PORTLAND OFFICE
eleventh floor
121 sw morrison street
portland, oregon 97204-3141
TEL *503 228 3939* FAX *503 226 0259*

OTHER OFFICES
beijing, china
new york, new york
seattle, washington
washington, d.c.
GSBLAW.COM

GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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

July 12, 2010

DEPT OF
JUL 13 2010
LAND CONSERVATION
AND DEVELOPMENT

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.[1] 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

---

[1] See 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 statues, 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 "Standring" property
Tax Lot 901	39.37 acres	1N 215	Also known as the "Standring" 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	.40 acres	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,[2] 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."[3]

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.[4] 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."[5] 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.[6] The findings fail to acknowledge these highly relevant facts.

---

2 Metro Ordinance No. 10-1238A, Exhibit E, p. 96.

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

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

5 Oregon Department of Agriculture, "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands," January 2007.

6 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[7] 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.[8] 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.

---

[7] 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.

[8] 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.[9] 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.

---

[9] 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 Famland 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.[10] 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[11] 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).[12] 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"[13] 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

---

10 Metro Ordinance No. 10-1238A, Exhibit E, June 3, 2010, p 10.

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

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

13 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.[14] Metro's Habitat Protection map shows that about one-third of Area 8B consists of "High habitat conservation area."[15] Metro's "Inventory of Regionally Significant Habitat" map shows about one third of Area 8B consists of the highest-value habitat, Class 1 Riparian.[16] 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).[17] In addition, Area 8B contains an expansive oak woodland of over 200 old-growth Oregon white oak trees.[18] 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."[19] 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.[20] 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 Standring 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

---

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

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

16 *Id.*

17 *Id.*

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

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

20 "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.[21]

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.[22]

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.[23] 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.[24] 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

---

21 "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.

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

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

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

Grossen's 126-acre family farm.[25] 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

---

[25] 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.[26] 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.[27] 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.[28] 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.[29]

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

---

[26] Staff Report, Urban and Rural Reserves Recommendations, Washington County Urban & Rural Reserves Record, August 3, 2009, p 8210.

[27] Cherry Amabisca testimony, Washington County Urban & Rural Reserves Record, August 10, 2009, p 6170.

[28] Pam Gates testimony, Washington County Urban & Rural Reserves Record, December 8, 2009, p 7248.

[29] 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..."[30] 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 "undesignated" to accommodate future urban reserves.[31] 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.

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."[32] As explained

---

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

31 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.

32 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).[33] 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.[34]

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

---

[33] Standring Groveland Investment Co, testimony, Washington County Urban & Rural Reserves Record, December 11, 2009, p 7179.

[34] 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.[35] 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. [36] 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.[37]

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.[38] 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.[39] As noted above, these Areas serve as the gateway to the farmland of Washington County that is enjoyed by all citizens of the State.

---

35 ODA Report January 2007 p 13.

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

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

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

39 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.[40] 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.

---

[40] 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.

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

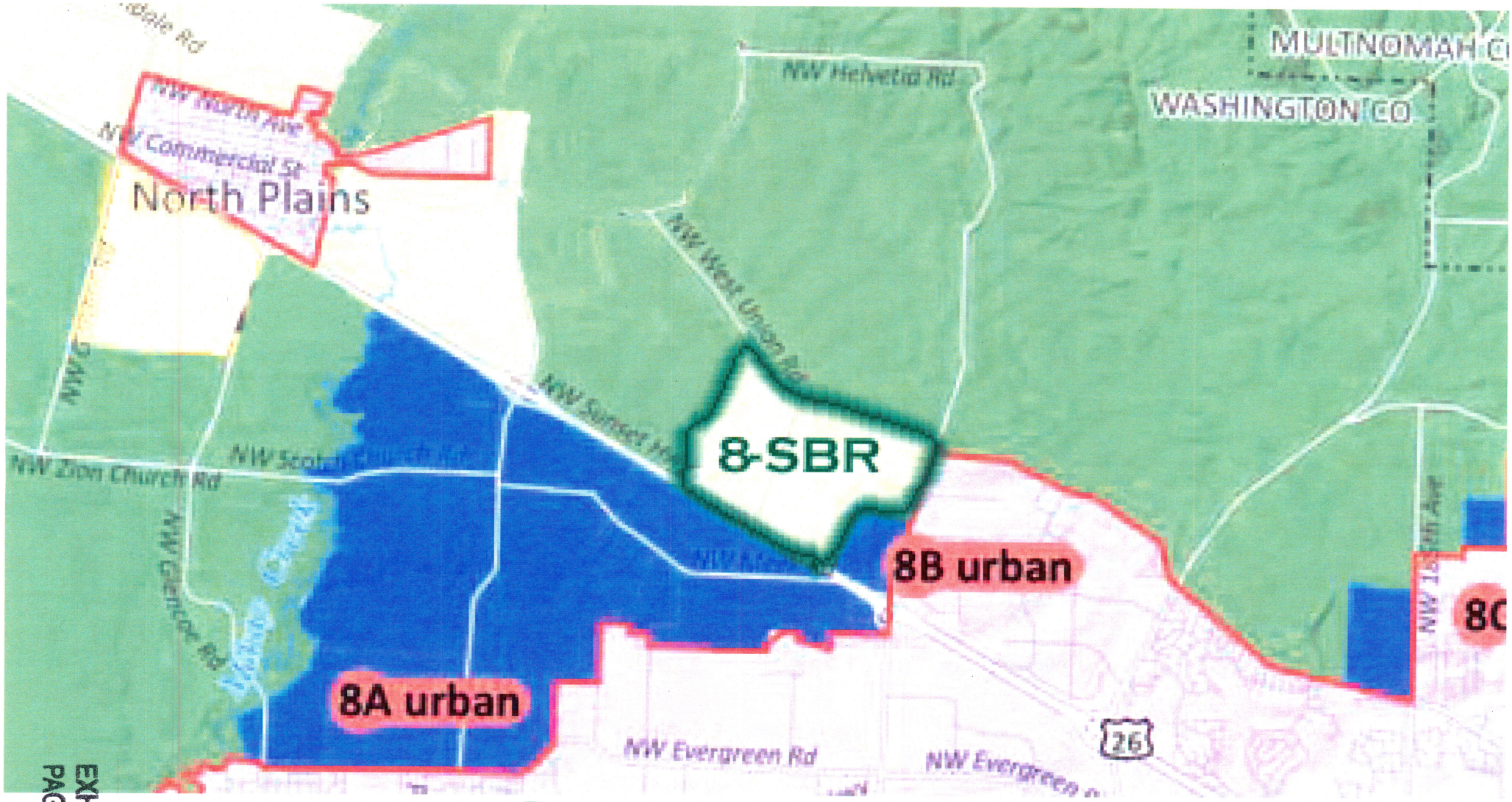
CR:jmp

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]



AREA 8 UNDESIGNATED

Save Helvetia.o

EXHIBIT 1
PAGE 1 OF 4

Amabisca
Approximate Affected Acres: 635

Citizen Request
- Rural Reserve to Urban Reserve
- Undesignated to Urban Reserve
- Rural Reserve to Undesignated
- Urban Reserve to Rural Reserve
- Undesignated to Rural Reserve

Ordinance No. 733
- Rural Reserve
- Urban Reserve
- Existing Regional Urban Area

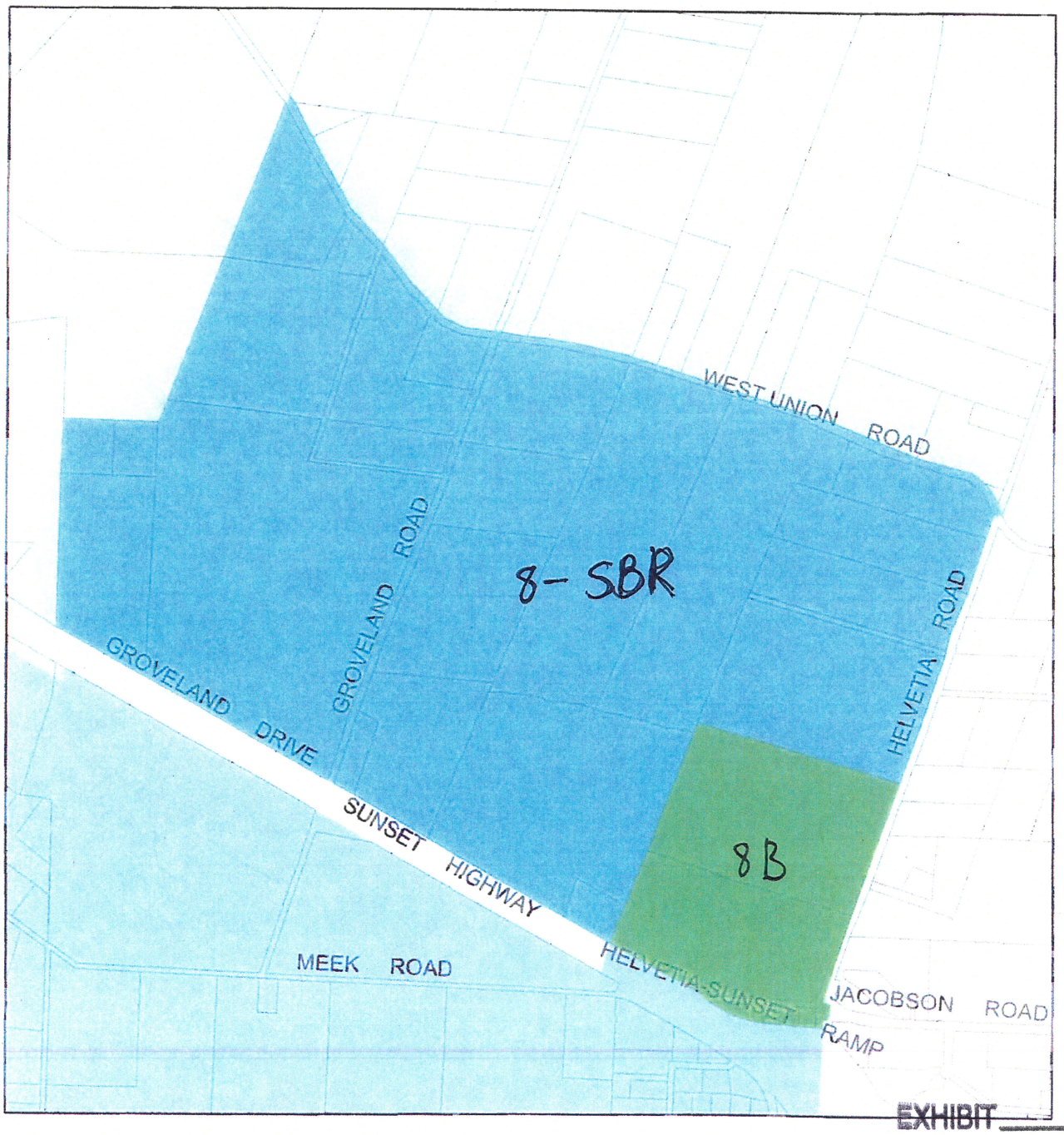


EXHIBIT 1
PAGE 2 OF 4

Washington County
Urban & Rural Reserves Record

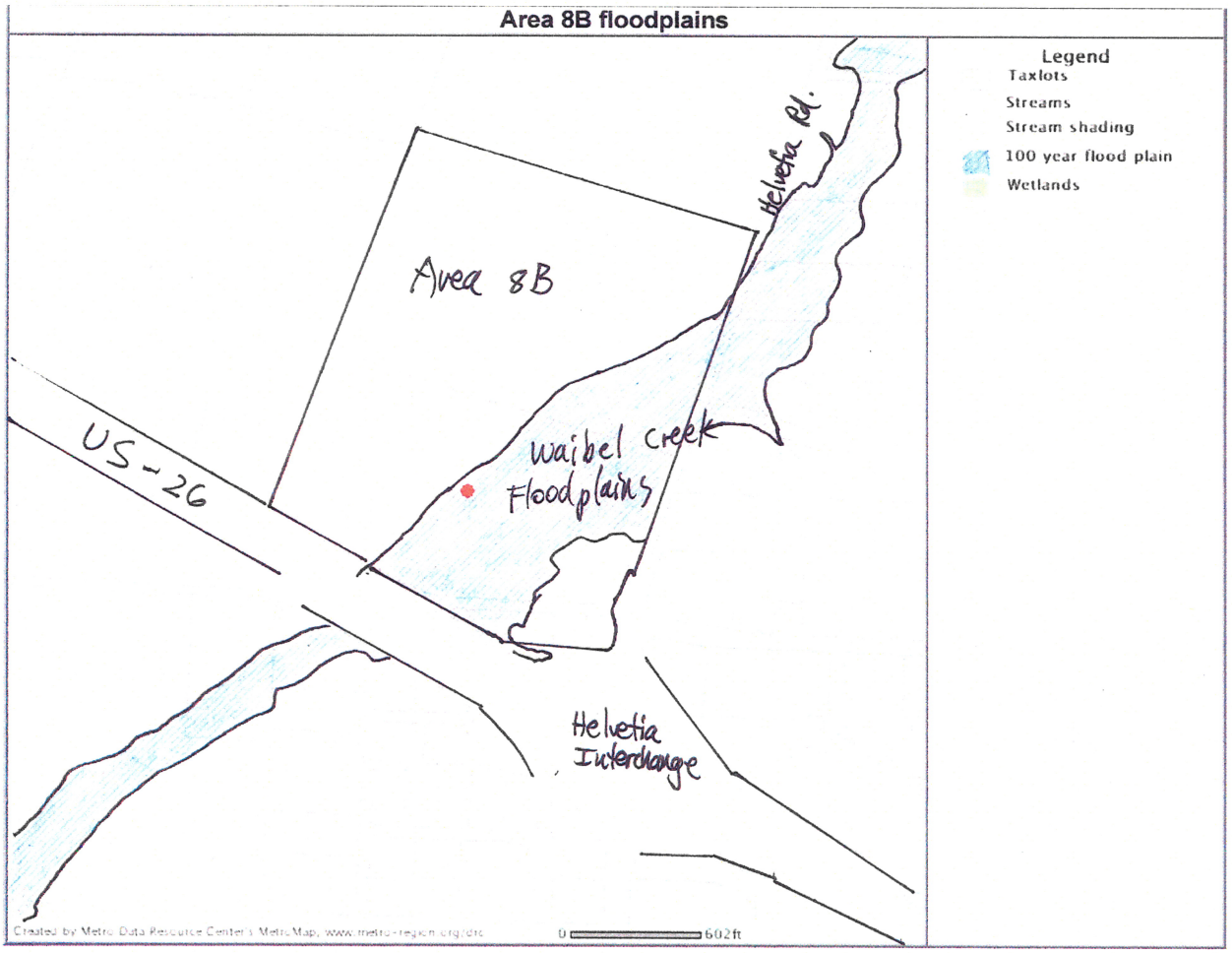
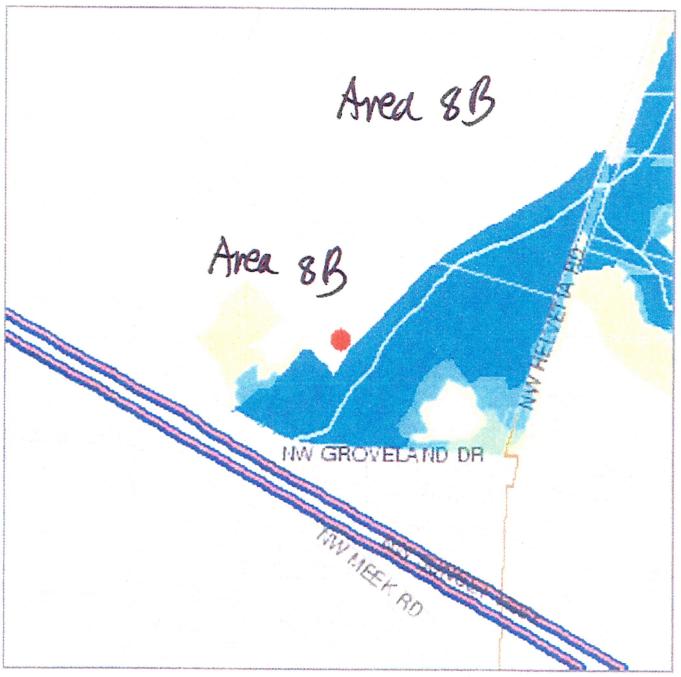


EXHIBIT 1
PAGE 3 OF 4

Council's recommendation on habitat protection

- Allow development
- Low habitat conservation area
- Moderate habitat conservation area
- High habitat conservation area
- Parks and open spaces
- Streams and rivers
- Not affected by recommendation

Inventory of regionally significant habitat



- Class 1 riparian, highest-value
- Class 2 riparian, medium-value
- Class 3 riparian, lower-value
- Class A wildlife, highest-value
- Class B wildlife, medium-value
- Class C wildlife, lower-value
- Impact areas
- Parks and open spaces
- Streams and rivers
- Not included in inventory

Standring Properties
24655 NW Groveland Drive
Hillsboro, OR 97124

EXHIBIT 1
PAGE 4 OF 4

Exhibit 2 - Save Helvetia Steering Committee Members and Supporters testified at the following hearings regarding urban and rural reserves:

1. Washington County Reserves Coordinating Committee HEARING, August 20, 2009

Save Helvetia Steering Committee Members

Amabisca, Cherry	Jacobs, Lyn
Bailey, Patricia	Mecklem, Greg
Bailey, Robert	Platt, John
Beinlich, Brian	Radtke, Steve

Save Helvetia Supporters

Amabisca, Allen	Price, Gary
Arnold, Noel	Pruitt, Mary
Furrow, Matthew	Schaaf, Alan
Gates, Pam	Sowders, Becky
Kasper, Steve	Stadelman, Ryan
Keith, Catherine	

2. METRO Council HEARING, September 24, 2009

Save Helvetia Steering Committee Members

Amabisca, Cherry	Just, James
Bailey, Patricia	Mecklem, Greg
Bailey, Robert	Peters, Linda
Jacobs, Lyn	Radkte, Steve

Save Helvetia Supporters

Amabisca, Allen	Mortensen, Wendy
Furrow, Matthew	Pruitt, Mary
Kasper, Steve	Schamp, Kris
Keith, Catherine	Stadelman, Ryan

3. METRO Council HEARING, October 15, 2009

Save Helvetia Steering Committee Members

Amabisca, Cherry	Hosey, Faun
Beinlich, Brian	Mecklem, Greg

Save Helvetia Supporters

Amabisca, Allen	Schoch, Casey
Arnold, Noel	Sowders, Becky
Gates, Pam	Wilson, Stuart

EXHIBIT 2
PAGE 1 OF 2

Gates, Spencer
Jacobson, Melissa
Young, Charlie

4. Washington County Board of Commissioners HEARING, December 8, 2009

Save Helvetia Steering Committee Members

Peters, Linda
Radtke, Steve

Save Helvetia Supporters

Beinlich, Mason
Gates, Pam
Grossen, DeLoris
Mortensen, Wendy
Jacobsen, Melissa
Sowders, Becky
Thorsgard, Eirik

5. Washington County Board of Commissioners HEARING, December 15, 2009

Save Helvetia Steering Committee Members

Amabisca, Cherry
Mecklem, Greg

Save Helvetia Supporters

Brockman, Hal
Price, Gary
Pruitt, Mary
Wilson, Stuart

Submitted written testimony

Amabisca, Adrian
Amabisca, Allen
Beinlich, Brian
Bailey, Robert
Furse, Elizabeth
Jacobs, Lyn
Platt, John
Schamp, Kris

6. METRO Council HEARING, January 20, 2010

Save Helvetia Steering Committee Members

Amabisca, Cherry
Bailey, Robert
Beinlich, Brian
Furse, Elizabeth
Hosey, Faun

Save Helvetia Supporters

Amabisca, Adrian
Amabisca, Allen
Brockman, Hal
Furrow, Matthew
Gates, Spencer
Grossen, DeLoris
Kasper, Steve
Schoch, Casey
Schoen, Don

EXHIBIT 2
PAGE 2 OF 2

Transportation needs for this sector and other development in the reserve can be met by Highway 26, which provides a high-capacity transit link to other areas of the region. Additionally, industrial development in this area will be proximate to existing and future labor pools residing in Hillsboro and nearby cities. These lands will also provide opportunities to attract new industries which would help diversify and balance the local and regional economy.

Urban Reserve 8B: Shute Road Interchange

General Description: Urban Reserve Area 8B is located at the northwest quadrant of the intersection of Sunset Highway and NW Shute Road. This site totals approximately 88 acres and includes land within the 100 year floodplain of Waibel Creek. The existing UGB and the corporate limits of Hillsboro run along the eastern border of the site, while the southern boundary runs along Sunset Highway and is contiguous to Urban Reserve Area 8A. Lands to the north and west of the site are agricultural lands.

How Urban Reserve 8B Fares Under the Factors: Urban Reserve Area 8B is a small portion of a Pre-Qualifying Concept Plan (PQCP) area analyzed by the city of Hillsboro to meet long-term growth needs. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves" under OAR 660-027-0050. WashCo Rec. 3113-3137.

Urban Reserve Factors 1 through 4

There are approximately 60 acres of buildable land within this urban reserve that could be developed at urban densities and served efficiently and cost-effectively by public facilities and services provided by the City of Hillsboro. Buildable lands within the UGB along with other urban reserve lands throughout the region will provide sufficient development capacity to support a healthy economy. 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. WashCo Rec. 3132.

Urban Reserve Factors 5 through 8

The natural ecological systems within the tributary of Waibel Creek and its associated floodplain on this site will be protected and potentially enhanced under the existing regulatory framework in Washington County and Hillsboro. Both concept and community level planning can assure a site design that will preserve and enhance ecological systems. Independent of other urban reserve lands in the region, this site is of adequate size to support a mix of housing types and, following a detailed community planning process, could be developed in a way that preserves applicable natural landscape features. Concept and community level planning in conformance with established city plan policies can establish a site design which will minimize adverse impacts on farm practices and natural landscape features in the area. Adjoining lands are not designated rural reserves.

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 site 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.

Urban Reserve 8C - Bethany West

Note: Urban Reserve Area 8C is comprised of 2 separate collections of parcels which are further identified as: *Urban Reserve Area 8C- Bethany West / PCC Rock Creek*; and *Urban Reserve Area 8C- Bethany West / West Union* – separate findings and conclusions for these subareas are provided below.

Study Area 8C – Bethany West / PCC Rock Creek

General Description: Including the Peterkort site, the PCC Rock Creek portion of Study Area 8C is approximately 173 acres in size. This land is located near the intersection of NW Springville Rd. and NW 185th Avenue at the northern end of the PCC Rock Creek Campus. This area abuts the current UGB along its eastern and southern boundaries.

One of the Metro conditions for the ordinance that brought North Bethany into the UGB called for the county to "recommend appropriate long-range boundaries for consideration by the Council in future expansions of the UGB or designation of urban reserves." Additional urban land to the immediate west of the North Bethany Community Planning Area is necessary for the provision of sanitary sewer and storm drainage and to assist in the funding for a primary road link to SW 185th Avenue.

Following the directives of the Board of County Commissioners at its May 25, 2010 public hearing on Ordinance No. 733, the Peterkort site was included within this Urban Reserve subarea. In order to address a number of concerns raised in relation to the wetlands and floodplains on the Peterkort site as well as within the "West Union" portion of Urban Reserve Area 8C, a Special Concept Plan Area overlay was added to Ordinance No. 733 (Special Concept Plan Area C). This special plan overlay requires application of the "Integrating Habitats" approach to planning and development of these lands. Independent findings for inclusion of the Peterkort site are provided above under ***Section B*** of these findings. Additional information relating to the Peterkort site is included in the record on pages 8533 to 8540.

How Urban Reserve 8C Fares Under the Factors: Note that this urban reserve area is included as an important element of the North Bethany Community Planning area. See associated findings related to the Peterkort site under ***Section B*** of these findings. This section of Urban Reserve Area 8C is a small portion of a Pre-Qualifying Concept Plan (PQCP) area analyzed by the city of Beaverton to meet long-term growth needs. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves" under OAR 660-027-0050. WashCo Rec. 3062.

EXHIBIT 3 92
PAGE 2 OF 2

Why This Area was Designated Urban Reserve:
Urban Reserve Area 8A was specifically selected for its key location along the Sunset Highway and north of existing employment land in Hillsboro and also because of the identified need for large-lot industrial sites in this region. *(Washington County Record Pages 3124-3128).* This area's pattern of relatively large lots can help support Metro's recommendation for roughly 3,000 acres of large-parcel areas which provide capacity for emerging light industrial high-tech or biotech firms such as SolarWorld and Genentech. Transportation needs for this sector and other development in the reserve can be met by Highway 26, which provides a high-capacity transit link to other areas of the region. Additionally, industrial development in this area will be proximal to existing and future labor pools residing in Hillsboro and nearby cities. These lands will provide opportunities to attract new industries which would help diversify and balance the local and regional economy.

Urban Reserve Area 8B: Shute Road Interchange

General Description:
Urban Reserve Area 8B is located at the northwest quadrant of the intersection of Sunset Highway and NW Shute Road. This site totals approximately 88 acres and includes land within the 100 year floodplain of Waibel Creek. The existing UGB and the corporate limits of Hillsboro run along the eastern border of the site, while the southern boundary runs along Sunset Highway and is contiguous to Urban Reserve Area 8A. Lands to the north and west of the site are agricultural lands.

How Urban Reserve 8B Fares Under the Factors:
Urban Reserve Area 8B is a small portion of a Pre-Qualifying Concept Plan (PQCP) area analyzed by the city of Hillsboro to meet long-term growth needs. The PQCP analysis included a detailed review of the initial planning area and provided findings demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves" under OAR 660-027-0050. *(Washington County Record Pages 3113-3137).*

Urban Reserve Factors 1 through 4:
There are approximately 60 acres of buildable land within this urban reserve that could be developed at urban densities and served efficiently and cost-effectively by public facilities and services provided by the City of Hillsboro. Buildable lands within the UGB along with other urban reserve lands throughout the region will provide sufficient development capacity to support a healthy economy. 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. *(Washington County Record Page 3132).*

EXHIBIT 4
PAGE 1 OF 2

Urban Reserve Factors 5 through 8:
The natural ecological systems within the tributary of Waibel Creek and its associated floodplain on this site will be protected and potentially enhanced under the existing regulatory framework in Washington County and Hillsboro. Both concept and community level planning can assure a site design that will preserve and enhance ecological systems. Independent of other urban reserve lands in the region, this site is of adequate size to support a mix of housing types and, following a detailed community planning process, could be developed in a way that preserves applicable natural landscape features. Concept and community level planning in conformance with established city plan policies can establish a site design which will minimize adverse impacts on farm practices and natural landscape features in the area. Adjoining lands are not designated rural reserves.

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 site 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.

Urban Reserve Area 8C - Bethany West

Note: Urban Reserve Area 8C is comprised of 2 separate collections of parcels which are further identified as: *Urban Reserve Area 8C- Bethany West / PCC Rock Creek*; and *Urban Reserve Area 8C- Bethany West / West Union* – separate findings and conclusions for these subareas are provided below.

Bethany West / PCC Rock Creek

General Description:
Including the Peterkort site, the PCC Rock Creek portion of Urban Reserve Area 8C is approximately 173 acres in size. This land is located near the intersection of NW Springville Rd. and NW 185th Avenue at the northern end of the PCC Rock Creek Campus. This area abuts the current UGB along its eastern and southern boundaries.

One of the Metro conditions for the ordinance that brought North Bethany into the UGB called for the county to "recommend appropriate long-range boundaries for consideration by the Council in future expansions of the UGB or designation of urban reserves." Additional urban land to the immediate west of the North Bethany Community Planning Area is necessary for the provision of sanitary sewer and storm drainage and to assist in the funding for a primary road link to SW 185th Avenue.

EXHIBIT 4
PAGE 2 OF 2

Agricultural Lands includes land that is "exception land" no longer protected for agriculture for farming. Of the 28,615 acres designated urban reserves, some 10,767 acres are zoned EFU. Even including the 2,774 acres of these EFU lands that are classified by ODA as "conflicted", these 10,767 acres represent four percent of all land zoned EFU in the three counties. If the "conflicted" acres are removed from consideration, the percentage drops to four percent. Staff Report, June 9, 2010, Metro Rec.179-180.

If the region's effort to contain urban development within the existing UGB and these urban reserves for the next 50 years is successful, the UGB will have accommodated an estimated 74 percent increase in population on an 11-percent increase in the area within the UGB. No other region in the nation can demonstrate this growth management success. Most of the borders of urban reserves are defined by a 50-year "hard edge" of 266,954 acres designated rural reserves, nearly all of which lies within five miles of the existing UGB. Of these rural reserves, approximately 249,116 acres are Foundation or Important Agricultural Land. Staff Report, June 9, 2010, Metro Rec.119-120; 179-180.

Why did the region designate *any* Foundation Agricultural Land as urban reserve? The explanation lies in the geography and topography of the region, the growing cost of urban services and the declining sources of revenues to pay for them, and the fundamental relationships among geography, topography and the cost of services. The region aspires to build "great communities." Great communities are those that offer residents a range of housing types and transportation modes from which to choose. Experience shows that compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems offer the best range of housing and transportation choices. *State of the Centers: Investing in Our Communities*, January, 2009. Metro Rec.181-288. The urban reserves factors in the reserves rules derive from work done by the region to identify the characteristics of great communities. Urban reserve factors (1), (3), (4),and(6)[2] especially aim at lands that can be developed in a compact, mixed-use, walkable and transit-supportive pattern, support by efficient and cost-effective services. Cost of services studies tell us that the best geography, both natural and political, for compact, mixed-use communities is relatively flat, undeveloped land. *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation,*Metro Rec. 1163-1187; *Regional Infrastructure Analysis*, Metro Rec. 440-481.

The region also aspires to provide family-wage jobs to its residents. Urban reserve factor (2) directs attention to capacity for a healthy economy.[3] Certain industries the region wants to attract prefer large parcels of flat land. Staff Report, June 9, 2010, Metro Rec. 172-178. Water,

---

[2] (1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;
(3) Can be efficiently and cost-effectively service with public schools and other urban-level public facilities and services by appropriate and financially capable providers;
(4) Can be designed to be walkable and service with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate services providers;
(6) Includes sufficient land suitable for a range of needed housing types.

[3] (2) Includes sufficient development capacity to support a healthy economy.

EXHIBIT 5 16
PAGE 1 OF 4

This certainty is among the reasons the four governments chose the longer, 50-year, reserves period.

The region's governments have also debated how best to protect important natural landscape features at the edges of the urban area. The partners' agreements and these ordinances now identify the features that will define the extent of outward urban expansion.

The region's urban and rural reserves are fully integrated into Metro's Regional Framework Plan and the Comprehensive Plans of Clackamas, Multnomah and Washington counties. Metro's plan includes a map that shows urban and rural reserves in all three counties. Each of the county plans includes a map that shows urban and rural reserves in the county. The reserves shown on each county map are identical to the reserves shown in that county on the Metro map. Each of the four plans contains new policies that ensure accomplishment of the goals for the reserves set by the four local governments and by state law. These new policies are consistent with, and carry out, the intergovernmental agreements between Metro and the three counties signed in February, 2010.

Together, these reserves signal the region's long-term limits of urbanization, its commitment to stewardship of farmland and forests, and its respect for the features of the natural landscape that give the people of the region their sense of place. Urban reserves, if and when added to the UGB, will take some land from the farm and forest land base. But the partners understood from the beginning that some of the very same characteristics that make an area suitable for agriculture also make it suitable for industrial uses and compact, mixed-use, pedestrian and transit-supportive urban development. The most difficult decisions made by the four governments involved Foundation Agricultural Land[1] near the existing UGB and the circumstances in which this land should be designated as urban reserve to accommodate growth in a compact form and provide opportunities for industrial development difficult or impossible on steep slopes.

Some important numbers help explain why the partners came to agree that the adopted system, in its entirety, achieves this balance. Of the total 28,615 acres designated urban reserves, approximately 13,981 acres are Foundation or Important Agricultural Land. This represents only four percent of the Foundation and Important Agricultural Land studied for possible urban or rural reserve designation. If all of this land is added to the UGB over the next 50 years, the region will have lost five percent of the farmland base in the three-county area. Staff Report, June 9, 2010, Metro Rec.119; 179-180.

There is a second vantage point from which to assess the significance for agriculture of the designation of urban reserves in the three-county region: the percentage of land zoned for exclusive farm use in the three counties that is designated urban reserve. Land zoned EFU has emerged over 35 years of planning as the principal land base for agriculture in the counties, and is protected for that purpose by county zoning. The inventory of Foundation and Important

[1] Those lands mapped as Foundation Agricultural Land in the January, 2007, Oregon Department of Agriculture report to Metro entitled "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands.

sewer and transportation costs rise as slope increases. *Core 4 Technical Team Preliminary Analysis Reports for Water, Sewer and Transportation,* Metro Rec. 1163-1187; *Regional Infrastructure Analysis*, Metro Rec. 440-481. Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development is not only very expensive, it is politically difficult. There is no better support for these findings than the experience of the city of Damascus, trying since its addition to the UGB in 2002 to gain the acceptance of its citizens for a plan to urbanize a landscape characterized by a few flat areas interspersed among steeply sloping buttes and incised stream courses and natural resources. Staff Report, June 9, 2010, Metro Rec.289-300.

Mapping of slopes, parcel sizes, and Foundation Agricultural Land revealed that most flat land in large parcels without a rural settlement pattern at the perimeter of the UGB lies outside Hillsboro, Cornelius, Forest Grove, Beaverton, and Sherwood. These same lands provide the most readily available supply of large lots for industrial development. *Business Coalition Constrained Land for Development and Employment Map*, Metro Rec. 301; 1105-1110. Almost all of it is Foundation Agricultural Land. Had the region been looking only for the best land to build great communities, nearly all the urban reserves would have been around these cities. It is no coincidence that these cities told the reserves partners that they want significant urban reserves available to them, while most other cities told the partners they want little or no urban reserves. *Washington County Cities' Pre-Qualified Concept Plans*, WashCo Rec. 3036-3578.

Despite these geopolitical and cost-of-services realities, the reserves partners designated extensive urban reserves that are *not* Foundation Agricultural Lands in order to meet the farm and forest land objectives of reserves, knowing they will be more difficult and expensive to urbanize:

Urban Reserve 1D east of Damascus and south of Gresham (2,716 acres);
Urban Reserve 2A south of Damascus (1,239 acres);
Urban Reserves 3B, C, D, F and G around Oregon City (2,232 acres);
Urban reserves 4A, B and C in the Stafford area (4,699 acres);
Urban reserves 4D, E, F, G and H southeast of Tualatin and east of Wilsonville (3,589 acres);
Urban Reserve 5F between Tualatin and Sherwood (572 acres);
Urban Reserve 5G west of Wilsonville (203 acres); and
Urban Reserve 5D south of Sherwood (447 acres).

This totals approximately 15,697 acres, 55 percent of the lands designated urban reserve.

Our reasons for not selecting more non-Foundation Agricultural Land as urban reserves from the 400,000 acres studied can be found in our analysis of these lands using the urban reserve factors. First, we began our analysis by examining lands within five miles of the UGB. Most of these lands initially studied are beyond the affordable reach of urban services. With one exception (Urban Reserve 1D), designated urban reserves lie within two miles of the UGB.

Second, much of the Important and some Conflicted Agricultural Lands are separated from the UGB by, or include, important natural landscape features:

- East of Sandy: the Sandy River Canyon and the county's scenic river overlay zone
- Eagle Creek and Springwater Ridge: the bluffs above the Clackamas River
- Clackamas Heights (portion closest to UGB): Abernethy Creek
- South of Oregon City: steep slopes drop to Beaver Creek
- West Wilsonville: Tonquin Scablands
- Bethany/West Multnomah: Forest Park and stream headwaters and courses.

Urban reserve factors (5), (7) and (8)[4] seek to direct urban development away from important natural landscape features and other natural resources.

Third, much of the Important and Conflicted Agricultural Lands rate lower against the urban reserves factors in comparison to areas designated urban reserve, or remain undesignated for possible designation as urban reserve if the region's population forecast proves too low:[5]

- Clackamas Heights
- East Wilsonville
- West Wilsonville
- Southeast of Oregon City
- Southwest of Borland Road
- Between Wilsonville and Sherwood

Lastly, some of the Important and Conflicted Agricultural Lands lies adjacent to cities in the region that have their own UGBs and want their own opportunities to expand over time:

- Estacada
- Sandy

These reasons are more fully set forth in the explanations for specific urban and rural reserves in sections VI-VIII.

The record of this two and one-half-year effort shows that not every partner agreed with all urban reserves in each county. But each partner agrees that this adopted system of urban and rural reserves, in its entirety, achieves the region's long-range goals and a balance among the objectives of reserves: to accommodate growth in population and employment in sustainable and

---

[4] (5) Can be designed to preserve and enhance natural ecological systems;
(7) Can be developed in a way that preserves important natural landscape features included in urban reserves;
(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.

[5] "Retaining the existing planning and zoning for rural lands (and not applying a rural or an urban reserves designation) is appropriate for lands that are unlikely to be needed over the next 40 years, or (conversely) that are not subject to a threat of urbanization." Letter from nine state agencies to the Metro Regional Reserves Steering Committee, October 14, 2009, page 15.

EXHIBIT 5 18
PAGE 4 OF 4

HAND DELIVERED

GWSB

GARVEY SCHUBERT BARER

eleventh floor
121 sw morrison street
portland, oregon 97204-3141

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

DEPT OF
JUL 13 2010
LAND CONSERVATION
AND DEVELOPMENT