reserves." This finding is not only non-responsive to a factor that requires minimization or avoidance; it fails to acknowledge that this undesignated status provides no certainty on how long this land will remain rural.

The key to improving the interface between urban and agricultural lands is providing an adequate buffer between the two uses. Designating Area 8B for urban uses would remove the existing buffer between farm and urban uses in the east/west direction, currently buffered by NW Helvetia Road, by moving the boundary one parcel further west directly adjacent to the

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<sup>21</sup> "Historic Landmarks", Washington County Urban & Rural Reserves Record, August 21, 2009, p 6032; Stuart Wilson Testimony, Washington County Urban & Rural Reserves Record, December 15, 2009, p 7031.

<sup>22</sup> Kris Schamp testimony, Washington County Urban & Rural Reserves Record, September 24, 2009, pgs 6158,6159.

<sup>23</sup> "Scenic Tour", Washington County Urban & Rural Reserves Record, August 21, 2009, pgs 6154, 6155.

<sup>24</sup> Adrian Amabisca testimony, Washington County Urban & Rural Reserves Record, December 15, 2009, p 7141.

Grossen's 126-acre family farm.<sup>25</sup> With no buffer, farming activities on adjacent farmland will be impacted. Commuter traffic will increase on NW Helvetia Road, NW Groveland Road and NW West Union Road. Additionally traffic, traveling at high speeds on rural roads is a hazard to the slow-moving farm equipment.

In conclusion, designating Area 8B as urban reserves undermines that primary purpose set out in OAR 660-017-0040(2) and Metro's findings of need because it allows a local government to consciously and deliberately commit land to urban use by allowing the loss of productive, high-value farmland simply because the land is adjacent to urban development thereby creating conflicts with the pre-existing farm uses, solely upon a finding that it is easy to extend urban services regardless of whether that land is needed for urban use or its suitability for farm use. The sheer convenience of utilities and transportation connections is a circumstance affecting most lands adjacent to the UGB and therefore cannot be the sole basis for Metro's inclusion of Foundation Lands in this case.

Remedy: Based on the foregoing, Area 8B should not be designated urban reserve.

#### **OBJECTION TO AREA 8-SBR**

#### **Objection 4: The Metro Decisions Fail to Satisfy OAR 660-027-005 "to provide long-term protection for agriculture" and OAR 660-027-0040, Violates Goal 2 Adequate Factual Base and Rational Basis, and Goal 3, and are not Supported by Substantial Evidence in the Whole Record.**

The Metro decisions do not map Area 8-SBR and the findings make no reference to it. Area 8-SBR is part of the large swath of the rural reserve labeled on Metro maps as Area 8 although it is undesignated. The area is comprised entirely of Foundation Agricultural Land that totals 556.5 acres in Washington County, north of Highway 26. It is bordered by NW West Union Road on the north, NW Helvetia Road on the east, NW Groveland Drive and Highway 26 on the south and a line of trees on the west. On the other side of the line of trees, the same block of contiguous Foundation Agricultural Land continues west to NW Jackson School Road. Ex. 1.

Area 8-SBR is primarily composed of productive farming operations containing some of the most fertile, well-drained soils in the Metro area. Metro Ordinance No. 10-1238A sandwiches this area of 556 acres between an urban reserves and a rural reserve area for no reason that is apparent in the decision. In fact, the division between the western boundary of the non-designated area and the concurrent eastern boundary of the rural reserves designated area directly west appears to follow property lines. Property lines, or worse, arbitrary lines drawn on maps, make extremely poor boundaries between urban, rural and undesignated lands. It is impossible to make the case that the eastern portion of this arbitrary line qualifies as urban reserve and the

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<sup>25</sup> DeLoris Grossesn testimony, Washington County Urban & Rural Reserves Record, December 8, 2009, p 7274.

western portion of the line qualifies for a rural designation when there are no physical or logical boundaries between the areas. For a boundary to exist, it must provide a rational basis for imposing a dividing line based on the factors contained in OAR 660-027-0005. All of these lands are Foundation Lands and no physical or natural topographic exists in the area north of U.S. 26 and west of NW Helvetia Road that could provide the same rational, hard boundary currently provided by U.S. 26, a four-lane highway, and NW Helvetia Road.

Leaving Area 8-SBR undesignated creates an island of agricultural land that lacks buffers on the east and west sides. Area 8-SBR is between Area 8B urban reserve on its east and 617 acres of rural reserve on its west with only property lines as demarcation. As noted by Washington County staff, roads form much better boundaries than property lines.<sup>26</sup> With no buffer, farming activities in Area 8-SBR will be impacted. Cars from urban areas bring in microscopic noxious weed seeds, or fields bought by speculators lay fallow, allowing weed seeds to contaminate the purity of the grass seed crops on adjoining farmlands.<sup>27</sup> People in housing developments will object to the dust and noise from discing, plowing and tilling (especially during nighttime combining) and will object to spraying, limiting the activities of the adjacent farms. Commuter traffic will increase on NW Helvetia Road, NW Groveland Road and NW West Union Road. Additional traffic, traveling at high speeds on rural roads is a hazard to the slow-moving farm equipment.

Leaving this large block of Foundation Agricultural Land “Undesignated” will have an adverse impact on farming activities in that block of land. Under the undesignated status, the reality is this land is next in line to be included in the UGB and causes speculation and drives land prices higher.<sup>28</sup> Farmers will not invest in crops and infrastructure. Landlords will sign them to a shorter lease, if they lease land, in case the land will come into the UGB. Farmers need certainty to continue to invest in farming and leaving land “Undesignated” creates uncertainty.<sup>29</sup>

Nine Oregon state agencies recognized the importance of a buffer for this area and recommended Area 8-SBR for rural reserves in their letter to Metro Regional Reserves Steering Committee of October 14, 2009: “The area north of Highway 26 to the west of Helvetia and east of Jackson School roads should be designated rural reserves to form a “hard edge” to the boundary in this

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<sup>26</sup> Staff Report, Urban and Rural Reserves Recommendations, Washington County Urban & Rural Reserves Record, August 3, 2009, p 8210.

<sup>27</sup> Cherry Amabisca testimony, Washington County Urban & Rural Reserves Record, August 10, 2009, p 6170.

<sup>28</sup> Pam Gates testimony, Washington County Urban & Rural Reserves Record, December 8, 2009, p 7248.

<sup>29</sup> Spencer Gates testimony, Washington County Urban & Rural Reserves Record, December 8, 2009, p 7277; Don Shoen testimony, Washington County Urban & Rural Reserves Record, December 15, 2009, p 7151, 7152; Casey Schock testimony, Washington County Urban & Rural Reserves Record, December 15, p 7150; Lyn Jacobs testimony, Washington County Urban & Rural Reserves Record, December 15, 2009, p 7122 – 7124.

important agricultural region...”<sup>30</sup> Area 8-SBR is an integral part of the large, contiguous swath of Foundation Agriculture Land that starts on the west side of NW Helvetia Road and continues to the east side of NW Jackson School Road that the agencies recommend as rural reserves.

Metro and the four governments have reserved thousands of acres of Important and Conflicted Agricultural Lands as “undesigned” to accommodate future urban reserves.<sup>31</sup> It is not necessary to compromise Area 8-SBR’s Foundation Agriculture Land with uncertainty by reserving it as undesignated land without any analysis of why this land is not suitable for protection as rural reserve.

Goal 3 requires the preservation of Agricultural Lands. Rather than explaining how leaving Area 8-SBR undesignated furthers the Goal 3 obligation of protecting farmlands, the County’s goal findings are unresponsive, concluding only that the designation of urban and rural reserves “does not change or affect comprehensive plan designations.” Although this statement is correct, Goal 3 protection requires that lands be preserved and maintained for farm use. There is no reasonable basis to assume that Goal 3 does not require the same protections of Foundation Lands that are imposed on other neighboring lands without any further explanation.

Remedy: Area 8-SBR should be designated rural reserve as recommended by the nine Oregon state agencies, the Metro COO, CPO8 and the Coalition of Agriculture and Natural Resources.

## **OBJECTIONS TO BOTH AREAS 8B AND 8-SBR**

### **Objection 5: The Metro Decisions Fail to Apply the Rural Reserve Factors of OAR 660-027-0060(2)(a) to Areas 8B and 8-SBR, Violates Goal 2, Adequate Factual Base, and are not Supported by Substantial Evidence in the Whole Record.**

The Metro decisions fail to satisfy OAR 660-027-0040(10) that both the urban and rural reserve factors must be applied “concurrently and in coordination with one another.” As such, it is improper to solely consider a case in favor of urbanization without simultaneously considering whether these same lands might be more suitable for rural land protections. Washington County staff has noted that “the requirement to accommodate urban land need was the deciding element in choosing between an Urban Reserve designation rather than Rural Reserve designation, where the underlying suitability analysis would otherwise support either designation.”<sup>32</sup> As explained

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<sup>30</sup> State Agency Comments to Metro Regional Reserves Steering Committee, Washington County Urban & Rural Reserves Record, October 14, 2009, p 7674.

<sup>31</sup> Metro doesn’t say how many acres are undesignated for a safety valve. But Washington County has 5,961 acres of undesignated land; presumably that includes the 565 in Area 8-SBR. Washington County Urban & Rural Reserves Record, April 14, 2010, p 8159. Given 13,884 acres of urban reserves in WaCo, 5,961 acres of undesignated is a whopping 43% hedge.

<sup>32</sup> Staff Report, Urban & Rural Reserve Recommendations, Washington County Urban & Rural Reserves Record, August 3, 2009, p 8247.

elsewhere, this is not a case where the land satisfies both urban and rural factors. Rather, the concurrency obligation requires deciding whether the land more closely satisfies rural objectives over urban and if so, the land must be protected for agricultural purposes consistent with the rural reserve factors. The Metro decisions evidence no consideration of the rural reserve factors for Areas 8B and 8-SBR although they are satisfied in both cases.

*Areas 8B and 8-SBR are under Significant Pressure to Urbanize*

The first factor for identifying lands that are suitable for rural reserve protection under OAR 660-027-0060(2)(a) are those lands that are capable of sustaining long term agricultural viability but are under pressure for urbanization due to their proximity to an urban growth boundary (UGB) or because these lands are in close proximity to properties where the fair market value significantly exceeds the agricultural value for farmland.

No parcel may be under more pressure for urban development than Area 8B north of US-26 and west of NW Helvetia Road. This is evidenced by the City of Hillsboro and property owners' ceaseless efforts to obtain urban reserves designation for these lands. The current owner of the two largest parcels in Area 8B, Mr. Standring, bought these parcels for investment. In 1995, he attempted to sell the property for use as a hotel and conference center (the sale never closed).<sup>33</sup> Over the past two years, he has vigorously lobbied to have them designated as urban reserves, suggesting that the pressure for urbanization of this area has been longstanding.

Area 8B is subject to redevelopment pressure not because it is ill-suited for agricultural preservation, but because it is the next domino in the line to fall to urbanization and, it must be assumed that Area 8-SBR domino would fall shortly thereafter. Testimony submitted shows that giving these lands "Undesignated" status has already resulted in a large increase in the per acre pricing of recent parcels going up for sale, making it difficult for adjacent farmers to buy additional farmland or for other farmers to buy this property. Similarly, this increased value decreases the incentive for existing farmers to continue farming.<sup>34</sup>

Designation of these lands for urban or non-designation rather than rural reserves will only further support an argument that the pressure was too great. Such pressure is not a factor identified in OAR 660-027-0050 to support designating land urban reserves. Rather, this factor is an express reason for protecting such lands as rural reserve premised on the existing hard buffer provided by NW Helvetia Road and US-26.

*Areas 8B and 8-SBR are Capable of Sustaining Long-Term Agricultural Operations*

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<sup>33</sup> Standring Groveland Investment Co, testimony, Washington County Urban & Rural Reserves Record, December 11, 2009, p 7179.

<sup>34</sup> Cherry Amabisca testimony, Washington County Urban & Rural Reserves Record, August 10, 2009, p 6170.

The other OAR 660-027-0060(2) factors are directed at determining whether the land is capable of sustaining long-term agricultural operations. Both Areas 8B and 8-SBR are designated Foundation Agricultural Lands meaning that they have the attributes necessary to sustain current agricultural operations as well as to adapt to changing technologies and consumer demands.<sup>35</sup> These areas have been farmed successfully for well over a century. One of the 8-SBR parcels comprising 125 acres has been owned and farmed by the Grossen family for over 100 years. These areas are currently planted in grass seed, hazelnut orchards and nursery stock. These areas are composed primarily of high-value Class 1 and 2 soils and have an extensive system of sub-surface drainage.

As noted above, farming activities in Areas 8B and 8-SBR are currently buffered from urban uses by NW Helvetia Road and US-26. Because this land abuts other producing farmland, industrializing these two Areas would provide no buffer to the adjacent farmland and adversely affect the farming operations on this contiguous, adjacent farmland further to the north and the west. Extensive, historical inter-connected sub-surface drainage (called “field tiling”) is installed through this area. Testimony has been submitted by Save Helvetia that when one area of tiling is severed, such as during excavation for construction, it causes a break in the connection between parcels, which in turn causes water to back up onto adjoining farmland, flooding fields and destroying crops.<sup>36</sup> Area 8B contains approximately 20 acres of 100-year floodplains from the Waibel Creek drainage system. Testimony and photos have been submitted by Save Helvetia showing the extent of the flooding that regularly occurs, not only on the property, but also across Helvetia Road, impeding traffic.<sup>37</sup>

Areas 8B and 8-SBR contain important fish, plant and wildlife habitat. As noted above, Area 8B contains extensive Oregon white oak woodlands that are habitat for vulnerable, sensitive species at the state and federal level.<sup>38</sup> Waibel Creek, which crosses Area 8B, is a tributary of McKay Creek, an important riparian habitat. Both Areas serve as grazing areas for the Helvetia’s Roosevelt elk herd for foraging and grazing during the fall and winter months, providing an essential element of their survival.<sup>39</sup> As noted above, these Areas serve as the gateway to the farmland of Washington County that is enjoyed by all citizens of the State.

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<sup>35</sup> ODA Report January 2007 p 13.

<sup>36</sup> Long Term Agricultural Operations, Washington County Urban & Rural Reserves Record, August 20, 2009, p 5710.

<sup>37</sup> Robert Bailey testimony, Washington County Urban & Rural Reserves Record, December 15, 2009, pgs 7142 to 7144.

<sup>38</sup> Gary Price testimony, Washington County Urban & Rural Reserves Record, December 15, pgs 7059, 7060.

<sup>39</sup> Wildlife Habitat, Washington County Urban & Rural Reserves Record, August 21, 2009, pgs 5998- 6014; Mary Pruitt testimony, Washington County Urban & Rural Reserves Record, December 15, 2009, pgs 7005,7006.

Areas 8B and 8-SBR provide easy access to recreational opportunities in the rural area of Helvetia. Testimony has been provided by Save Helvetia of the thousands of runners and bicyclists who use Helvetia Road adjacent to Area 8B throughout the year, not only as individuals, but as members of recognized clubs from throughout the Portland Metropolitan area and as participants in regionally-recognized charity events.<sup>40</sup> Urbanizing or leaving these Areas undesignated would create thousands of daily car trips along NW Helvetia Road, destroying the rural character of the area and jeopardizing the safety of the thousands of bicyclists and runners who use its rural roads for recreation.

A number of groups from throughout the region have recommended that the area north of Highway 26, be designated as Rural Reserves in order to preserve its agricultural activities and its natural resources. These groups include: Portland Audubon Society, Washington County Farm Bureau, Urban Greenspaces Institute, Oregon Nursery Association, Washington County Farm Bureau, 1000 Friends of Oregon, Coalition for a Livable Future, Save Helvetia, Oregon Association of Nurseries, Portland Area Community Supported Agriculture Coalition, Oregon Council of Trout Unlimited, Slow Food, CPO 8, Tualatin River Keepers. This Agriculture and Natural Resources Coalition recommended map designations of rural reserves for both Areas 8B and 8-SBR.

OAR 660-027-005(2) requires a balance of urban and rural reserves and states:

“The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape feature that define the region.”

Washington County’s efforts designating rural reserve lands that extend to the edge of the county boundary where there is no threat of urbanization fails to provide the “balance” contemplated by the rule. Providing protection for lands that are not threatened does not serve to offset the large amount of urban reserve assigned to lands directly adjacent to the existing UGB. These adjacent rural lands are under the most serious pressure for urbanization and are entitled to protection in order to achieve livable communities. The forecasts are too uncertain, the region’s ability to fund needed infrastructure has not been demonstrated, coupled with incorrect factual bases, only works to further undermine any guise of a proper balance of urban versus rural. Areas 8b and 8-SBR are key pieces of a “large block” of over 1,200 acres of Foundation Agricultural Land and development on them would cast a shadow over the other Foundation lands that form this block threatening their viability and vitality due to conflicts caused by traffic, possible new road connections, and the creation of unbuffered edges.

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<sup>40</sup> Easy Access to Recreational Activities, Washington County Urban & Rural Reserves Record, August 21, 2009, pgs 6151-6152.

The overarching objective when designing urban and rural reserves is using these designations in a way that “best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.” Livable urban communities are best served by integrated residential and employment opportunities served by multi-modal opportunities including walking and bicycling as well as mass transit. These features are not, and will not be, present in Area 8B or 8-SBR. Livable communities are those that will strengthen and complement existing urban areas and do not detract from their success. Designating Area 8B for urban uses will only work to further distance workers from their homes and increase overall vehicle miles traveled. A decision to leave Area 8-SBR undesignated will leave it next in line to fall to these negative impacts from sprawl. Livable communities are those that embrace attributes that define a region for its residents, such as making a rural agrarian lifestyle and the fruits of farm labor available not only to those who live in Helvetia but to those who drive along US-26. From their cars, visitors can witness the rolling hills and the loamy scent of recently tilled farms of Helvetia, experiencing agricultural activities that make Washington County unique. Unlike urban uses that can locate anywhere, farming is dependent on the land. US-26 and NW Helvetia Road provide an appropriate, permanent barrier between rural and urban uses that, along with the farming activities should be supported through the designation of Areas 8B and 8-SBR as rural reserves.

Remedy: Based on the foregoing, Area 8B and Area 8-SBR should be designated rural reserve.

**Objection 6: The Urban and Rural Reserve Decisions fail to satisfy ORS 197.298, Violates Goal 14, Goal 2, Adequate Factual Base, and the Metro Regional Framework Plan Policy 1.12.2, and are not Supported by Substantial Evidence in the Whole Record.**

The Metro decisions are inconsistent with the priority scheme set forth in ORS 197.298. Of the 28,615 acres designed for urban reserves, 10,768 acres or 37% is designated Exclusive Farm Use (EFU). Of the 13,884 acres designated urban reserves in Washington County, 51% are designated EFU and nearly all of that EFU designated land is also designated as Foundation Agricultural lands. Areas 8B and 8-SBR are comprised entirely of high value soils and designated Foundation Agricultural lands. ORS 197.298(2) requires that when determining where to expand the urban growth boundary, higher priority must be given to those lands of lower productive capability as measured by soil classifications. In other words, the poorer quality soils must be included in the UGB before better quality soils. Department of Land Conservation and Development v. Douglas County, 36 Or LUBA 26 (1999). Although ORS 197.298(1)(a) does contemplate urban reserve lands as first priority for inclusion in the UGB, such an inclusion process cannot be used to trump the priority process in its entirety as will be the result if these Metro decisions are acknowledged.

If, as Metro believes, the priority scheme of ORS 197.298 no longer applies once lands have been designated urban reserves, then the alternatives obligation imposed by OAR 660-027-0040(11) when designating Foundation Lands for urban reserves becomes absolutely imperative to ensure that other non-foundation lands are considered first before including any Foundation Lands.

Further, compliance with Goal 14 requires compliance with both the need and the location factors. Here, once this decision is final, the lands designated urban reserve will be the first into the UGB premised on a need that was already established as part of the reserve process. Assuming that as first priority, the urban reserves areas will be the only options for inclusion, the parties will be left to argue over the location factors which will be largely limited and, in Washington County, consist primarily of EFU zoned, Foundation Lands.

Metro and the County findings ignore this priority scheme entirely presuming that the urban reserves process allows a balancing of factors and broad political discretion to determine where urban designations are most appropriate even if they result in loss of farmland. Rather than address how urban reserves alters the Goal 14 analysis, Washington County's Goal 14 findings merely punt on the issue stating that Goal 14 does not apply as the UGB is not currently being expanded. Metro and the County cannot avoid compliance with Goal 14 and ORS 197.298 by claiming that the need analysis does not apply now and then rely on this current analysis to claim that need was already established. If the need for additional lands within the UGB is being established along with severely limiting the location factors analysis as a result of limiting the available lands to those designated as urban, Metro and the County must apply Goal 14 now in some meaningful way and they have failed to do so in this case.

In addition to the priority scheme established by ORS 197.298 and Goal 14, Metro Regional Framework Plan Policy 1.12.2 does not exclude lands designated urban reserve. It provides:

“When the Metro Council must choose among agricultural lands of the same soil classification for addition to the UGB, the Metro Council shall choose agricultural lands deemed less important to the continuation of commercial agriculture in the region.”

Although it appears that Metro did try to choose lower priority lands over Foundation Lands, it is clear from the identification of Important and Conflicted Agricultural Lands back-up lands (those that were intentionally left undesignated in the event that population forecasts are too low) that such lands do exist to meet Metro's identified land need. Until these lower priority lands are considered to serve the need identified, Foundation Lands such as Area 8B and 8-SBR should be designated for rural use.

Mr. Richard Whitman  
April 1, 2011  
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Remedy: Based on the foregoing, Area 8B should not be designated urban reserve and both Areas 8B and 8-SBR should be designated rural reserves.

Sincerely,

GARVEY SCHUBERT BARER

By

Carrie A. Richter

CR:jmp

Attachments:

- Ex. 1 – Maps of Areas 8B and 8-SBR incl. floodplain and natural resources
- Ex. 2 – Save Helvetia members who have standing and support the objections
- Ex. 3 – Excerpt of Metro Ordinance No. 10-1238A addressing Area 8B
- Ex. 4 – Excerpt of Washington County Ordinance 733 addressing Area 8B
- Ex. 5 - Excerpt of Metro Ordinance No. 10-1238A addressing loss of Foundation Lands

Cc:

Clients  
Metro w/o attachments  
Washington County w/o attachments  
Multnomah County w/o attachments  
Clackamas County w/o attachments

PDX\_DOCS:453168.1 [37764-00100]



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October 8, 2010

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

Attn: Richard Whitman, Jennifer Donnelly, Rob Hallyburton

Re: Metro Rural and Urban reserves  
Exceptions to the Director's Response to Objections on Reserves

This letter constitutes the exceptions of the Washington County Farm Bureau, Dave Vanasche, and 1000 Friends of Oregon to the Department's response to our objections to the Metro Reserves decision. Our exceptions focus on the legal flaws in some of the Department's responses to our objections. We have not addressed every response in our exceptions, but wish to make it clear that we disagree with the Department's response to each of our objections and hereby renew those objections.

We first address the Department's response to our general objections, then to specific geographic and issue objections.

We recommend that the Commission adopt the following remedy:

- As required by the reserves statute and rule, Metro entered into separate Reserves agreements with each County. We recommend that the Commission approve the Reserves agreements between Metro and Clackamas County and Metro and Multnomah County.
- We recommend that the Commission approve most of the urban reserves proposed by Metro in Washington County. We recommend that it not approve the urban reserves north of Council Creek in Areas 7I and 7B, and in Area 8A.<sup>1</sup>

There are several legal and factual justifications for not approving these urban reserves in Washington County, which we describe in our objections and exceptions. These include that they do not meet the criteria for urban reserves, that the Department and Metro incorrectly interpreted various provisions of the reserves statute and rule, that Metro has not provided substantial evidence to either support these areas or to support the overall amount of land included in the urban reserves, that alternative sites are available, and most simply, that Metro cannot designate urban reserves for the entire 30-year period while still meeting the other reserve requirements of a balance between urban and rural reserves and protection of Foundation farm land, and therefore must designate urban reserves for somewhere between the allowed 20 to 30 year time period.

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<sup>1</sup> The 9-State Agency letter, co-authored by DLCD, also offers a reduced size of Area 8A, using the natural landscape feature boundary of Waibel Creek as a boundary.



Taking this remedy recognizes that the region reached consensus on both urban and rural reserves in two out of the three counties and in most of the third county. The Commission's role as overseer of Oregon's land use program is to ensure the law is followed in reaching that consensus. Certain core areas of Foundation farm land in Washington County do not qualify as urban reserves under the law. The Commission can find success in most of the Reserves decision.

I. Exceptions to Department's General Responses

The Department's Report on Objections, in the sections titled "Summary of Recommended Action" (pp. 3-4) And "Department Analysis" (pp. 15-22), describes the Department's approach to its review of the Metro Reserves decision. We do not believe this approach meets the legal requirements of the Reserves statute or rule, for the following reasons.

A. **Contrary to the Department's view, this is not a political decision.**

The Department makes the rather startling statement:

"With two exceptions, the Department believes that the statutes and rules that guide this effort replaced the familiar standards-based planning process with one fundamentally on *political* checks and balances."<sup>2</sup>

There is nothing in the statute or rule that leaves the designation of urban and rural reserves to politics. Moreover, such a conclusion is contrary to the rule of law, the predictability that the rule of law provide to citizens and their expectations for and participation in government decision-making processes, and the ability of a reviewing body to evaluate a government decision.

Rather, the statute and rule contain pages of various factors and policy directions that are to be considered, weighed, and applied. For example, the Legislature stated its purpose in adopting the reserves statute was to ensure "long-range planning":

**"195.139 Legislative findings.** The Legislative Assembly finds that:

(1) Long-range planning for population and employment growth by local governments can offer greater certainty for:

(a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and

(b) Commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.

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<sup>2</sup> Department Report, p. 3, emphasis added. This type of statement is repeated elsewhere in the Department Report. For example, the Department endorses the following statement made by Metro: "Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development ... is politically difficult." Report, p. 53. Political difficulty is not a factor.

(2) State planning laws must support and facilitate long-range planning to provide this greater certainty.”

The statute goes on to specifically define rural reserves and urban reserves. Metro “*shall* base the designation on consideration of factors including, but not limited to...” and then lists specific characteristics for land to qualify as a rural reserve. ORS 195.141(3). There is a similar statutory provision regarding urban reserves. ORS 195.145(5). The administrative rules further describe the reserve designation process and criteria that must be considered and applied.

There are only **two** political determinations in the reserves process: whether to designate any reserves at all, and if so, whether to include urban reserves. (The statute authorizes Metro and the counties to agree to designate rural reserves alone, but if any urban reserves are designated under this process, then rural reserves must also be designated. ORS 195.143(3), OAR 660-027-0020(3))

The Washington County Farm Bureau and 1000 Friends of Oregon were involved with every step of the crafting of the reserves statute and rule. Leaving this to political checks and balances was never discussed, and if it had been we would have left the process and not agreed to the statute or rule. Leaving the decision to politics is the *antithesis* of Oregon’s planning program.

We could have all saved ourselves a lot of time and energy on the Reserves Steering Committee, on the county reserves advisory committees, educating the public about the reserves process, encouraging others to participate, attending open houses, and testifying at hearings if this is “fundamentally” a political process.

**B. The discretion of Metro and a county is not as broad as the Department describes.**

The Department’s report states:

“[I]n the Department’s opinion, the region has substantial discretion in determining the *location* of urban and rural reserves....”<sup>3</sup>

\* \* \* \*

“Note these [urban and rural reserve] factors are *not criteria* in the sense that Metro has to show each area complies with each factor. Rather, these are each *considerations*, which Metro must take into account when deciding whether to designate an area as an urban reserve.”<sup>4</sup>

This is contrary to the language and purpose of the reserves statute and rule, which provide defined boundaries on Metro’s and a county’s discretion - boundaries that were carefully negotiated and were not written or intended to be as broad as the Department suggests.

The Legislature provided the purpose for designating rural reserves:

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<sup>3</sup> Report, p. 3 (emphasis in original).

<sup>4</sup> Report, p. 18 (emphasis in original).

“[To] offer greater certainty for [t]he agriculture and forest industries, by offering *long-term protection of large blocks* of land with the *characteristics* necessary to maintain their viability.”<sup>5</sup>

The statute states that when designating rural reserves “to provide long-term protection to the agricultural industry,” that Metro and the relevant county “*shall* base the designation on consideration of factors, including but not limited to,” whether the land is capable of sustaining long-term agricultural operations, taking into account suitable soils and water where needed, the existence of a large block of agricultural land, existing land use patterns, adjacent uses, the location of the land relative to other farm uses, and the sufficiency of agricultural infrastructure in the area.<sup>6</sup> An additional and important factor is whether the agricultural area is “potentially subject to urbanization.”

These requirements are repeated in the Commission’s rules.<sup>7</sup>

Thus, if Metro and a county decide to adopt urban and rural reserves under this statute, they *must* do so in a way that provides “long-term protection” for these core characteristics that are “necessary to maintain the viability” of the agricultural industry, if those areas are threatened by urbanization. These are “factors” that must be addressed and met, not mere “considerations.”

The Commission’s rule *requires* that the designation of rural and urban reserves must achieve a “balance” that “best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of important natural landscape features that define the region...”<sup>8</sup>

Finally, the rule further provides that if an area of land has been mapped as Foundation or Important Agricultural Land by the Oregon Department of Agriculture, and is within 3 miles of a UGB, it is deemed to have met the criteria to be designated as rural reserves.<sup>9</sup> Metro and a county have a heightened burden to explain why, based on the rural and urban reserve factors, Foundation farm land should be designated instead as an urban reserve.<sup>10</sup> That is, there is a built-in legal assumption that the area should be in a rural reserve, and the burden shifts to Metro and the county to justify why an urban reserve designation outweighs the fact that the area is Foundation farm land and already qualifies as a rural reserve, and why removing it from the rural reserves still keeps the region in “balance” for rural reserve factors.

The Department, as it describes throughout its Report, did not apply the rural reserve factors in this manner. It also appears the Department either did not take into account the statutory purpose and the heightened burden required to designate Foundation farm land as urban reserves, or it did not do so legally. And it did not correctly apply the “balancing” requirement.

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<sup>5</sup> ORS 195.139 (emphasis added).

<sup>6</sup> ORS 195.141(3) (emphasis added).

<sup>7</sup> OAR 660-027-0005(2), -0060.

<sup>8</sup> OAR 660-027-0005(2).

<sup>9</sup> OAR 660-027-0060(4).

<sup>10</sup> OAR 660-027-0040(11).

Instead, in the section titled “Deciding Whether a Particular Area Should be Urban or Rural, or Undesignated, and the Role of Metro and the Role of LCDC,” the Department *starts* with evaluating land as *urban* reserves: “The question for the Department in this report... is whether Metro considered the urban reserve factors in deciding to include particular areas.... [T]he Department does not believe that the question is whether an area would be better as a rural reserve than as an urban reserve, or even whether Metro was right in its decisions.”<sup>11</sup> Thus, if a county finds that land qualifies as an urban reserve, apparently the inquiry stops there for DLCD.

Unless the land is Foundation land. There, the Department describes that Metro and the county must merely “consider” both urban and rural reserve factors, and “explain why it selected as urban reserves the [Foundation] lands in question instead of other lands.”<sup>12</sup> While the statute and rule do provide for a heightened level of review for Foundation farm land, the Department’s interpretation of that is incorrect, as follows:

- It starts with a premise that the land is urban reserve.
- Metro and the county need only “consider” the rural reserve factors. If you start with the premise that the land is urban reserve and must only consider the rural reserve factors, you will end the inquiry at urban reserves. This is the inverse of the burden of proof established by OAR 660-027-0040(11).
- There is little, and in some cases no, evidence that Metro and Washington County considered non-Foundation farm land in the region to designate as urban reserves rather than the large blocks of Foundation farm land within 3 miles of a UGB that they did designate as urban, despite the existence of large areas of Conflicted and Important farm land regionwide.
- Metro and Washington County improperly re-defined the rural reserve factors when evaluating all lands, including Foundation farm lands.<sup>13</sup> This infects the entire analysis of rural reserves in Washington County.
- The issue of the qualitative balance between rural and urban reserves is not taken into consideration.

The Department exacerbates this apparently boundless discretion in the way it interprets how the “balancing” requirement is to be met. The Reserves rule states (emphasis added):

“The objective of this division is a balance in the designation of urban *and* rural reserves that, in its *entirety*, *best* achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.”<sup>14</sup>

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<sup>11</sup> Report, p. 18.

<sup>12</sup> Report, p. 19.

<sup>13</sup> See Objections of Oregon Department of Agriculture and 1000 Friends, Washington County Farm Bureau, and Dave Vanasche. This includes re-defining soil capability, improperly evaluating the issue of water availability, and not properly taking into account large blocks of farm land.

<sup>14</sup> OAR 660-027-0005(2).

Yet, the Department only addresses the balancing requirement in the Report section titled “Amount of Rural Reserve Land,” and then treats it as though it is a limiting factor *on the amount of rural reserves*. The Department states:

“Since this ‘balance’ is not implemented through prescribed criteria, the counties and Metro have considerable discretion in deciding which lands warrant protections provided by a rural reserve designation.”<sup>15</sup>

No they don’t. Metro and the counties must explain how the lands chosen as rural reserves *best* achieves the requirement to preserve the viability and vitality of the agricultural industry in the region. Clackamas and Multnomah counties did this – they very purposefully did not designate Foundation farm land within 3 miles of the UGB as urban reserves. In fact, Clackamas County designated as urban reserves Conflicted and Important lands in the Stafford Basin – *despite* the *political* difficulty in so doing – because of the County’s recognition of its *regionwide responsibility* to do that, rather than urbanize the state’s best farmland in the Tualatin Valley and south of the Willamette River.

Washington County did not. As described in our Objections and those of others, Metro and the County turned the balancing requirement on its head – both in the county and regionally, and as it impacts Foundation farm land. The vast majority of the Foundation farm land - in the county and regionally - that is threatened by urbanization has been designated as urban reserves. And, the majority of the Foundation farm land that *is* threatened by urbanization has *not* been designated as rural reserves.

It is difficult to conceive of an area more qualifying of rural reserve designation than the farm land at the heart of the Tualatin Valley agricultural industry, north of Council Creek. It is Foundation farm land, separated from urban areas by the ecologically significant natural landscape feature of Council Creek, located in the core of the Tualatin Valley agriculture industry, not easily accessible from designated mixed-use centers, interdependent on nearby farm-related industries and in-ground infrastructure, and about which there has been the most expert testimony from the Department of Agriculture, the Farm Bureau, and farmers who farm in the area – all of whom support a rural reserve designation. And yet it is proposed as an urban reserve. If this does not qualify as rural reserves, then the discretion of Metro and the county has no real boundaries.

A clear way to achieve the balance required by the reserves statute and rule to “best achieve” the “viability and vitality of the agricultural industry” is to designate fewer urban reserves on Foundation farm land, and Metro does have the discretion to chose a different time period for urban reserves. It has chosen to designate urban reserves for the full 30 year period beyond the 20-year UGB. But it could chose anywhere between 20-30 years beyond that 20-year UGB. If that is the only way to achieve the required balance, then Metro *must* chose a lesser time period. And the Commission can require them to do so to achieve that balance.<sup>16</sup>

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<sup>15</sup> Report, p. 20.

<sup>16</sup> The 9-State Agency letter of October 14, 2009, of which this Department was a co-author, along with Business Oregon, ODOT, DEQ, ODFW, and the Oregon Departments of Agriculture, Forestry, and Water Resources, recommended just that, stating: “The state agencies strongly support using the lower end of the planning period authorized for reserves – e.g. forty years [20 beyond the 20-year UGB]. We are facing a time of extraordinary

## II. Exceptions to Department's Responses to Specific Areas

### A. **Washington County**

#### **Response 2. Areas 7I and 7B: North of Council Creek**

Council Creek runs in an east-west direction, to the north of the cities of Cornelius and Forest Grove. It forms a natural boundary between the urban and urbanizable land in those two cities and the heart of the Tualatin Valley agricultural industry to the north. It is also a natural boundary – the Creek and floodplain are hundreds of yards wide in some places, forming a natural and permanent buffer between the conflicting uses of urban and rural.

The land in the proposed urban reserve consists of about 825 acres of Class I, II, and III High Value farm land north of Council Creek. (About 625 acres north of Cornelius and 200 acres north of Forest Grove.) It has been designated as Foundation farm land by the Oregon Department of Agriculture and is within 3 miles of the UGB.

The Washington County Farm Bureau, 1000 Friends, and Dave Vansache, a Century farmer in this area, all objected to designating the area north of Council Creek as urban reserves. It is very important to more that we have *not* objected to designating the 300+ acres east and south of Cornelius, and over 250 acres adjacent to Forest Grove, as urban reserves and that are also in this decision. Most of these alternative areas are also Foundation farm land. **In fact, it was the Washington County Farm Bureau that first suggested all these other areas around Cornelius as urban reserves** – because they make more sense, from both an urban and rural reserves perspective. They are, variously, south of Council Creek, or bounded by the Tualatin River, or are along the Tualatin Valley Highway – a Highway that connects Cornelius/Forest Grove with Hillsboro and would be the proposed HCT corridor for increased bus service. Council Creek and the Tualatin River provide a natural landscape feature buffer between urban and rural uses. These areas make sense, and provide Cornelius and Forest Grove extensive lands for possible future urbanization, including industrial use of any lot size.<sup>17</sup>

*This* agency, and eight other state agencies, as well as Metro's Chief Operating officer, all strongly agreed with the Washington County Farm Bureau position, and recommended rural reserves for this area.<sup>18</sup>

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uncertainty in how our communities and industries will evolve. \* \* \* \* [W]e believe the region should strike a balance that tends toward the risk management/flexibility end of the scale rather than locking up most lands on the periphery of the UGB for fifty years....One way of providing some flexibility is to set reserves for a forty-year period, and simultaneously plan to revisit whether additional reserves should be designated well before that forty-year period expires (a twenty or twenty-five year 'check-in')." State Agency Letter, p. 4.

<sup>17</sup> This is an example of the agricultural industry and the natural resources community attempting to participate in good faith and follow the rule and statute in offering alternative urban reserves area for Cornelius and Forest Grove, respecting those towns' urban aspirations – which is an enormous compromise, considering that these areas are also largely Foundation farm land. Had they known that this decision would instead be made on a political basis and that *all the areas* - the compromise areas they suggested *and* the areas north of Council Creek - would be designated as urban reserves, the agricultural community would not have participated at all.

<sup>18</sup> [http://library.oregonmetro.gov/files/final\\_consolidated\\_state\\_agency\\_comments.pdf](http://library.oregonmetro.gov/files/final_consolidated_state_agency_comments.pdf)

The Department acknowledges that the justification for this area as an urban reserve is weak (the Department report describes the findings as “general” and states that at least one factor is “not directly addressed.” Report pp. 86-88).

It is hard to imagine a more appropriate area in the entire region for rural reserve designation, and one that has such widespread support. Yet the Department recommends approving an urban reserve designation for these two areas. What is truly hard to imagine is what set of facts might compel the Department to recommend something *different* than what Washington County and Metro recommended for urban reserves in the county.

The proposed 7I and 7B urban reserves, and the Department’s response to our objections, continue to demonstrate a violation of the law in the following ways:

- Areas 7I and 7B do not meet the urban reserve criteria.
- Areas 7I and 7B meet the rural reserve criteria on *both* agricultural and natural resource grounds, and therefore should be designated rural reserves.
- Foundation farm lands require a higher level of justification for being designated as urban reserves and the Department has not demonstrated that the Metro decision meets that. Those within 3 miles of the UGB require an even higher level, as they automatically qualify as rural reserves .

#### ***Areas 7I and 7B Do Not Meet the Urban Reserve Criteria***

The Department’s report acknowledges that Washington County and Metro have addressed the urban reserve factors (OAR 660-027-0050) in only a “general fashion,” and that the Commission could determine that the record does not support designation of these areas as urban reserves. (Report p. 86) The substantial evidence, and in some cases, the only evidence, in the record shows that areas 7I and 7B fail to meet the urban reserve factors in at least the following ways

Factor 1: “Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments.”

The Department relies upon the “findings” in the Cornelius and Forest Grove pre-qualifying concept plans (PQCPs) and on Metro’s consolidated findings to show this criterion is met. These findings are both conclusory and do not meet the requirements of the factor.

For example, in addressing this factor, the Cornelius PQCP states:

“The City has comprehensively planned its public and private infrastructure in coordination with surrounding jurisdictions and partners and consistent with state and regional 2040 Plan goals and requirements. The major infrastructure systems are either in place ready for or can be extended for development. The water, sewer and transportation systems that bisect and are adjacent to Cornelius have regional growth capacity. Clean Water Services sanitary and storm sewer lines are sized to serve north to Dairy Creek and the partially urbanized area south and east of Cornelius, and are capable of extending between Hillsboro and Cornelius

north of Dairy Creek. The City has required developers to stub for extension urban sized utilities for future expansion at the City boundary.”<sup>19</sup>

This is a conclusory statement that can be made about any area inside the Metro UGB. It simply re-states existing state law and Planning Goal 11, which requires all cities to provide urban scale infrastructure within their city limits, and to plan for its extension to urbanizable lands within its UGB. Cornelius has urbanizable land between its city limits and its portion of the UGB that it has not annexed (including land brought into the UGB for “industrial” purposes over 4 years ago), as well as vacant and undeveloped lands throughout its city limits (according to Metro, over 10% of the land within the Cornelius city limits is currently vacant; even more land is underdeveloped). The above conclusory statement is what one would expect to find in the Cornelius public facilities plan, without reserves being part of the discussion.

Furthermore, it does not explain how, given the large amount of vacant, underdeveloped, and un-annexed land within the Cornelius portion of the UGB, adding over 1000 acres of urban reserves (including proposed urban reserves south and east of the city) to a city of only 1170 acres now, will ensure an urban level of development that makes efficient use of the existing facilities. The existing facilities are under-utilized by the lands within the existing city – those areas must densify to meet Metro’s Region 2040 Growth Concept, Regional Transportation Plan, and High Capacity Transit plan for a mixed-use, higher density Cornelius Town Center that can support high capacity transit; adding additional land makes that *less likely* to happen, not more.

The PQCP goes on to state that the proposed urban reserves will develop at a density of 10 units per acre.<sup>20</sup> That does not meet Metro’s definition of and requirement for urban densities of 15 units/acre in the urban reserves, and thus reliance on the Cornelius PQCP is flawed.

Cornelius and Forest Grove are designated Town Centers in Metro’s Region 2040 Plan. Metro’s Region 2040 Plan, High Capacity Transit (HCT) plan, and the Regional Transportation Plan (RTP) all contemplate mixed-use, higher density development and high capacity transit along a corridor running from Hillsboro to Cornelius and Forest Grove. To achieve those laudable goals requires investment inside the existing UGB on lands along those corridors – the Tualatin Valley Highway and the proposed light rail corridor – which are largely vacant and underdeveloped now.

This was pointed out by both the 9-State Agency letter, including this agency, and the Metro Chief Operating Officer’s (COO) Report:

“Large scale urbanization in the area to the north may detract from implementing the 2040 Plan by placing thousands of households and jobs farther away from centers and transit corridors, thus increasing Vehicle Miles Traveled (VMT) and making it more difficult to support the recently adopted High Capacity Transit (HCT) corridor from Hillsboro to Forest Grove.”<sup>21</sup>

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<sup>19</sup>[http://www.co.washington.or.us/LUT/PlanningProjects/reserves/upload/Cornelius\\_PQCP\\_Report\\_073109Combined.pdf](http://www.co.washington.or.us/LUT/PlanningProjects/reserves/upload/Cornelius_PQCP_Report_073109Combined.pdf)

<sup>20</sup> *Id.*

<sup>21</sup> COO Recommendation, Sept. 15, 2009, p. 24.

Metro also found that urbanizing the area north of Council Creek would be expensive. “To improve such [transportation] access would require considerable regional resources.”<sup>22</sup>

There is no evidence showing that urban reserves for areas 7I and 7B north of Council Creek meet urban reserve factor 1; substantial evidence shows these areas do not meet the urban reserves criteria.

Factor 2: “Includes sufficient development capacity to support a healthy economy.”

The Department, Metro, and Washington County simply re-state the factor in finding it has been met. This is not substantial evidence. Furthermore, there is no underlying evidence actually addressing economic capacity. Raw land is not development capacity. The Cornelius portion of the current UGB is not dense enough in employees or housing to support increased bus service or a HCT line of any type, the current land supply has substantial vacant and underdeveloped lands, including parcels over 60 acres, with services, and in industrial parks. Cornelius has not yet annexed 60+ acres of land added to its UGB over 4 years ago for industrial development, in part because there is no demand for it. Adding raw land without, among other things, the residential or employment demand for it, does not support a healthy economy.

Factor 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.”

Factor 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.”

Factor 5: “Can be designed to preserve and enhance natural ecological systems.”

Factor 6: “Includes sufficient land suitable for a range of needed housing types.”

Factor 7: “Can be developed in a way that preserves important natural landscape features included in urban reserves.”

These factors are addressed by similarly conclusory statements in the Department’s Report, Metro findings, and the PQCP in that they largely re-state the factor itself and claim it is or will be met. In particular, there is no evidence that the public transit hoped for by Cornelius and Forest Grove and envisioned in the RTP and HCT plan will be realized by almost doubling the size of the city in areas far away from those transit corridors, particularly when those corridors today are low density and contain substantial vacant and undeveloped lands. A conclusory statement that it will be met does not meet the legal factor.

Factor 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.”

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<sup>22</sup> *Id.*

The Department's Report acknowledges this factor was not addressed by Metro in its decision. (Report p. 86)

Finally, the Department, Metro, and the County ignore that a "Purpose and Objective" of the reserves rules is that "important natural landscape features" are to be used to "limit urbanization" and "define natural boundaries of urbanization." OAR 660-027-0005(2) and ORS 195.137(1). The reserves rule and statute do not allow an evaluation of urban reserves without including their relationship to the surrounding farm and forest lands and natural resources, including how those natural features can – and must – be used as the boundary for urbanization by being designated as a *rural* reserve. A promised buffer on the urban side of an urban reserve does not meet the law.

Here, Council Creek provides that natural boundary between urban and rural uses. It is a generally wide floodplain, wetland, and stream. There is no boundary – natural or even manmade – that separates rural and urban lands in the proposed urban reserves north of Council Creek. There is no factual dispute as to this. Therefore, Council Creek and the area north of it in Areas 7I and 7B do not qualify as an urban reserve and should be a rural reserve.

***Areas 7I and 7B meet the Rural Reserve Criteria on both Agricultural and Natural Resource Grounds***

As discussed in our Objections, but not addressed in the Department's report, areas 7I and 7B qualify for rural reserve designation under both set of criteria – the criteria for "long-term protection for the agricultural industry" (OAR 660-027-0060(2)) and "to protect important natural landscape features" (OAR 660-027-0060(3)). As a factual matter, this is not in dispute. In addition, these two areas are also Foundation agricultural lands within 3 miles of the UGB, for which there is a higher bar for justifying designation as urban reserves.

Few areas under consideration or in dispute meet all these factors – every factor of rural reserve designation as agriculture, every factor for rural reserve designation as an important natural landscape feature, and Foundation farm land. The Commission's discretion is not so boundless as to override the triple bottom line for why, legally, areas 7I and 7B should be rural reserves.

***Foundation Farm Lands Require a Higher Level of Justification for Being Designated as Urban Reserves, and the Department has not Demonstrated that the Metro Decision Meets that.***

The Department acknowledges that LCDC's rule requires that if Foundation farm lands, as identified by the Oregon Department of Agriculture, are proposed as urban reserves rather than rural reserves, then a higher standard applies to justify that urban designation for the particular area of land. OAR 660-027-0040(11). The Department concludes that Metro's decision meets this standard. This is legally and factually incorrect, for the following reasons:

- The Department acknowledges that Metro's findings are only "general" and that they are not "specific to each of the areas." This does not meet the higher standard criteria of law. (Report p. 87, 88)

- The Department seems to endorse the following rationale for accepting mere “general” findings for the Foundation farm land areas north of Council Creek: that since most of the farm land in Washington County near the existing UGB is Foundation farm land, a whole lot of it is going to be designated as urban reserves, so how can this higher standard be met on any particular parcel? (Report p. 87, Department text and quote of consolidated findings; p. 88) The fact that much of the land around the UGB in Washington County was Foundation farm land was known when the reserves statute was passed by the Legislature and when the Commission adopted its reserve rule. It has been mapped for some years now. Knowing that, this higher level of justification was clearly required by this Commission. And it has not been met concerning areas 7I and 7B. If it cannot be met, one remedy is that Metro and the Commission can adopt urban reserves for a shorter time period than the full 30 years beyond the 20-year UGB.
- The Department endorses the following Metro mischaracterization of the reserve rule’s and statute’s purpose, and the Department apparently applies it to 7I and 7B: the urban reserve recommendation in Washington County balances “the *need* for future urban lands and the *values* placed on ‘Foundation’ agricultural lands and lands that contain valuable natural landscape features.” (Report pp. 87-88; Metro Rec. p. 62, emphasis added) This is a condescending and inaccurate description of both the factual situation and the law. The reserves rule and statute, and the Department of Agriculture’s “Identification and Assessment of the Long-Term Commercial Viability of Metro region Agricultural Lands” Report demonstrates that “Foundation Agricultural Land is the most important land for the viability and vitality of the agricultural *industry*.” (OAR 660-027-0040(11), emphasis added)

As testified to throughout the decision process below by a wide variety of farmers, the Washington County Farm Bureau, and the Oregon Department of Agriculture, and the agriculture-related industries in the region, that land is the base for one of the county’s and state’s top industries. Washington County has consistently been in the top 5 of Oregon’s counties in agricultural production. As Oregon’s #2 industry, agriculture is a significant industrial engine grossing over \$5 billion in 2008. Add in the goods and services farmers purchase from other businesses to grow food and fiber, and the value-added products that are produced, and agriculture is a \$10 billion industry, accounting for over 10% of the state’s economy. Food processing, in which Multnomah County leads, was the *only manufacturing sector* in Oregon to show positive employment gain in 2008; that processing depends on Washington County farms. And much of that value and product is exported, bringing new dollars into the state, and into Washington County’s economy. Agricultural products are #1 in bulk and #2 in value of the shipments out of the Port of Portland. Oregon agriculture has been increasing in value almost every year for over a decade, a claim that no other industry can make, and Washington County’s agricultural cluster has been growing for over 150 years.

Agricultural lands may well be a “value,” but they are also an industry and a “need.” And unlike traditional “urban” industries, the land on which they rely is not interchangeable, moveable, or convertible into a higher density building. The premise on which the Foundation lands in 7I and 7B were evaluated by DLCDC is incorrect; the higher standard to designate them as urban reserves has not been shown.

- While acknowledging the general nature of the Metro and County findings for designating this and other areas of Foundation farm land as urban reserves, the Department endorses Washington County’s apparent re-write of the Department of Agriculture’s Foundation farm land standards. Rather than focus on the urban reasons for why areas 7I and 7B should be in an urban reserves despite being Foundation farm land, the County has conducted its own analysis – using different standards than the Department of Agriculture – to apparently conclude that the area is not really Foundation farm land. (Report, p. 88) There is no legal basis for this.

The DLCD Report recognizes that the rural reserve factors are based on the Department of Agriculture’s report. The Reserves statute gives deference to the Department of Agriculture in developing the criteria for rural reserves. ORS 195.143. Those rural reserve factors evaluate characteristics such as soil types, whether water is needed and present, adjacent land use patterns, parcelization, threat of urbanization, capacity for long term, agricultural operations, whether the eland is on a large block of farm land, etc... The reserves rule states that to override the Foundation farm land designation requires reference to the urban and rural reserve factors. (OAR 660-027-0040(11)) It does not allow Metro or the Washington County to re-write those rural reserve factors, and yet that is what Washington County has done and Metro and DLCD have endorsed. (DLCD Report, p. 88) The County relied on different definitions of soil capacity, parcelization, and role of water. It also used what appear to be different factors, including among others “high dwelling density,” land values, and presence of homes. (DLCD Report, p. 88; various references to the Washington County record) There is no provision for so doing in the Reserves rule.

There is no other area of Foundation farm land about which the agricultural community – including farmers, the Farm Bureau, the Community Supported Agriculture Coalition, small farmers, organic farmers, farm equipment dealers, farm product processors, and more - in Washington County and regionally have been stronger on for a longer period of time: urbanization must not go north of Council Creek; doing so will gut the heart of the Tualatin Valley agricultural lands and significantly contribute to the demise of the agricultural industry in the entire northern Willamette Valley. Truly, if this land does not qualify as Foundation farm land that should not be in an urban reserve, then no land qualifies.

### III. Exceptions to Other Department Responses to Objections

#### A. “B. Amount of Urban Reserve Land - 2. 1000 Friends and City of Wilsonville (pages 34-36)”

1000 Friends and other objectors contend that the amount of land proposed for urban reserves exceeds the statutory 50-year limit, for various reasons explained in our Objections and those of the cities of Wilsonville and Portland. The Department disagrees. We take exception to the Department’s conclusions as follows:

- The Department explains that because “100 percent of the maximum zoned capacity of the existing UGB will be used during the reserves planning period,” that the statutory 50-

year limit has not been exceeded.<sup>23</sup> However, if it will take the 50 years to attain the already zoned capacity of the 20-year UGB, then there is far more than a 20-year land supply inside the UGB, and the urban reserves far exceed the 50-year limit. Earlier in its Report, the Department concludes that Metro has established as 20-year UGB onto which it can then “tack” 30 more years of urban reserves.<sup>24</sup> Yet here it acknowledges, as the Objectors contend, that the UGB actually has enough capacity for far more than 20 years.

- The Department states that “While some of Metro’s planning projections may be characterized as somewhat conservative, others are best described as somewhat aggressive.”<sup>25</sup> What does “conservative” mean, which ones, and which assumptions are “aggressive”? These terms and their applications - and more importantly, their relevance and legality – are not explained. Not only does this create a screen preventing participants from understanding and evaluating Metro’s and the Department’s conclusions, it is not a basis on which this Commission can make a determination. This type of statement is found in several places in the Report.<sup>26</sup>
- The Department seems to misunderstand the issue raised by the city of Portland concerning Metro’s built-in vacancy rate of 4% for both the current UGB and the urban reserve.<sup>27</sup> The Metro UGB, as all UGBs, has a built-in “vacancy” factor in the form of a 20-year UGB that is re-visited every 5 years. There is never “no vacant land within the UGB.” The vacancy rate is nothing more than another way of looking at market factors, which the long-term 20-year land supply already addresses. Including it on top of a 20-year land supply is contrary to Goal 14 and its requirement to demonstrate that land inside the UGB will be used efficiently prior to adding land. There is no legal or factual basis to extend a 4% vacancy rate to a 30-year reserve, which the Department and Metro claim may never even be urbanized. This doubles the error to 8% of all the lands. Even if a vacancy rate were legitimate for the UGB capacity assumption and/or the urban reserve, Metro has not explained why it is 4%. There is no substantial evidence to support this; the burden is on Metro to provide the evidence for why 4% is the correct vacancy rate, it is not on Portland to explain why it is not.
- The inconsistency between the UGB capacity assumed by Metro in its Regional Transportation Plan (RTP) and Reserves decision violates planning Goal 2 and ORS 195.020-.040, because Metro has adopted two planning documents forecasting population, employment, and UGB capacity that are inconsistent and uncoordinated. The Department explains that this is acceptable because the RTP was adopted one week after Metro adopted the urban reserves decision, and the RTP has not yet been acknowledged. The reserves decision is submitted to LCDC in the manner of periodic review. Periodic review is an iterative process. If during that process other planning decisions are made by the locality that change any of the underlying premises for that iterative planning process, LCDC can and must send the document back to Metro for updating. LCDC

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<sup>23</sup> Report, p. 35. The Department continues by explaining that the Damascus area, recently added to the Metro UGB to satisfy a 20-year need, will actually not fully develop for 50 years. Report p. 36.

<sup>24</sup> Report, p. 16.

<sup>25</sup> Report, p. 35.

<sup>26</sup> For example, Report p. 34.

<sup>27</sup> Report, p. 33.

currently has two inconsistent documents from Metro before it – the Reserves decision and the RTP.

- Metro’s RTP contains a High Capacity Transit (HCT) strategy, which it designed with local government partners, that designates and directs funding to HCT corridors, in which residential and employment density will be increased to support the HCT. However, in its Reserves decision, Metro has not accounted for any density increases in these corridors. The Department states that it is “reasonable” for Metro to assume no increases in planned or zoned density due to Metro’s adoption of its HCT corridors strategy in the 2035 RTP, because it has not yet made changes to its own other functional plans to conform to the HCT strategy.<sup>28</sup> It is not clear what other functional plan changes must be made, but those are Metro’s *own functional plans*. It has just *bound itself* to make those changes by adopting its 2035 RTP. It seems unreasonable, and possibly illegal, for Metro to not assume those planned and zoned density increases.<sup>29</sup> If Metro cannot count on itself to make these functional plan changes, it is unreasonable for it to assume that any zoning changes will be made to any urban reserves once they are brought into the UGB.

**B. “C. Employment Land/Goal 9 - 1. 1000 Friends of Oregon (pages 43-46)”**

The Objectors challenged Metro’s assumption that 3000 acres of the urban reserves are needed for large lot industrial use. The Department endorses this Metro finding for the 30-year period beyond the current 20-year UGB: “A reasonable extension of historical demand informed by future growth estimates suggests that approximately 100 acres per year would be appropriate over the reserves time frame, equating to 2,000 acres for the period 2030-50 and an additional 1,000 acres for 2050-60.”<sup>30</sup>

The Objectors take exception to this for the following reasons:

- It is conclusory.
- Contrary to Metro’s and the Department’s assumption described in the exception just above, here Metro assumes that its entire current supply of large industrial lots will be used up in 20 years. Yet as explained above, Metro and the Department assumed that it will take up to 50 years for the Metro UGB to use its zoned capacity. In fact, the Department states in another place that “Metro’s analysis shows that the existing UGB has a substantial surplus in the overall amount of employment land that it projected will be needed over the fifty-year planning period (by a factor of 2:1).”<sup>31</sup>
- It is unclear how Metro used this 3000 acre assumption in its designation of urban reserves. Is it in addition to the projected need for residential and employment land to the

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<sup>28</sup> Report, p 34, 36.

<sup>29</sup> If Metro cannot count on itself to make these functional plan changes, then it is unreasonable for it to assume now that any zoning changes will be made to any urban reserves once they are brought into the UGB – it is not known which municipality, or perhaps county and service districts, will govern each area, plan and zone it, and pay for and provide infrastructure.

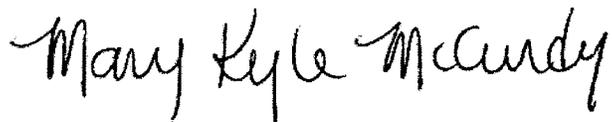
<sup>30</sup> Report, p. 45.

<sup>31</sup> Report, p. 48.

year 2060, because of an alleged special need for large lots? And if so, did it result in the selection of Foundation farm lands to meet that need? And if so, which ones? The Department claims that the 3000 acres is simply “one aspect of [Metro’s] general land needs for employment over the next 50 years,” and that it has no “particular location.”<sup>32</sup> It appears that Metro and the Department are trying to have it both ways. In order to not run afoul of the Commission’s directives in the Newberg case that a city’s long term land need cannot be based on specific siting requirements for particular uses, the Department states that no particular area has been included to meet the alleged need for large industrial lots. If that is the case, then the justification for bringing Foundation farm land into the urban reserves in Areas 8A, 7I, 7B, and other areas no longer exists.

Thank you for consideration of our exceptions.

Sincerely,

A handwritten signature in black ink that reads "Mary Kyle McCurdy". The signature is written in a cursive, flowing style.

Mary Kyle McCurdy

Senior Staff Attorney and Policy Director

On behalf of Washington County Farm Bureau, Dave Vanasche, and 1000 Friends of Oregon

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<sup>32</sup> Report, p. 45



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July 12, 2010

Mr. Richard Whitman, Director  
Department of Land Conservation  
and Development  
635 Capitol Street, NE Suite 150  
Salem, OR 97301

Re: Objections to Metro Urban and Rural Reserves  
Metro Ordinance No. 10-1238A and Washington County Ordinance 733

The following objections are filed on behalf of 1000 Friends of Oregon, the Washington County Farm Bureau, and Dave Vanasche, Washington County Farm Bureau President. These objections are to certain elements of Metro's urban and rural reserves decision, Ordinance No. 10-1238A, and the corresponding ordinance adopted by Washington County, Ordinance 733. (Because the findings in Metro Ordinance No. 10-1238A and Washington County Ordinance 733 are almost identical, references will be to the Metro decision.)<sup>1</sup>

1000 Friends of Oregon, the Washington County Farm Bureau, and Farm Bureau officers and members, including Dave Vanasche, testified orally and in writing at the hearings held by Metro, Washington County Board of Commissioners and Reserves Coordinating Committee, and the Reserves Steering Committee on urban and rural reserves. In addition, one member of the Washington County Farm Bureau was on the Washington County Reserves Coordinating Committee, and 1000 Friends was a member of the Reserves Steering Committee. The participation of 1000 Friends, the Washington County Farm Bureau, and Dave Vanasche includes, but is not limited to, the following dates:

- Washington County Reserves Coordinating Committee, testimony of August 26, 2009
- Reserves Steering Committee and Metro Council, testimony of October 14, 2009; hearing of October 15, 2009
- Washington County Board of Commissioners hearings on December 8 and 15, 2009
- Metro Council hearings, testimony of January 14, February 25, May 20, May 25, 2010
- Participation on Washington County Reserves Coordinating Committee, throughout 2009
- Participation on Reserves Steering Committee, 2008-09

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<sup>1</sup> Page references to the Metro decision are to the pagination of the entire decision – which contains several documents - as submitted to DLCD, not to the pagination of the individual documents.



## OVERALL OBJECTIONS

### **Objection 1: The amount of acres proposed for urban reserves exceeds the statutory 50-year limit on urban reserves, ORS 195.145((4)).**

Metro's decision designates 28,615 acres as urban reserves, allegedly for a 50-year time period. The amount of acres proposed for urban reserves exceeds the statutory 50-year limit on urban reserves, by underestimating the capacity of the current UGB, which represents the starting period capacity for the urban reserves period, in at least three ways.

First, Metro assumes that the existing urban zoning, adopted and acknowledged by each city and county, will not be realized within the 20-year time period of the urban growth boundary (UGB), at least absent a demonstration that public investments or policies are currently in place or underway to cause the zoned level of urban development to happen.<sup>2</sup> Assuming that existing planning and zoning will not be met and the investments will not be made over the 20-year UGB planning period is unrealistic, does not meet the requirements of ORS 197.296 and Goal 14, and is contrary to the methodology used by the Department of Land Conservation and Development in evaluating all other UGBs.

In addition, to assume those densities will not be met over a 40-50 year time period is not only legally improper and unlikely, it is a statement that the Metro Council does not believe in or support the acknowledged land use, transportation, and public facility plans of its partner jurisdictions. Surely, at least those 20-year zoned will be met over the 40-50 year time period; if Metro believes otherwise, the burden of proof is on Metro to show that the city plans are inaccurate, not only in this decision but by objecting to the periodic review of its partner cities.

Second, and related to the first, Metro assumes that cities will meet their current zoning only if certain investments are made – such as in infrastructure, urban renewal, various subsidies, or waivers - and Metro requires a level of certainty about those investments before relying on them to assume that higher densities are achieved in any city. However, those cities all have acknowledged public facilities plans that “describe[] the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans....” for the 20-year planning period. OAR 660-011-0005(1), (4). Public facilities plans also include cost estimates, an estimate of when each facility project will be needed, and a discussion of funding mechanisms. Therefore, Metro should assume that at least these 20-year public investments will be made over the 40-50 year time period, and adjust its UGB capacity estimate accordingly.

Third, Metro's capacity estimate for the UGB assumes there will be no upzoning over the 20-year or 50-year period over current zoning. There is no evidence for that assumption, and it is contrary to past experience and law. In analyzing the capacity of its UGB, Metro must examine the housing density, mix, and trends over at least the past five years, or since the last periodic review, and use that in its assessment of future land needs and trends. And, evaluation of a UGB requires analysis of the full zoning capacity as well as upzoning potential.<sup>3</sup> Although Metro is not - yet - conducting a UGB analysis, its reserves analysis is for a longer time period and therefore must rely upon the same

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<sup>2</sup> Metro decision pp. 22-23; *COO Recommendation, Urban and Rural Reserves*, Sept. 15, 2009, Apps. 3E-C and 3E-D; *Metro Urban Growth Report*.

<sup>3</sup> ORS 197.732(1)(c)(B); Goal 2, Part II(c)(2); Goal 14; OAR 660-004-0020(2)(b)(iii); *1000 Friends of Oregon v. City of North Plains*, 27 Or LUBA 372, 390, *aff'd* 130 Or App 406, 882 P2d 1130 (1994); *BenjFran Development v. Metro Service Dist.*, 17 Or LUBA 30, 49 (1988), *aff'd* 95 Or App 22, 767 P2d 467 (1989); *DLCD v. Douglas County*, 36 Or LUBA 26, 34-35 (1999); LCDC Answering Brief in *1000 Friends of Oregon v. LCDC (McMinnville)*, January 26, 2010, pp. 13-14.

legal and factual assumptions as it will for its UGB decision. In its reserves analysis, Metro must still have an adequate factual and legal basis, and there is none for its assumption of no upzoning.

Looking on the ground, one can see how unrealistic the assumption of no upzoning is as a practical matter. Metro relies upon its Corridors and Centers strategy to accommodate much of the expected population and employment growth in the region. The July 2004 ECONorthwest *Report on Corridors*, prepared for Metro, reviewed the planning and zoning for nine corridors and concluded that currently: “Corridors tend to be lower-density and more auto-oriented.”<sup>4</sup> The Report shows that in 2004, the region had 41,907 gross acres of “Corridors,” of which 13,296 acres were zoned for single family and more than 5,400 acres were zoned either “rural,” “agriculture,” or “forest.”<sup>5</sup> Although these facts have been raised in these reserves proceedings,<sup>6</sup> we cannot find evidence in this record to show that the corridors have been upzoned, or that Metro assumes they will be. However, to meet the Region 2040 requirements and market demands over the 20-year UGB period and the full 50-year Reserves period, these corridors will be re-zoned to higher density and mixed uses.

**Remedy:** Because Metro has underestimated the capacity of the UGB for both the 20-year UGB period and the 40-50 year reserves period, the 28,615 acres proposed for urban reserves exceeds the 50-year time limit. LCDC should remand the decision to Metro with direction to fully account for upzoning, rezoning, and meeting zoned densities over the reserves time period, and decrease the amount of urban reserves accordingly

**Objection 2: The amount, quality, and location of Foundation farm land designated as urban reserves violates ORS 195.137-.145 and OAR 660, division 27.**

The Legislature made specific findings on the purpose of urban and rural reserves. It stated that rural reserves are meant to provide certainty for the agricultural and forestry industries, as well as to:

“offer[] long-term protection of *large blocks* of land with the *characteristics* necessary to maintain their viability.” OAR 195.139(1)(a) (emphasis added).

This is a substantive policy direction, based on the specific qualities, location of the land relative to other farm and forest uses, and size of the agricultural and forested areas.

In contrast, the legislative findings for urban reserves are not tied to the inherent qualities or size of the land; rather, they are based solely on providing:

“...certainty for \*\*\* [c]ommercer, other industries, other private landowners and provides of public services by determining the more or less like locations of future expansion or urban growth boundaries and urban developments.”

The remainder of the statute and the administrative rule reinforce this distinction. Rural reserves are based on the qualities of the land, including soil and water (water if necessary), its relationship to other farm and forest lands and agricultural infrastructure, and the existence of physical buffers between rural reserves and non-farm uses. These are qualitative, placed-based criteria. ORS 195.141, OAR 660-027-0060(1), (2).<sup>7</sup>

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<sup>4</sup> ECONorthwest July 2004, pp. 2-4

<sup>5</sup> *Id.* at p. 5-3, Table 5-1.

<sup>6</sup> 1000 Friends written testimony of May 20, 2010.

<sup>7</sup> Following are the rural reserves factors from the administrative rule; the statutory factors are almost identical. OAR 660-027-0060:

The Commission recognized the importance – and finite quantity – of these characteristics in its administrative rule. Any lands identified as “Foundation” by the Oregon Department of Agriculture by definition means that they meet the rural reserve factors. Foundation lands cannot be designated as urban reserves unless there are findings and reasons explaining why they must be used for urban reserves, rather than other lands that are not Foundation. OAR 660-027-0040(11).

The statute and rule provide factors to be considered when evaluating lands for urban reserve designation but, in contrast to the rural reserve factors, they are not based on the location or size of the land under consideration. While the ability of the land to be developed in a compact, mixed-use urban fashion is the essence of the urban factors, the lack of reference to size and location recognizes that many topographies and locations can be, and have been, urbanized, and that lands capable of being urbanized are fairly interchangeable. In addition, the urban factors are considerations, while there is a higher level of justification that must be made for designating Foundation lands as urban reserves. OAR 660-027-0040(11)

Similarly, important natural landscape features are to be designated as rural reserves based on their qualitative and locational characteristics. They must be located to “limit urban development or define natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.” ORS 195.137(1), OAR 660-027-0005(2).

Thus, the Legislature provided for rural reserves because it recognized that the characteristics of the land base essential for one of Oregon’s most productive, and growing, industries – agriculture - is finite, significant, place-based, and not fungible. In contrast, it recognized that the primary reason for urban reserves is for certainty of urban investment.

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“(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation.

- (a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;
- (b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;
- (c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and
- (d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:
  - (A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;
  - (B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;
  - (C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and
  - (D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.

Although the Legislature did not provide for any “balancing” in authorizing urban and rural reserves, LCDC did by stating that the reserve rule’s objective is:

“...a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region...”<sup>8</sup>

The amount, quality, and location of the lands designated as urban reserves fail to comply with the reserve statute and rule. Metro designated 28,615 acres as urban reserves. 11,911 of those acres are identified as Foundation farm land by the Oregon Department of Agriculture (ODA).<sup>9</sup> Almost all of the Foundation farm land designated for urban reserves is in Washington County – 9730 acres, or 82% of all the Foundation farm land in the decision. In contrast, Metro designated very little Foundation farm land as urban reserves in Clackamas and Multnomah counties. For example, in Clackamas County, the *inverse* of Washington County is the case – 84% of the urban reserves are on lands identified as “Conflicted” by the ODA.

Not only is the amount of Foundation farm land designated as urban reserves disproportionate region-wide and in Washington County, but in Washington County, the lands designated as urban reserves are specifically threatened by urbanization. The first factor cited in the statute and rule to be considered in whether lands should be protected as rural reserves is whether the land:

“(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary...”

The “subject to urbanization” is an *additional* factor of the reserve statute and rule - beyond the criteria used by the Department of Agriculture is identifying Foundation farm land – that must be considered. ORS 195.141(3)(a); *see also* OAR 660-027-0060(2)(a).

Almost all Washington County Foundation lands designated as urban reserves were also found to be “subject to urbanization.” In fact, Washington County found the areas north of Council Creek, in the Evergreen area, and in Helvetia to be “highly” subject to urbanization.<sup>10</sup> In addition, all the acres that Washington County deemed “undesignated” are Foundation farm land and “highly” subject to urbanization. Foundation farm land subject to urbanization meets all the criteria for protection as rural reserves, not urban.

An examination of the maps shows that at least 75% of the current UGB in Washington County is now ringed with proposed urban reserves that are “highly” subject to urbanization. If the undesignated lands are included, that amount increases.

The result is that the land most threatened by urbanization in Washington County is now proposed as urban reserves, while many acres *not* under threat of urbanization in the planning period are designated as rural reserves, turning the law on its head. While the rule recognizes a balance between rural and urban needs, this decision is not balanced.

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<sup>8</sup> OAR 660-027-0005(2)

<sup>9</sup> *See* Metro decision, p. 179, table titled “Reserves Acreage Breakdown.” Also Exhibit E to Metro Ordinance, decision p. 15.

<sup>10</sup> Washington County RCC Urban & Rural Reserves Recommendations, September 23, 2009, Map 16, *Subject to Urbanization*. Map 16 Subject to Urbanization <http://www.co.washington.or.us/LUT/PlanningProjects/reserves/wcrcc-urban-and-rural-reserves-recommendations.cfm>

Finally, the Metro decision goes on at length in an attempt to paint a picture that the amount of farm land in general, and Foundation farm land is particular, is a small percentage of the overall amount of all land, or farm land, in the region outside the UGB. (Metro decision pp. 15-16) This is irrelevant factually and without any basis in the law. It is a smokescreen to hide the significant damage that will be done to the agricultural industry in the region and state by this decision.

The reserves law is based on the *quality* of the land at issue – *not* the quantity. The reserves statute and rule, as well as Goal 14 and ORS 197.298, emphasize the quality of the agriculture and forest lands under consideration, and their contribution to those industries. In crafting the reserve rule and statute, every person and governmental agency involved agreed that there was not to be an acre-for-acre comparison of urban and rural reserves, or anything else. All recognized that would make no sense practically. Rather, we agreed that this law would be based on the factual quality of the lands and industries – whether urban or rural. For Metro and local decision-makers to rely on this weak reed of percentages of land to justify their decision is disingenuous and dishonest to the process, the reality, and the other participants.

There are alternatives to designating this much Foundation farm land in Washington County, and in the region. First, alternatives that are not Foundation farm land exist, including but not limited to:

- Assuming more of the zoned capacity inside the current UGB will be realized over the period (see Objection 1)
- Increasing densities inside the current UGB (see Objection 1)
- Assuming higher densities in the lands designated as urban reserves
- Conflicted and Important lands not designated as urban reserves, for example:
  - Clackamas Heights
  - East Wilsonville
  - West Wilsonville
  - Southeast of Oregon City
  - Southwest of Borland Road
  - Between Wilsonville and Sherwood

Metro discounts some of these areas and chose Foundation farm land instead because the alternatives are more expensive and “politically difficult” to urbanize,<sup>11</sup> and due to “the growing cost of urban services and the declining sources of revenues to pay for them.”<sup>12</sup> Merely being more expensive than farm land to urbanize is not a factor in the reserves rule or statute; even Metro recognizes that flat farm land is almost always cheaper to serve with urban infrastructure than other areas.<sup>13</sup> While efficiency of service is one factor, it is not the only one; moreover, most of the reserve study areas were fairly similar in serviceability. Political difficulty is not a factor. Oregon’s land use law is based on the quality, location, and characteristics of the land, not on temporal ownership or shifting political views.<sup>14</sup>

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<sup>11</sup> Metro Decision, p. 17.

<sup>12</sup> Metro decision, p. 16.

<sup>13</sup> See also *City of West Linn v. LCDC*, 201 Or App 419, 446 (2005); *Residents of Rosemont v. Metro*, 173 Or App 321, 335 n. 6 (2001).

<sup>14</sup> Metro uses the difficulty of urbanizing Damascus as an example. This is a canard. That UGB expansion was for a 20-year time frame; it is not expected to fully develop in the near term, and certainly not in this economic market. The assertion ignores that the Damascus area has incorporated as a city and has embarked on nationally-recognized planning efforts, attracting some of the leading land use and transportation academics in the nation. The city’s efforts to integrate urban and agricultural uses in the UGB is ground-breaking. In contrast, the Bethany area – approximately 800 acres of relatively flat, mostly farm land – was brought into the UGB and no development has taken place there, due primarily to two factors: (1) the high speculative price paid for the land by developers, and (2) the high cost of infrastructure, despite

The declining sources of revenue to pay for infrastructure is not a factor, nor would it make much sense when looking at a 50-year time period. The Bethany UGB experience has illustrated the region's inability to accurately evaluate the cost of infrastructure for even the next few years. Moreover, if this is the case, that is an argument for a *smaller* urban reserve, not a larger one. Metro's studies have shown that the cost of providing urban infrastructure to undeveloped areas is 2 to 3 times as expensive as accommodating the same number of people or employees in the existing, developed urban area.<sup>15</sup>

Finally, the Metro region can choose a time span less than the maximum 50 years, or an estimate of future growth that is not at the top of its population and employment growth forecast. This would be consistent with the recommendation of the nine state agencies, including the Department of Land Conservation and Development.

"The state agencies strongly support using the lower end of the planning period authorized for reserves – e.g. forty years. We are facing a time of extraordinary uncertainty in how our communities and industries will evolve. A receding demographic peak, rapid globalization, immigration, climate change, and changes in energy pricing all may require that we be able to adapt more rapidly than we have in the past in terms of how we live, work and travel. Reserves require a balancing between the advantages of providing long-term certainty (for landowners, local governments, public and private investment) and the disadvantages of inflexibility if conditions change in unexpected ways.

"Given the global and local uncertainties facing us (as reflected, in part, by the large ranges in Metro's population and employment forecasts) we believe the region should strike a balance that tends towards the risk management/flexibility end of the scale rather than locking up most of the land on the periphery of the UGB for 50 years. One way of providing flexibility is to set reserves for a forty-year period, and simultaneously plan to revisit whether additional reserves should be designated well before that forty-year period expires (a twenty to twenty-five year 'check-in')."<sup>16</sup>

If choosing the outer limit of the allowable time span and the upper end of the population and employment forecast results in a designation of urban reserves that does not conform to the law, which we believe this does not, then Metro must choose a lesser time span and/or a lower point within the forecast.

**Remedy:** Direct Metro to reduce the amount of Foundation farm land designated as urban reserves consistent with state law. Designate those lands as rural reserves, because by definition they meet the rural reserves factors and they are subject to urbanization.

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promises made when the land was brought into the UGB that it could be cost-effectively served. This latter point is the real example Metro should be looking to in evaluating future UGB actions.

<sup>15</sup> Metro, *Comparative Infrastructure Costs: Local Case Studies*, 2008; FCS Group and Cogan Owens Cogan, *Regional Infrastructure Analysis*, 2008.

<sup>16</sup> Joint State Agency Comments of October 2009.

**Objection 3: The alleged need for 3000 acres for large lot industrial use is without substantial evidence, and the designation of lands to meet this “need” violates the reserve rule and statute by improperly using large blocks of Foundation farm land.**

Metro determined that the existing UGB has sufficient capacity for overall employment growth for the 50-year reserves period.<sup>17</sup> However, the Metro decision includes approximately 3000 acres of net buildable land that is “suitable for larger-parcel industrial users” to “account for the preference of some industrial employees for larger parcels.”<sup>18</sup> This fails to comply with the reserves law, for several reasons.

First, there is no legal basis for providing for any specific type of land use – here, large lots for industrial purposes – in the urban reserves. Nor is there a provision allowing for setting aside large blocks of land for industrial use. In fact, the reserves law specifically and only says that *agricultural* lands should be protected in “large blocks” in the *rural* reserves, which matches the Legislature’s purpose in adopting Senate Bill 100 originally. ORS 215.243(2) The reserves law does not provide that land should be created or maintained in large blocks for any other use. The Legislature knew how to use reserves to preserve land in large blocks for certain purposes – it chose not to do so here.

LCDC disallowed use of this same “large lot” argument to drive urban reserves to farm land in the city of Newberg reserves decision. Although the reserves process used in Newberg falls under a different administrative rule, the legal and policy rationale is the same. In its remand order of April 22, 2010, LCDC stated:

“OAR 660- 021-0030(1) does not authorize a city’s long-term land need to be based on specific siting requirements for particular uses, and that (instead) the amount of land in a city’s urban reserves must be based on generalized long-term population and employment forecasts.

\* \* \* \*

“THEREFORE, IT IS ORDERED THAT: 1. The City’s decision designating URAs is remanded to remove identification of specific industrial, commercial, institutional, and livability needs.”

Second, the Metro decision acknowledges that this “preference” for large lots for industrial purposes has driven the decision to incorporate Foundation farm land that otherwise would be in rural reserves. There is no legal basis to make any urban reserve decision based on “preferences” of some employers.

Third, this does not make sense from a practical standpoint. Reserves are for a 40 to 50 year time frame. Metro’s underlying technical reports acknowledge the difficulty of projecting industrial land needs and, in any event, the decision lacks substantial evidence that there is an unmet need for large lots for the reserves time period. The 3000 acre number comes from this analysis:

“Based on the analysis done in the Urban Growth Report for the 20-year time frame plus historical demand estimates, it is estimated that 100 acres per year would be appropriate over the 50-year urban reserves time period.”<sup>19</sup>

As explained in Objection 1, the urban reserves need projection, including for employment land, exceeds the 50-year time frame and therefore cannot be relied upon. The flaws in that analysis

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<sup>17</sup> Metro decision, p. 23.

<sup>18</sup> Metro decision, p. 23.

<sup>19</sup> Metro decision, p. 119 (staff report of June 9, 2010).

described in Objection 1 are amplified here, where Metro acknowledges that the 3000 acres estimate is based on historical demands, not a future demand.

There also is no substantial evidence in the record to support a need for 3000 acres of large lot sites; the projected future employment trends, how that employment will use buildings, and the locational requirements and desires for that employment do not support this conclusion. The 3000 acres does not seem to take into account Metro's conclusion that "employment land will develop more efficiently in urban reserves," because "industrial activity [is shifting] from production to research and development with the result that higher floor area ratios, more demand for office-type building products and more of a focus on the smaller products being located along corridors and centers."<sup>20</sup> Metro's large employer/large lot analysis shows that the office building type is the most efficient of any industrial business type in terms of jobs per acre.<sup>21</sup> Thus, whatever demand there might be today for large lots, it is diminishing.<sup>22</sup>

Finally, it appears that Metro may have designated more than 3000 acres for large lots, and that the overwhelming majority of it is on Foundation farm land in Washington County, thereby driving the flaws in the overall reserves decision, described in Objections 1 and 2. Urban Reserve Area 8A, Hillsboro North, contains 2265 acres of buildable land and was designated an urban reserve to meet the alleged need for large lot industrial sites.<sup>23</sup> This area is also Foundation farm land, is "highly" subject to urbanization, and is irrigated. And it has the important natural landscape feature of Weibel Creek. There is no other need stated for this land, or for this amount of land. Thus, almost the entire regional "need" for large lot is proposed to be met on one site of Foundation farm land in Washington County. There is no factual basis for the implied conclusion that most of the large lot need is in one small part of the region.

Assuming that the "need" is legitimate, there are alternatives in the region to over 2000 acres of Foundation farm land in one location. In fact, all the designated urban reserves on Conflicted or Important land could and must be examined to meet this need. The existence in some cases of a "plan" for other uses of a proposed urban reserve is irrelevant. (For example, area 6A Hillsboro South, larger parts of Stafford and Borland Road, areas around Wilsonville).

Metro also designated other areas around the region pursuant to the large lot "need," including but not necessarily limited to portions of 7I Cornelius North (Foundation), possibly portions of 7B Forest Grove North (Foundation), 1D and 1F Boring (not Foundation), Borland Road (not Foundation), 2A Damascus South (not Foundation), 5F Tonquin. It appears this might drive the overall acreage for large lots to over 3000 acres.

Metro's decision to add 3000 acres of Foundation farm land to the urban reserves is without basis in law and lacks substantial evidence.

**Remedy:** Direct Metro to analyze reserves land need without a large lot for industrial users factor, and to remove 3000 acres of Foundation farm land designated for that purpose.

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<sup>20</sup> Metro decision, p. 119.

<sup>21</sup> 2009-2030 Urban Growth Report, *Appendix 4: Forecast-based large employer/large lot analysis*. See, for example, table 6.

<sup>22</sup> Chief Operating Officer Recommendation, Sept. 15, 2009; including App. 3E-D.

<sup>23</sup> Metro decision, p. 90.

## WASHINGTON COUNTY AND SPECIFIC AREA OBJECTIONS

### **Objection 4: Washington County’s reserves analysis, on which Metro relies, is legally flawed.**

Washington County conducted an analysis for purposes of designating urban and rural reserves that is legally flawed. The County analysis brought in elements not in the law, and used various weighting schemes to measure these and other elements, resulting in an analytical system that in some cases is actually contrary to both the purpose and factors of the Reserve statute and rule.

Metro appears to have incorporated most or all of this analysis in its decision,<sup>24</sup> resulting in a flawed final reserves decision for the Washington County portion of the regional reserves decision. We describe here our objections to the entire Washington County analysis, and because it is part of each specific area analysis, we incorporate it without repeating it into the specific areas to which we also have additional objections.

Those specific area objections follow Objection 4, and are for the urban reserves proposed north of Council Creek (urban reserve areas 7I Cornelius North and a portion of 7B Forest Grove North); the Evergreen area (8A Hillsboro North); and the undesignated area around the towns of North Plains and Banks.

The Washington County portion of the reserves decision does not comply with ORS 195.137-.145 and OAR chapter 660, division 27, on several grounds. The statute and rule use similar language in listing the factors that must be considered when evaluating lands for rural reserve designation. ORS 195.141(3)(a)-(d); OAR 660-027-0060(2)(a)-(d), (3).

**ORS 195.141(3)(a) and OAR 660-027-0060(2)(a)** provide that the lands to select for rural reserves should be based on whether the land is “potentially subject to urbanization,” with rural reserves protection as a tool to protect Foundation farmlands and important natural resources that are subject to urbanization. Washington County mapped those areas subject to high, medium, or low threat from urbanization.<sup>25</sup> Little of the land designated as *rural* reserves in Washington County seems to be actually under threat from urbanization over the next 40-50 years. The analysis shows that most of the rural reserves lands are under “low” or “medium” threat from urbanization.

In contrast, *every acre* designated for urban reserves in Washington County is subject to “high” threat from urbanization and, as noted above, most of those are Foundation farm land. The State Agency letter noted and criticized this analysis.<sup>26</sup>

**ORS 195.141(3)(b), and (d) and OAR 660-027-0060(2)(b) and (d)** provide that those lands “capable of sustaining long term agricultural operations” and that are “suitable to sustain long-term agricultural operations” are appropriate for rural reserves designation. These qualities are reflected in the land identified as Foundation farm land by the ODA.

Evidence in the record from the Washington County Farm Bureau and individual farmers describes the robust and growing agricultural economy in the region in general, and in Washington

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<sup>24</sup> The Metro decision relies upon the “analysis and methodology” detailed by Washington County in its September 23, 2009 Urban and Rural Reserves Report and Recommendations to the Regional Reserves Steering Committee. Metro decision pp. 71, 95; Wash. Co. Record starting at p. 2493. Hereafter this will be referred to as the “Washington County Report.”

<sup>25</sup> Washington County Report, p. 22, and Map 16:

<http://www.co.washington.or.us/LUT/PlanningProjects/reserves/wcrcc-urban-and-rural-reserves-recommendations.cfm>

<sup>26</sup> State Agency letter, p. 13.

County in particular.<sup>27</sup> As testified to below, agriculture is Oregon's #2 industry producing over \$5 billion/year. Add in the goods and services farmers purchase from other businesses to grow food and fiber, and the value-added products that are produced, and agriculture is a \$10 billion industry, accounting for over 10% of the state's economy. The Portland region forms its core: Washington and Clackamas counties are always in the top 5 of Oregon's counties in agricultural production. Multnomah County leads the state in food processing – which was the *only manufacturing sector* in Oregon to show positive employment gains in 2008. That core industry of food processing relies upon the proximity of its inputs – from Washington, Clackamas, and Multnomah county farms. Agricultural products are #1 in bulk and #2 in value of shipments out of the Port of Portland. This brings new dollars into the state and region.

Oregon agriculture has been increasing in value every year for over a decade, and Washington County's agricultural cluster has been growing for over 150 years. Yet much of the lands designated as urban reserves are those lands that have been the productive heart of Washington County agriculture for that 150 years, and which will continue to support a growing economy if designated as rural reserves, not urban.

**ORS 195.141(3)(c) and OAR 660-027-0060(2)(c)** state that a factor in selecting rural reserves is whether there is “available water *where needed*.” The Washington County analysis, and hence the Metro decision, weights various characteristics in evaluating this factor.<sup>28</sup> It places an inappropriately high weight on whether land is in an irrigation district, and an inappropriately low weight if the land is in a water-restricted area. While irrigation, and in particular the existence of an irrigation district, are important contributors to the viability and vitality of the agriculture industry and represent a significant investment in infrastructure, the lack of a irrigation or an irrigation district should not be used to discount otherwise qualifying lands. Many crops, including high value ones, do not need irrigation. This skews the final decision as to whether an area should be in an urban or rural reserve for the following reasons:<sup>29</sup>

- The statute and rule explicitly state that water availability is to be a factor *where it is needed*. As testified to before Washington County and Metro, many farmers grow high value crops that do not need irrigation. Examples include legume seeds, hay, grapes, grass seed and more.
- Many Washington County farmers obtain irrigation from a source other than TVID.
- Farm land in a water-restricted area should not be discounted because it has a protected source of water; these are lands that actually have an additional reason to be *in* rural reserves.

The State Agencies also found this analysis to be flawed; but apparently Washington County and Metro continued to rely upon it. Except when they did not. Almost all the Foundation farm land in the urban reserves designated north of Council Creek (areas 7I and 7B) and in North Hillsboro (area 8A) is in the Tualatin Valley Irrigation District.<sup>30</sup>

**ORS 197.141(3)(d)(A) and OAR 660-027-0060(2)(d)(A)** address the importance of whether there is a “large block of agricultural land” in designating rural reserves. The decision seems to equate “large block” with large “parcels,” and “parcelization” with “ownership.” An area was considered “parcelized” if the majority of tax lots were 35 acres or less.<sup>31</sup> This reflects a significant

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<sup>27</sup> For example, letter of August 26, 2009 from Washington County Farm Bureau, Larry Duyck, and Dave Vanasche to Washington County Reserves Coordinating Committee.

<sup>28</sup> Washington County Report, pp. 6-7 and Table 1,; pp. 22-23.

<sup>29</sup> *Id.*, testimony of Oregon Department of Agriculture; State Agency letter of October 2009.

<sup>30</sup> Farm Bureau letter of August 26, 2009.

<sup>31</sup> Washington County Report, p. 26; Wash. Co. Rec. starting at p. 2493.

misunderstanding of both the law and the way farming works on the ground. It looks too narrowly at parcelization, and discounts lands if they are parcelized, as follows:

- While parcelization as measured in this manner is not appropriate, the 35-acre cut-off for what is deemed “parcelized” is too high in any event. There is no evidence in the record to support this or any other parcel size. The justification provided for this was: “[Washington County] Staff’s belief that commercial agricultural production is more easily facilitated in areas where parcel size is large enough to viably farm....”<sup>32</sup> No explanation of the 35-acre conclusion is given.
- The issue for farmers is not parcelization per se, as that seems to have been translated into ownership and tax lots. As testified to, most farmers farm small parcels that they own or lease as part of larger agricultural operations.
- The legal issue, for reserves evaluation, is whether a small parcel is located in an area that is largely agricultural in nature, or whether it is isolated in an area that is already broken up with smaller developed parcels. The issue is surrounding conflicts and the relationship with other farming activities in the region, not the parcel size. This is emphasized further by factors (d)(B), (C), and (D), which elaborate on what is meant by a “large block.”
- The Metro Council heard testimony from many smaller farmers – in particular, specialty farmers like, organic farmers, Community Supported Agriculture farm owners, and those just starting out in farming – that they rely upon these smaller parcels and are producing high-value crops on them.
- The Metro decision is selective in its application of this factor – as noted in testimony, some of the most significant regions of Foundation farm land are in large blocks and ownerships and parcels, and yet have been designated as urban reserves - north of Council Creek, north and west of Hillsboro, south of the former St. Mary’s land, and north of Highway 26.<sup>33</sup>
- The State Agency letter also found this analysis to be flawed.

**ORS 195.141(3)(d)(D) and OAR 660-027-0060(2)(d)(D)** require consideration of the “sufficiency of agricultural infrastructure in the area.” The decision does not adequately address factor (d)(D); in fact, it appears the County relied solely on the Washington County Farm Bureau to supply the information to address this issue, and was not satisfied with what it received and thus did not address it at all.<sup>34</sup> And, we can find no evidence that Metro did more, although there was extensive testimony on this factor submitted to both the County and Metro. Apparently, neither the County nor Metro conducted any analysis of their own or contacted the ODA for information. Therefore, the ODA finding that the areas designated as Foundation farm land are critical to maintain the sufficiency of the agricultural infrastructure in the area stands.

However, there is substantial evidence in the record from local agriculture-related businesses testifying to the importance of protecting the limited amount of agricultural lands left in the County. For example, there are letters from the following, all of which were submitted to Washington County and the Metro Council:

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<sup>32</sup> Washington County Report p. 26; Wash. Co. Rec. starting at p. 2493.

<sup>33</sup> Washington County Report, App. 1, Map 24.

<sup>34</sup> Washington County Report, Issue Paper no. 10.

- Ag West Supply, Aug. 19, 2009
- Rick’s Independent Crop Consulting Services
- Metro New Holland, Aug. 10, 2009
- Wilco Winfield LLC; Aug. 1, 2009
- Western Ag Improvements, Aug. 10, 2009
- Fisher Farm & Lawn, July 9, 2009

As an example, here is partial testimony from one large equipment dealer, located in Cornelius, who described:

“the importance of the region’s agriculture to another segment of the local economy... those businesses that support the region’s agricultural producers...include[ing] farm equipment dealers; farm chemical and seed businesses; businesses that prepare, process, or package agricultural products, trucking company businesses...Businesses that provide services, goods, and other infrastructure needs to agriculture in Washington County depend on a critical mass of...suitable agricultural land. Loss of agricultural land in Washington County has been dramatic and is of concern to our business.”<sup>35</sup>

Metro’s Chief Operating Officer, in his recommendation, commented specifically on the importance and expense of one type of agricultural infrastructure – irrigation districts – and relied on that as part of his recommendations that certain lands be designated rural reserves.<sup>36</sup> Yet this did not make it not the final analysis or decision.

**Remedy:** Due to the multiple legal and factual flaws in the reserves analysis of Washington County, that portion of the reserves decision should be remanded to Metro.

**Objection 5: Designation of the farm land north of Council Creek, generally north of the cities of Cornelius and Forest Grove, as urban reserves violates the reserves statute and rule (urban reserve area 7I and a portion of 7B).**

The Metro decision designates as urban reserves at least 624 acres in Cornelius North (7I), located north of Council Creek. (It may be more than this because this acreage may not account for the floodplains and wetlands in the area.) Some portion of Forest Grove North (7B) is also located north of Council Creek. This objection is to all lands in both urban reserve areas that are north of Council Creek. The following reasons for this objection are in addition to those contained in Objection 4.

The area qualifies as a rural reserve. It is Foundation agricultural land and meets all rural reserve factors: It is “highly” subject to urbanization during the time period, is capable of and does sustain long-term agricultural operations, is primarily Class I, II, and III soils, is an intact large block of farm land, and the farm use and ownership patterns demonstrate long-term stability. Most, if not all, the land is in the Tualatin Valley Irrigation District. As a potential candidate for rural reserves, Washington County ranked it as Tier 1 – the most qualifying, based on all the rural reserve factors.<sup>37</sup>

Written and oral testimony from the Washington County Farm Bureau and from individual farmers, some of whom farm north of Council Creek, attested to the fact that this area is the heart of the Tualatin Valley agricultural industry and contains some of the most productive blocks of

<sup>35</sup> Letter from Fisher Farm & Lawn.

<sup>36</sup> COO Recommendation, Sept. 15, 2009, p. 23.

<sup>37</sup> Washington County Report.

farmland in the state. Agriculture-related businesses in Washington County testified that this area is critical to the economic health of the supporting agriculture infrastructure and industry.<sup>38</sup>

The area designated as urban reserves has significant and irreplaceable agricultural infrastructure in it, which the decision does not address although it is required to do so. These include, among others: Tualatin Valley Irrigation District infrastructure; VanDyke Seed, a seed-cleaning plant; Jacobsmuhlen's Meats, a meat processor; Spiesschaert Enterprises; and Duyck Produce. Nor does it address the nearby agricultural infrastructure – inside the urban areas of Cornelius, Forest Grove, Hillsboro, North Plains, and Banks - and the impact of designating this land as urban reserves.

The area north of Council Creek also qualifies as rural reserves because it is a mapped significant natural landscape feature under the rural reserves statute and rule.<sup>39</sup> Council Creek and its floodplain form a natural boundary separating urban and rural uses, and qualify as an important natural landscape feature. Crossing Council Creek would be a significant intrusion into the heart of Tualatin Valley agricultural land and industry, without any other logical, natural boundary evident. Because the area qualifies under *both* the agricultural land and natural resource categories as a rural reserve, the burden of proof to designate it as urban is even higher, and has not been met. OAR 660-027-0060(1).

Furthermore, expansion across Council Creek is contrary to the urban reserve factors, and is contrary to the stated local aspirations of Forest Grove and Cornelius, as reflected in their local plans and on-the-ground circumstances. Both want significant transit improvement, including eventually light rail. Urban reserves north of Council Creek would not facilitate compact, mixed-use development in the current town centers of either city, and would be contrary to creating a community that is well-served by transit. The land proposed is not proximate to the high capacity transit line that Cornelius envisions for its community or to the rest of the city; rather, the urban reserves land to which we object is across a wide creek and floodplain, far from the proposed transit line. Urbanizing this area would reinforce auto-oriented development patterns and would be contrary to the state and region's climate change goals.

The Metro Chief Operating Officer relied on this in finding that the area north of Cornelius does not qualify as an urban reserve:

“Large scale urbanization in the area to the north may detract from implementing the 2040 Plan by placing thousands of households and jobs farther away from centers and transit corridors, thus increasing Vehicle Miles Traveled (VMT) and making it more difficult to support the recently adopted High Capacity Transit (HCT) corridor from Hillsboro to Forest Grove.”<sup>40</sup>

Urbanizing the area north of Council Creek would also be expensive. “To improve such [transportation] access would require considerable regional resources.”<sup>41</sup>

The Metro decision is suppose to be based on regional need, not local wishes. Yet the decision relies, in part, on Cornelius' desire for 150 acres of land for industrial use, and on Cornelius

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<sup>38</sup> See, e.g., testimony of Fisher Farm & Lawn; Ag West Supply; Rick's Independent Crop Consulting Services; Wilco Winfield LLC; Metro new Holland; Western Ag Improvements. ,

<sup>39</sup> Metro Natural Landscape Features Map; Washington County Map 5 Natural Landscape Features Inventory - Metro (February 2008)

<sup>40</sup> COO Recommendation, Sept. 15, 2009, p. 24.

<sup>41</sup> *Id.*

apparent pledge to serve the area and provide governance.<sup>42</sup> Reliance on a local need or desire is not a legal criterion for an urban reserve designation. The law provides for such consideration when evaluating UGB expansions, not urban reserves.

Moreover, if the individual characteristics of Cornelius are taken into account, the justification to add this land as an urban reserves diminishes even more. Cornelius has, and has had for some time, hundreds of acres of vacant and underutilized land. Metro's analysis shows that Cornelius currently has 125-150 acres of vacant, buildable land inside its portion of the region's urban growth boundary -- over 10% of the current area of Cornelius. This includes over 50 acres of land that Metro added to Cornelius only a few years ago for industrial use. That land is still being farmed. It is not clear whether the city has even annexed it yet. Another 20+ acres of land, which has full urban services and is in an industrial park, has had a "For Sale" sign up for years. The aerial map of the Cornelius and Forest Grove area, submitted in the record, illustrates the large amount of vacant land within the current boundaries of both cities, much of which is being farmed still.<sup>43</sup> Reliance on the alleged needs or desires of one city is not legal, and does not support this decision in any event.

The State Agency letter also recommends against including the land north of Council Creek in the urban reserves, concluding it does not qualify under the law.<sup>44</sup>

"The state agencies generally concur with the COO recommendations for this area...Rural reserves for areas here that are a significant distance from the existing UGB don't appear to meet the factors in the rule for designation of rural reserves... and generally there is too much land designated as rural reserves in this area."

The Metro Chief Operating Officer concluded:

"The area includes some of the best agricultural land in the state. To the north of Cornelius and Forest Grove, there is a well-established agricultural community that is part of the Tualatin Valley Irrigation District, representing a significant investment in agricultural infrastructure and a key component for proving agricultural product flexibility."<sup>45</sup>

The Metro decision findings are conclusory, in most cases simply restating the law or relying on Washington County's analysis, which is flawed as described in Objection 4.

In addition, it appears that neither Metro nor Washington County addressed at least two factors in designating this area for urban reserves: OAR 660-027-0050(7) -- can be developed in a way that preserves important natural landscape features, and (8) -- can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves. Nor did they address at least one rural reserve factor -- OAR 660-027-0060(d)(B) -- the existence of buffers between agricultural or forest operations and non-farm or non-forest uses.

These three factors are intertwined, and unaddressed. Council Creek currently provides a significant natural buffer between urban and rural uses, the importance of which was testified to repeatedly by farmer experts and residents of the area. Council Creek is mapped as an important natural landscape feature that limits urban development and defines the natural boundaries of urbanization. OAR 660-027-0005(2). Yet this decision leaps right over Council Creek, creating an urban/rural boundary that is basically an invisible line in a field. It eliminates the natural buffer and

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<sup>42</sup> Metro decision, p. 89.

<sup>43</sup> Maps attached to testimony of 1000 Friends and Save Helvetia.

<sup>44</sup> [http://library.oregonmetro.gov/files/final\\_consolidated\\_state\\_agency\\_comments.pdf](http://library.oregonmetro.gov/files/final_consolidated_state_agency_comments.pdf)

<sup>45</sup> COO Recommendation, Sept. 15, 2009, p. 23.

creates an immediate interface of conflict. The decision does not address the impact urban reserve designation will have on the adjacent farm land or on the wetlands and floodplains of Council Creek that would be in urban reserves. Finally, despite much testimony on the subject and legal requirements to do so, the decision does not address the impact this intrusion into the heart of the Tualatin Valley agricultural community will have on the future of regional and statewide agriculture.<sup>46</sup>

Not urbanizing the land north of Council Creek would still leave Cornelius with approximately 350 urban reserve acres on the south side of Council Creek and to the east and south of the city (7C Cornelius East and 7D Cornelius South), more land than the city is likely to use in a 50-year period based on the city's past land absorption rates. It will also leave Forest Grove with most of the land in the Forest Grove North urban reserve area, plus all of 7E Forest Grove South.

**Remedy:** Remand the Washington County portion of the decision with direction to remove the urban reserve designation north of Council creek in 7I and 7B, and to designate the lands as rural reserves. Designation of the lands north of Council Creek as urban reserves does not meet the legal test of balance, locally or regionally; nor does it meet the criteria for urban reserves. These lands do meet the criteria for rural reserves.

**Objection 6: Designation of the Hillsboro North area (8A, Evergreen) as an urban reserve violates the reserve statute and rule.**

Proposed urban reserve area 8A Hillsboro North contains 2265 acres and extends north of Hillsboro to Highway 26 and as far west as McKay Creek, thereby crossing Jackson School Road and bringing urbanization all the way to and beyond the Jackson School Road interchange. It encompasses Waibel Creek, which runs north-south. The following reasons for this objection are in addition to those contained in Objection 4.

Area 8A is entirely Foundation agricultural land and meets every rural reserve factor. It is highly subject to urbanization during the time period, is capable of and does sustain long-term agricultural operations, is primarily Class I, II, and III soils, is an intact large block of farm land. As one farmer testified, the land here is even better than that on Sauvie Island.<sup>47</sup> The area is entirely irrigated by a groundwater system. Sewell Road and the exception area are an excellent manmade buffer and edge that can protect the area from conflicting uses, and the farm use and ownership patterns demonstrate long-term stability.

In addition, the proposed area's proximity to Jackson School Road will be a magnet for future urbanization in this western direction, adversely impacting the farm lands around this area with conflicting uses, speculative land purchases, urban traffic, and more. The current and future transportation system in this area is auto-dependent, which will exacerbate the region's greenhouse gas emissions, and our ability to reduce them, which is already in doubt.

The extension of this area across Jackson School Road and to the interchange at Highway 26 eliminates several natural and manmade buffers that could have been relied upon to reduce the conflict between urban and rural uses: Waibel Creek, Jackson School Road, Sewel Road, and an

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<sup>46</sup> See, for example, testimony presented by Dave Vanasche and the Washington County Farm Bureau from SAIF on the current dangerous traffic conditions caused by urban dwellers using Washington County farm roads to cut-through from one part of the urban area to another, causing safety conflicts for farmers and farm equipment, and additional testimony on how the conflicts will increase with an urban reserve designation.

<sup>47</sup> Testimony of Laura Masterson to Metro Council and Core 4.

existing exception area. Instead, the proposed urban reserve has no natural or manmade buffer to protect rural from urban uses.

As described in Objection 5, the decision does not address OAR 660-027-0050(7), (8) or OAR 660-027-0060(d)(B). There is no evidence in the record that these factors can be addressed. Nor is there evidence in the record that any interchange management plan for the area as it impacts Highway 26 would be effective, or that any interchange management plan has ever been effective, in reducing impacts on interchanges, highways, and on surrounding farm lands.

**Remedy:** Remand the Washington County portion of the decision with direction to remove the urban reserve designation from 8A Hillsboro North, and to designate the lands as rural reserves.

**Objection 7: Most of the “undesigned” lands around North Plains and Banks should be rural reserves.**

The Metro decision leaves substantial areas around the towns of North Plains and Banks as undesigned, apparently so those cities can in the future be designated urban reserves or expand their UGBs. An examination of the map shows the undesigned lands are about four times the size of each city’s current footprint. Even the large urban reserves proposed for the Metro UGB are not anywhere near that order of magnitude larger than the current urbanized area. There are no projections that even half this much land would be needed for urban reserves for the two towns. Not only is it extremely unlikely that these cities will experience that much growth, but demographic and employment projections demonstrate that future growth will not be accommodated in a *less* dense pattern than already exists (this likely would also be contrary to law).

Therefore, “undesigned” in these areas is a misnomer; it is actually – as stated by elected officials during the course of this decision - a category of “next-in-line” lands for urbanization. However, that is not contemplated by the law.

Much of these areas clearly qualify for rural reserve designation – they are part of large blocks of Foundation land in active, long-term, stable agricultural production and consist of Class I, II, and III soils. It appears that almost all the lands are in the Tualatin Valley Irrigation District or have water rights.<sup>48</sup> Based on the testimony of local officials from North Plains and Banks, they are subject to urbanization in the time period.

The impact of leaving areas that qualify as rural reserves in an undesigned category must be evaluated, not only on those lands, but on the farm and forest lands around them. ORS 195.141(3)(d)(B), OAR 660-027-0060(d)(B). The remaining farm land in Washington County will be squeezed between urban areas, causing it to become less and less viable for agriculture. Local farmers testified to the difficulty of farming in areas that are under speculative pressure to urbanize, which these will be – Metro Councilors and Washington County Commissioners described the function of the undesigned lands as “safety valves” for urbanization, and that some might be urbanized in the planning period.

Testimony from Washington County farmers Dave Vanasche, Bob Vanderzanden, Larry Duyck, and others described the types of conflicts they already experience in farming lands near the edge of urbanization, and which will increase if the category of “undesigned” lands is large. These conflicts include: lost land leases; restrictions by landlords on planting anything but an annual crop;

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<sup>48</sup> Washington County Report, App. 1 Map 18.

lack of investment in or repair of infrastructure; speculative buying driving up land prices; competition with non-farms for use of the land; planting of lower value crops.<sup>49</sup>

For additional reasons, the undesignated area around North Plains lacks justification. Approximately 10 years ago, after a protracted legal battle, North Plains received approval from LCDC for a UGB expansion to the north and east of the city, on to prime farm land, because the city argued strongly and successfully that a UGB expansion across Highway 26 to the south would be prohibitively expensive to serve, would cut the city in half, and would violate the city's adopted vision as a compact community with connected, walkable neighborhoods. The city pointed out that it is "North" Plains, not "South" Plains. 1000 Friends of Oregon was persuaded by this argument and did not object to not crossing Hwy. 26 to the south with the UGB expansion. Others litigated the issue, and the LCDC decision prevailed.

Now, just a short time later, the area to the south of North Plains is left undesignated, in case North Plains wants to grow in that direction. Apparently, the rationale for not doing so has become moot – it is no longer expensive to serve and cutting the community in half with a highway is not an issue? It seems like just the opposite would be true – that it is even less likely the city would grow to the south, since much of the lands added to the north and east have not yet been annexed or developed.

This does not meet the purpose of the reserve legislation, ORS 195.139, which is to offer "protection of large blocks of [agricultural] land ...to maintain their viability." These lands meet the rural reserve factors and should be designated as such, possibly with a significantly smaller area of undesignated lands around the two towns should either be able to justify a future UGB expansion. The Metro COO also recommends that this area be designated as rural reserves.<sup>50</sup>

**Remedy:** Remand Washington County portion of the decision with direction to remove or decrease the size and location of the undesignated lands around North Plains and Banks.

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<sup>49</sup> See, for e.g., testimony of Dave Vanasche, including documentation of lost lease due to possible inclusion in UGB; testimony of Larry Duyck and Bob Vanderzanden

<sup>50</sup> COO Recommendation, Sept. 15, 2009, pp. 25-26.

Thank you for consideration of our objections.

*Mary Kyle McCurdy*

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Mary Kyle McCurdy  
Policy Director  
1000 Friends of Oregon

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Dave Vanasche  
President, Washington County Farm Bureau

**French, Larry**

**From:** Mary Kyle McCurdy [mkm@friends.org]  
**Sent:** Wednesday, June 01, 2011 2:37 PM  
**To:** Andy\_Duyck@co.washington.or.us  
**Cc:** Mary Kyle McCurdy; Carrie Richter; jerry.lidz@state.or.us; larry.french@state.or.us; SHIPSEY Steve  
**Subject:** Fwd: Objections to Metro Urban and Rural Reserves  
**Attachments:** Reserves Objections 2011.final.pdf; Save Helvetia.Obj.2010.pdf; signatures.pdf; reserves.obj.07.12.10.final.pdf; Reserves exceptions.3-1.pdf

----- Original Message -----

**Subject:** Objections to Metro Urban and Rural Reserves

**Date:** Wed, 01 Jun 2011 14:26:11 -0700

**From:** Mary Kyle McCurdy <mkm@friends.org>

**To:** jerry.lidz@state.or.us, larry.french@state.or.us, Shipsey Steven <steve.shipsey@state.or.us>, "bennerr@metro.dst.or.us" <bennerr@metro.dst.or.us>, Laura Dawson-Bodner <Laura.Dawson-Bodner@oregonmetro.gov>, "Chandler, Daniel" <Dchandler@co.clackamas.or.us>, BEASLEY Charles <charles.beasley@co.multnomah.or.us>, "brent\_curtis@co.washington.or.us" <brent\_curtis@co.washington.or.us>, bcc@co.clackamas.or.us, COGEN Jeff <jeff.cogen@co.multnomah.or.us>, "cooperd@metro.dst.or.us" <cooperd@metro.dst.or.us>, tom.hughes@oregonmetro.gov, steve\_kelley@co.washington.or.us, "Charlotte Lehan" <clehan@co.clackamas.or.us>

**CC:** Mary Kyle McCurdy <mkm@friends.org>, Carrie Richter <crichter@gsblaw.com>

Attached please find the Objections of 4 organizations and 35 individuals to Metro Ordinance No. 11-1255 and Washington County Ordinance No. 740, regarding urban and rural reserves. There are five attachments to this e-mail:

- The Objections
- Scanned copies of the signatures of the Objectors
- Two sets of Objections submitted by some of the Objectors in 2010 to Metro's original reserves ordinance, No. 10-1238A, and Washington County's original ordinance, No. 733
- Exceptions submitted by some of the Objectors in 2010

A copy of the Objections to Ordinances 11-1125 and 740, and the original signatures, are being mailed today to the Department of Land Conservation and Development.

Mary Kyle McCurdy

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Mary Kyle McCurdy | Policy Director and Staff Attorney

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