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DEPT OF
JUL 14 2010
LAND CONSERVATION
AND DEVELOPMENT

SUBMITTED VIA E-MAIL

**Re: Written Objections on behalf of Forest Park Neighborhood
Association Supporting Rural Reserve Areas 9A, 9B, 9C, 9D & 9F**

Dear DLCD:

I represent the Forest Park Neighborhood Association and several individuals¹ (collectively "Forest Park NA"), all of whom participated in the Urban/Rural Reserves process before Multnomah County and Metro. These comments specifically address Areas 9A, 9B, 9C, 9D and 9F. As a preliminary matter, we strongly support Metro's decision designating these areas as Rural Reserves. However, the findings adopted in support of these designations appear somewhat weak in light of the factors in OAR 660-027-0060. In that sense, Multnomah County's (and thus Metro's) decision violates the administrative rule by not explaining fully why and how Areas 9A, 9B, 9C, 9D and 9F qualify for Rural Reserve designation. I submit this objection in support of Multnomah County's and Metro's decision as supplemental findings and citations to evidence and arguments in the record that support Metro's decision.² By way of a remedy, FPNA asks that DLCD supplement the findings to address the Rural Reserve factors as discussed below, including citations to evidence in the record.

As a starting point, both Multnomah County and Metro designated Areas 9A, 9B, 9C, 9D and 9F as Rural Reserve. These are all areas of great concern for the Forest Park NA because

¹ In addition to the Forest Park Neighborhood Association, this letter is submitted on behalf of Carol Chesarek, Jim Emerson, Milly Skach, Joseph C. Rayhawk, Greg Malinowski, Christopher H. Foster, Claudia Martin, Kevin O'Donnell, Mary Telford, Jerry Grossnickle, all of whom appeared before Multnomah County, Metro or both either in person or in writing.

² Multnomah County Board of Commissioners was responsible for designating Rural Reserves within the unincorporated portion of the County and adopting findings that addressed the Rural Reserve factors in OAR 660-027-0060. Metro adopted the County's decision in this regard. Throughout this Objection, I refer to Multnomah County's and Metro's decisions interchangeably.

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they are contiguous with Forest Park. Areas 9A, 9B, 9C and 9D are within 3 miles of the current Metro Urban Growth Boundary. Portions of 9F are within 3 miles of the Scappoose UGB. In that position, all of these areas are subject to the on-going threat of urbanization unless they are preserved as Rural Reserves. Highway 30 also brings an urbanization threats to 9D and 9F, as confirmed by the Joint State Agency Comments letter.³ Due to their precarious situation as a target for urbanization and development, all of these areas need long-term protection from urbanization. This is precisely the focus of the first Rural Reserve factor in OAR 660-027-0060(2). Only a Rural Reserve designation now can achieve this level of long-term protection, without which, the battle to make these areas developable and bring them into the UGB will be never-ending. The location of these areas and the on-going pressure to urbanize and develop them also argues strongly against leaving them undesignated. Their location adjacent or near Forest Park serves a natural boundary between the urban development of the Bethany Area in Washington County and the forested habitat of Forest Park. The effectiveness of this rural-urban boundary was recognized by Metro and affirmed by LUBA and the Court of Appeals and will function only if Areas 9A, 9B, 9C, 9D and 9F are designated as Rural Reserve. See footnote 5 and related text re: *West Linn v. LCDC*, 201 Or.App. 419, 442-443 (2005).

Second, Metro's decision and findings correctly demonstrate (and conclude), none of these areas is appropriate for an Urban Reserve designation. None of these areas meet the Urban Reserve factors, none can be served with urban services and facilities – easily, cost-effectively or at all, and all ranked low to medium when graded according to the Urban Reserve factors in OAR 660-027-0050. The City of Portland, the Multnomah County Reserves Citizen Advisory Committee, the Multnomah County Planning Commission and the Multnomah County Board of Commissioners all agreed that these areas do not qualify for Urban Reserve designation. None is easily served with urban services and facilities, particularly transportation facilities, which would be difficult and expensive to up-grade to urban standards. Even the traffic engineer for the Bethany Area developers determined that the surrounding roads, *i.e.*, Skyline Blvd, Springville Road and Germantown Road, would require “major investments,” significant improvements and expansions to serve any urban development in Areas 9B and 9C. While water service is possible, there is no plan to serve these areas with sanitary sewer, certainly not without the construction of significant new and expensive infrastructure.

These areas are a virtual “no man’s land” of governance. Neither Multnomah County nor the City of Portland have ever exerted any strong governance over these areas. They are simply too far from Portland’s corporate limits, and too far from Beaverton (2 miles) for either city to extend urban services or exert governance over them. Given their remote and predominantly forested nature, steep slopes and criss-crossing riparian corridors that characterize Areas 9A, 9B, 9C, 9D and 9F pose significant (*i.e.*, expensive) construction and maintenance problems should any city undertake the provision of urban services to them. Neither Portland nor Beaverton see

³ Oct 14, 2009, *Joint State Agency Comments on Metro Urban and Rural Reserves*, submitted to Metro Reserves Steering Committee and Core 4. This document is in the record and is incorporated herein by this reference.

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these areas as priority locations for meeting urban housing needs, a conclusion that even the Bethany Area land owners (aka the "East Bethany Owners Collaborative") and developers cannot deny. City of Portland, Forest Park Neighborhood Association and Forest Park Conservancy are very concerned about the damaging effect that urbanization of Areas 9A, 9B, 9C, 9D and 9F will have on the Forest Park environment.

Third, Forest Park Neighborhood Association, its officers and members submitted numerous letters to the Multnomah County Commissioners and the Planning Commission over a 3-year period advocating for preservation of these areas and documenting their physical, locational, biological factors that justified their designation as Rural Reserves.¹ All of these letters are in the record, and I hereby incorporate them herein by this reference and make them a part of this submission in support of Metro's decision designating Areas 9A, 9B, 9C, 9D and 9F as Rural Reserves.

Collectively and individually, Areas 9A, 9B, 9C, 9D and 9F meet the criteria for Rural Reserve designation under the factors in OAR 660-027-0060(2) & (3) due to their natural landscape features and, in the case of 9D and 9F, its suitability for long-term forestry:

- All of these areas are subject to urbanization pressure as clearly shown by the persistent interest and lobbying efforts of a few owners and developers. That urbanization pressure and these development objectives pose a real and imminent threat so long as any part of Areas 9A, 9B, 9C and 9D remain undesignated. All of Areas 9A, 9B, 9C and 9D should therefore be protected with a Rural Reserve designation. This is why Metro explicitly stated in Resolution 09-4010 that all such lands should be given a reserve designation and not left undesignated.
- Multnomah County has mapped most of Area 9F and large portions of Areas 9D and 9C as slope hazards. A 2009 DOGAMI report, that was submitted into the Metro record on May 25, 2010, shows significant landslide hazards in the West Hills, including parts of Areas 9B and 9C and most of 9D (Areas 9A, 9B and 9F were not within the geographic scope of the report).⁴
- Areas 9A, 9B, 9C, 9D and 9F are embedded in (surround by) Forest Park and have regionally important fish, plant and wildlife habitat, as shown by the regionally recognized significance of Forest Park as a wildlife and habitat preserve and by the Natural Landscape Features Inventory done by Metro. These areas have the same habitat qualities as Forest Park; Area 9C, 9D and 9F have extensive forest cover, and all five areas are all interconnected with one another and Forest Park. Together they provide critical connections between Forest Park and the larger ecosystems of the Coast Range,

⁴ 2009, Burns, William J. and Mickelson, Katherine, *Regional Landslide Susceptibility Maps of the Western Half of the Linton Quadrangle, Washington and Multnomah Counties, Oregon*. Oregon Dept. of Geology and Mineral Industries. This document is in the record and is incorporated herein by this reference.

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Multnomah Channel, the Willamette River and the Tualatin Basin.

- Multiple headwater streams flow through all of these areas, and their preservation in a Rural Reserve would protect the water quality of these streams and contribute to downstream water quality and quantity.
- Forest Park and the West Hills have a definite sense of place, which all of these areas share by virtue of their forest cover and interconnected wildlife habitat. The value of preserving views of forests and farms on the NW Hills, which provide a regional landmark, also meets this criterion.
- If preserved as Rural Reserves, the western edge of Areas 9B and 9C form a natural and important boundary between the urban development of the Bethany Area in Washington County and the forested habitat of Forest Park. The effectiveness and legal significance of this rural-urban boundary was recognized by Metro and affirmed by LUBA and the Court of Appeals in *City of West Linn v. LCDC*, 201 Or.App. 419 (2005).⁵ This natural boundary will only function if Areas 9B and 9C are designated Rural Reserve.
- Finally, these areas are contiguous with Forest Park and provide easy access to recreational opportunities on Forest Park's trail system – again, a strong attribute in favor of giving all of Areas 9A, 9B, 9C, 9D and 9F a Rural Reserve designation. Metro is planning a new regional trail that will connect Bethany to Forest Park with a proposed route through 9B and 9C.

Metro specifically directed the three Portland area counties to not leave land adjacent to the Urban Growth Boundary undesignated, and we strongly supported that position. Development interests urged Multnomah County to leave Areas 9B & 9C undesignated (or designated as urban reserves) in the hopes that they could later get those areas urbanized and approved for urban development. Wisely, Multnomah County resisted that suggestion, and designated all of these areas as Rural Reserves precisely because they met the Rural Reserve factors and did not meet the Urban Reserve factors. Again, Metro affirmed that decision.

The City of Portland issued a strong letter to Multnomah County on December 10, 2009, signed by Mayor Sam Adams and Commissioner Amanda Fritz, arguing for the preservation of

5 LUBA and the Court of Appeals affirmed Metro's finding about this natural urban/rural boundary:

“The Bethany expansion area will have clear boundaries that serve to both visibly highlight the line separating urban and rural uses, and to also serve as a buffer between urban development and rural uses. NW 185th Avenue, Abby Creek and its adjoining riparian zone and slopes and the powerline easement coupled with the Multnomah County boundary line all serve to clearly demarcate and buffer the proposed expansion area.”

City of West Linn v. LCDC, 201 Or.App. at 442-443.

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Areas 9A, 9B and 9C due to their compliance with the Rural Reserve factors and their non-compliance with the Urban Reserve factors in the administrative rule:

“We conclude that the suitability criteria support a rural designation over “urban,” and a “no designation” is too uncertain and too ambiguous. Further, [no designation] may not meet the statutory purpose statement envisioned on SB 1011 and contained in OAR 660-027-0005 of either protecting lands – for their farm, forest, natural systems or natural landscape features value – or designating them to meet future urban land needs.

We believe this means that where lands meet the rural reserve criteria, and that these outweigh the urban criteria, then there is an affirmative obligation to designate those lands as rural. Urban and rural designations were meant to work together to help ensure livability communities, including the protection of the natural landscape features that define the region for its residents. A “no designation” does not work to achieve this end. Relevant language in the purpose statement states in part,

“...Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural or forest land and for natural landscape features that limit urban development or define natural boundaries of urbanization.”

“The natural landscape features that extend westward from Forest Park include riparian streams, wildlife habitat, and corridors for ecological and scenic connectivity. These are significant features in themselves. When taken together with the County line, which is the same as the large power line easement, it divides the North Bethany concept plan area and Lower Springville Road/East Bethany properties area in ways that both “limit urban development” and “define natural boundaries of urbanization.”

Lower Springville Road, Area 9B, contains a large, active and currently operating commercial farm – a land use that helps qualify the area for Rural Reserve designation. Preservation of Areas 9B, 9C and 9D as Rural Reserve buffers and protects the mature forest that covers Area 9F – again a land use that clearly qualifies this area for Rural Reserve designation.

The Oregon Department of Forestry⁶ submitted the following commentary that applies to Areas 9A, 9B, 9C, 9D and 9F, all of which are forested, especially Areas 9D and 9F:

“In addition to the economic contribution, forestlands disproportionately provide ecosystem service values, including wildlife habitat and high quality water. Forestlands also represent a range of public safety risks related to wildfire and rapidly moving landslides. These factors also pose risks to infrastructure and developed property.”

⁶ Jan 29, 2008, *Criteria for Consideration of Forestlands within Future Rural Reserves*, Oregon Dept. of Forestry. This document is in the record and is incorporated herein by this reference.

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“In general, locations that are subject to rapidly moving geological events and flooding, including their run-out paths or floodplains (including channel migration zone) should be given high priority for rural reserve designation. These types of geological events are such that risk mitigation and prevention are unlikely to be successful in the long-term”

Relevant to Areas 9A, 9B, 9C, 9D and 9F, Multnomah County has adopted the following statement in its West Hills Rural Area Plan, component of its Comprehensive Plan about the significance of Forest Park and related and connected forest patches as habitat critical to wildlife populations:

“WILDLIFE HABITAT

“Wildlife Habitat has been identified as a significant Goal 5 resource in the West Hills. All of the West Hills, excepting a small area consisting of the Bonny Slope subdivision along Laidlaw Road and adjacent areas, has been determined to be significant wildlife habitat, because it is all part of an ecosystem which supports a diverse wildlife population relatively undisturbed by the rural levels of development in the West Hills.”

“Finally, the West Hills’ relationship to Forest Park is critical to the West Hill’s significance... Forest Park, in isolation, is not large enough to support self-sustaining populations of medium and large size mammals, such as elk, bobcats, mountain lions ... and black bears for which hundreds of square miles of habitat would be required...

Thus it is the quantity of the West Hills Wildlife Habitat Area in relation to its quality and location that are critical to this inquiry. High quality habitat elsewhere in Multnomah County cannot substitute for even medium quality habitat in the West Hills. It is because medium quality habitat is limited, and threatened by conflicting uses at a particular location, that makes the West Hills a significant Goal 5 resource.

The following statement from *Wild About the City*⁷ is also relevant to Multnomah County Areas 9A, 9B, 9C, 9D and 9F adjoining Forest Park emphasize the importance of these areas for wildlife habitat in the fragmented landscape of the West Hills surrounding Forest Park:

“This report discusses the concept of contiguous areas of natural habitat for wildlife and the results of the fragmentation of habitat into “islands.” In the latter instance, numerous biological studies (see bibliography for Wild About the City) have documented the diminishment and loss of native plants and animals due to a lack of

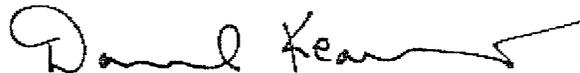
⁷ 1990, Marcy Houle, *Wild About the City*. This document is in the record and is incorporated herein by this reference.

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connection to a larger ecosystem. Continued development in the West Hills wildlife area could result in the fragmentation, and therefore the degradation of both the West Hills' and Forest Park's natural systems, the loss of species diversity, the permanent loss of natural populations to catastrophe such as fire, and the weakening of plant and animal populations due to the lack of genetic diversity available in larger areas."

Based on all of these facts and factors, the Multnomah County Board of Commissioners made the legitimate policy choice, based on the factors in the administrative rule, to designate Areas 9A, 9B, 9C, 9D and 9F as Rural Reserves and not as Urban Reserves. Metro affirmed and adopted that decision. The record contains factual information about each of these areas that clearly shows that they meet the Rural Reserve factors and do not meet the Urban Reserve factors. Even though the findings adopted by Metro in support of its decision are not very specific with regard to Areas 9A, 9B, 9C, 9D or 9F, that evidence exists in the record and corresponds to the factors in the administrative rule and support Metro's final decision.

Sincerely,



Daniel Kearns

cc: Richard Whitman, Director (richard.whitman@state.or.us)

¹ I incorporate herein the following materials previously submitted in support of Areas 9A, 9B, 9C, 9D & 9F:
Oct. 5, 2007 letter from Jim Emerson and the FPNA to Multnomah County BOCC
May 28, 2008 letter from Leslie Hildula and FPNA to Multnomah County BOCC
March 25, 2009 letter from Jim Emerson and FPNA to Multnomah County BOCC
June 23, 2009 letter from Jim Emerson and FPNA to Multnomah County BOCC
July 28, 2009 letter from Jim Emerson and FPNA to Multnomah County PC
Sept. 2, 2009 letter from Jerry Grossnickle & Bruce Wakefield to Multnomah County BOCC
Sept. 10, 2009 letter from Jim Emerson and FPNA to Multnomah County BOCC
Nov. 29, 2009 letter from Jim Emerson and FPNA to Multnomah County BOCC
Dec. 1, 2009 letter from Judith Emerson and FPNA to Multnomah County BOCC
Dec. 8, 2009 letter from Jim Emerson and FPNA to Multnomah County BOCC
Dec. 10, 2009 letter from Mayor Sam Adams and Commissioner Amanda Fritz to Multnomah County BOCC
Jan. 28, 2010 letter from Daniel Kearns, on behalf of FPNA, to Multnomah County BOCC
April 5, 2010 packet from Carol Chesarek to Multnomah County BOCC (pp 4439-4448 in the County record)
May 6, 2010 packet from Carol Chesarek to Multnomah County BOCC (pp 4817-4878 in the County record)
May 8, 2010 letter from Carol Chesarek to Multnomah County BOCC
May 25, 2010 letter from Carol Chesarek to Multnomah County BOCC
May 25, 2010 letter from Carol Chesarek to Metro Council re: West Hills Areas 9B in Multnomah County
May 26, 2010 letter from Carol Chesarek to Multnomah County BOCC