

Item 6

**Metro Urban and Rural Reserves Rulemaking Hearing
Comment Letters Received After Mailing of Staff Report**

CITY OF HILLSBORO



November 26, 2007

Email Transmitted

Hon. John Van Landingham, Chair
And Members
Oregon Land Conservation & Development
Commission
635 Capital Street NE, Ste. 150
Salem, OR 97301-2540

RE: Draft Administrative Rules: Metro Area Urban and Rural Reserves.

Dear Chair Van Landingham & Commissioners:

As an appointee, Hillsboro staff participated in all LCDC Rulemaking Workgroup meetings on Metro Urban and Rural Reserves. We support the latest draft of the proposed Urban/Rural Reserves Rule (dated October 31, 2007) as presented to the Commission by DLCD staff.

Our remarks follow up on the Workgroup Chair suggestion that members should express their views on a couple of significant, unresolved policy issues.

The draft Rule comes to LCDC with two key unresolved policy issues: 1) whether the word "best" should be inserted in draft Sec. 660-027-0040(10) or 660-027-0005(2); and, 2) whether proposed additional "criteria" should be inserted in Sec. 660-027-0060 Rule which would require that "foundation agriculture lands" within two miles of a UGB shall be designated Rural Reserves unless it is shown that such land is "appreciably better" for an Urban Reserve designation. Land would be "appreciably better" for Urban Reserve designation if it is capable of serving as one or more high-density, mixed use service center *that cannot be accommodated on less viable lands*. (Emphasis added.)

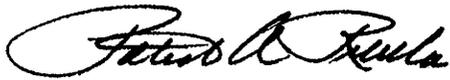
Should the Commission decide that "best" should be inserted into the Rule, we concur with Metro staff that "best" should be inserted only in Sec. 660-027-0005(2) which states the "purpose" of the draft Rules. In this placement, "best" would state a clear "policy" direction in the Rule to pursue the "best livable communities" in future Urban Reserves, and to pursue agricultural and forest industries vitality and viability in Rural Reserves in the Metro Area. Placing "best" in Sec. 660-027-0040(10) would make it a "standard" that could lead to endless rounds of debates (both political and legal) whether Metro and its county partners have sufficiently demonstrated that the lands ultimately designated Urban and Rural Reserve Areas would "best" ensure "livable communities" and, concurrently, would "best" ensure agricultural and forest industries viability and vitality, respectively.

LCDC Commissioners
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We do not support the proposed additional "appreciably better" criteria for 660-027-0060. We believe it runs counter to the Legislature's basic intent and objective of SB 1011 – as we perceived them – to put prospective Urban and Rural Reserve areas on an equal, balanced footing when Metro and its regional partners consider the simultaneous and concurrent designations of Urban and Rural Reserve areas.

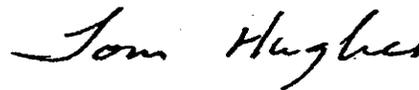
Thank you for the opportunity to present and submit these remarks into your record on possible LCDC Administrative Rules for Metro Area Urban and Rural Reserves.

CITY OF HILLSBORO:



Patrick A. Ribellia
Planning Director

Approved for submittal:



Tom Hughes
Mayor



OREGON
ASSOCIATION OF
NURSERIES

29751
SW Town Center
Loop W

Wilsonville, OR
97070

Phone
503.682.5089

Toll-Free
1.800.342.6401

Fax
503.682.5099

Web
www.oan.org

November 26, 2007

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

Dear Commissioners:

The Oregon Association of Nurseries is based in Wilsonville, Oregon. We have more than 1500 wholesale growers, retailers, landscapers and suppliers. Oregon's nursery and greenhouse industry is the state's largest agricultural sector. As an industry we lead all other sectors of Oregon agriculture in sales, payroll and full-time employees. The farm level value of nursery and greenhouse production in 2006 was \$944 million. Combined with Christmas trees, ornamental horticulture generates over \$1.1 billion in wholesale sales per year. That is Columbia Sportswear big. We are the third largest nursery state, trailing only California and Florida. Over 75% of our nursery products are shipped east of the Mississippi. We bring a lot of dollars back our state.

Agriculture has grown steadily over the past two decades and continues to be a major contributor to our economy – more than \$4 billion in sales with an economic impact of over \$12 billion annually. Agriculture is integral to the Oregon way of life and it provides 1 in every 12 jobs in the state. A poll conducted in the Portland Metro region indicated that 71% recognize agriculture as a key part of the economy.

This is why SB 1011 is so important. SB 1011 establishes a new set of criteria that may be used to designate urban reserves in the metro region. It does not replace the existing urban reserve or urban growth boundary expansion criteria. It adds another path to the long-term urbanization of resource land. I was part of the core group of advocates to seek passage of this bill and am proud of the way each entity looked beyond their own interests to enact this sweeping legislation.

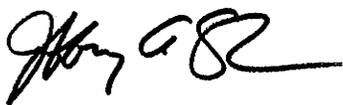
The path of this rulemaking effort should be as much about establishing a process as it is about creating certainty for agriculture and growth. SB 1011 does not change the nature of land use decisions, but does try to provide options where number crunching and unsustainable expansions of urban growth boundaries have eroded reason and balance. The key element of SB 1011 is the designation of urban and rural reserves. From our perspective, agricultural and resource lands seek protection by being labeled Exclusive Farm Use (EFU). While EFU lands are key, it is time to look at the economic output of resource lands as well as its soil type. Frankly, the nursery industry is not as dependent on soil type as many may be in the farming community. The key to the nursery industry is the recognition of real value of viable agricultural land.

The criteria listed in the new statute are based on the factors utilized by the Oregon Department of Agriculture (ODA) in its report completed for Metro entitled *Identification and Assessment of Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007*. The ODA report ultimately maps three categories of agricultural land. We have been consistent in advocating for these definitions to be included in the rule. As you are aware, the current soils hierarchy is designed to insure that the best agricultural soils are protected first and urbanized last. The LCDC rule implementing SB 1011 should do the same. Lands identified as the most viable and important to the region's agricultural industry should be harder to designate as urban reserves unless a special need is identified that cannot be met on other non resource lands or agricultural lands of lesser viability. And the best agricultural lands should only be utilized for the most efficient and effective urban developments.

I urge the commission to consult with the Oregon Department of Agriculture (ODA). We feel that both LCDC and ODA will benefit from the collaboration and will provide a reasoned pathway to rural and urban reserves. A solution must be reached. What is clear, is if the state allows non-farm development (residential and commercial) to encroach into traditionally agricultural areas, then our industry's ability operate will erode. Every day, nurseries face increased transportation costs, rising labor costs and higher energy bills. However, the damage from these threats pale in comparison to the long-term disruption and displacement of farming that occurs when uncontrolled encroachment of homes and commercial development onto farmland areas occurs. This is why SB 1011 is an important step.

We commend the commission for their hard work and look forward to rolling up our sleeves and finish the process.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Stone", with a stylized flourish at the end.

Jeff Stone

Director of Government Relations

Oregon Association of Nurseries



**Oregon
Alliance for
Land Use and
Affordable
Housing**

Land Conservation and Development Commission
635 Capitol St. NE, Suite 150
Salem, OR 97301

OALUAH c/o
Garvey, Shubert & Barer
121 SW Morrison Street, Suite 1100
Portland, OR 97204

November 27, 2007

Dear Chair VanLandingham and Members of the Commission:

As members of the board of the Oregon Alliance for Land Use and Affordable Housing (OALUAH), we are pleased to provide comment on the draft Metro Urban and Rural Reserve Rule. OALUAH is a not-profit organization formed in 2004 to help address the affordable housing crisis in Oregon. Our volunteer board consists of land use and housing attorneys, land use planners in public and private practice, architects, bankers and affordable housing advocates. As Chair VanLandingham is a member of the OALUAH Board, he has not participated in our Board's discussion and action on this matter.

We commend your rulemaking efforts for both urban and rural reserves. According to our organizational mission, our interest is primarily in the urban aspects of the draft rule. We believe this SB 1011 and this draft provide a worthy alternative to the current urban reserve rule, and, if implemented carefully, can be a great advance for planning in Oregon.

We understand that part of the purpose of the rule is to "...help ensure livable communities...". The draft rule defines "livable communities" as "...communities with development patterns, public services and infrastructure that helps to make them safe, healthy, affordable, sustainable and attractive places to live and work". Our interest is in the planning and development of housing affordable to all income types as a well-planned part of such livable communities. For example, we know the transportation, air quality, health and other affects that can arise from a lack of housing affordable to employees of urban employment centers (workforce housing). Housing for the most vulnerable of our population is even more difficult to provide, and due to their vulnerable nature, is equally important that it be well-sited. We are also pleased to see K-12 education, the economy, public services and special districts recognized in the draft rule.

Specifically, in 660-027-0050(6) of the rule, Metro will need to develop "policies to implement the reserves...". OALUAH is prepared to help find solutions and policies that will lead us toward truly livable, complete communities, so that land is not just zoned for affordable housing but is actually developed.

We like the extension of the planning horizon for urban reserves past 20 years and the allowance that conceptual plans for these areas may be developed. We believe greater certainty for planning and development will have broad benefit, particularly for significant, long-term investments, such as for infrastructure, educational facilities and affordable housing.

Continued on page 2.

Guaranteeing an adequate supply of affordable housing and public services to all Oregonians.

Advisory Committee:

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Clark Henry
Lyn Musolf
Bob Stacey

Board of Directors:

Ed Sullivan, President
John Czarnacki
Kirstin Greene
Ellen Johnson
Mauricio Leclerc
John VanLandingham
Bruce Whiting

Contact Information:

PO BOX 40291
Portland, OR 97240-0291
503 / 452-3997
www.oaluah.org

As described in section, 660-27-0040, we are concerned that urban and rural reserves would have to be designated "concurrently", that is, no urban reserves without rural reserves. There will understandably be significant controversy to establishing rural, 40-50 year reserves to protect particularly important agricultural resources. It would be a shame if the establishment of this new type of urban reserve were held up if rural reserves could not be established.

Regarding the list of factors to be considering when establishing urban reserves in 660-027-0050(1), Factors for Designation of Lands as Urban Reserves, we are not certain if all elements (a-h) need to be satisfied (mandatory), or if they are considered (optional). It appears to be that they are all required, but it is not at all clear. OALUAH supports use of these factors being mandatory, particularly (f), "...includes sufficient land suitable for a range of needed housing types", and suggest that "needed" housing types be more specifically defined.

In conclusion, we are not sure why the detail in 660-027-0080(3) is so limited, and suggest that it include additional information. For example, require Metro to show how each reserve satisfies the factors in 660-027-0050, and include in the binder draft policies to implement the reserves, or at least a process and timeline to develop the policies.

Again, we appreciate the opportunity to comment, and are available for additional consultation as desired.

Sincerely,



Edward J. Sullivan, Chair

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Northwest Office
1880 Willamette Falls Drive #200 | West Linn, OR 97068 | tel 503.697.3222 | fax 503.697.3268
www.defenders.org

November 28, 2007

Land Conservation and Development Commission
Dept. of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, Oregon 97310

Chair Van Landingham and Commission,

Thank you for the opportunity to comment on the draft SB1011 rule establishing a new process for designating urban and rural reserves in the Portland-Metro region. This is a welcome step in making the process of designating urban reserves and expanding urban growth boundaries more cognizant of impacts to fish and wildlife and their habitat. In the past the hierarchy for determining which lands would be urbanized has not placed adequate weight on the needs to conserve important habitat lands.

We support recognition of important natural landscape features in designating urban and rural reserves in SB1011 and the draft rule. We urge the commission and the rulemaking workgroup to adopt a draft rule that maintains a level playing field between high value habitat lands and agricultural lands. We would also suggest that the rule incorporate more specific language regarding the need to avoid urbanization of lands that support sensitive species or rare habitats in the Willamette Valley.

Thank you for considering our comments. We sincerely hope this new direction will be considered for urban areas in other parts of the state.

Respectfully,

Sara Vickerman
Director, NW Office
Defenders of Wildlife

National Headquarters
1130 17th Street, N.W.
Washington, D.C. 20036-4604
tel 202.682.9400 | fax 202.682.1331

MARK J. GREENFIELD

Attorney at Law

495 NW Greenleaf Road
Portland, Oregon 97229

Telephone: (503) 227-2979
Facsimile: (503) 292-1636

November 12, 2007

DEPT OF

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Land Conservation & Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540

**LAND CONSERVATION
AND DEVELOPMENT**

Subject: Proposed Rule on Designating Urban and Rural Reserves in the
Portland Metro Area

Dear Commissioners:

I offer this testimony on behalf of Jim Standring, who owns property just north of the US Highway 26/Helvetia Road Interchange in Washington County. The property lies immediately west of the planned Helvetia industrial area, outside of but adjacent to Metro's urban growth boundary.

Because my client's property has high value agricultural soils but also is well serviced and excellently situated for future urban development, I have attended most of the workgroup meetings on the proposed urban/rural reserve rule to see, in particular, how the rule will address this kind of circumstances. I offer the following comments on the proposed rule.

A. The Rule Needs to be Workable.

As one whose property was designated "urban reserve" in the late 1990s, when Metro last went through that process, my client has seen just how unworkable that process is for designating urban reserves, at least for a region of this size. With SB 1011, the state and the region have an opportunity to establish a process that actually works without bringing things back to square one after years of litigation. Accordingly, we urge you to adopt a rule that is workable.

Senate Bill 1011 speaks in terms of "factors" to be "considered" in designating urban and rural reserves. We believe it is very important that the rule be worded in terms of consideration of factors, so that appropriate balancing can take place. The currently proposed wording for OAR 660-027-0020(10) is satisfactory in that regard. It requires consideration and evaluation of areas and a statement of reasons explaining why the local governments selected the areas proposed for designation as urban or rural reserves. We urge you to support this language.

At workgroup meetings, there were some people who preferred to see the "factors" made into "criteria" that would all need to be satisfied for a site to be designated as an urban reserve. For reasons well articulated by Metro's representative and legal counsel, we do not support that approach, especially since there will be instances where sites worthy of an urban reserve designation may not meet every factor. For instance, proposed OAR 660-027-0050(1)(f) requires that land selected for a designation of urban reserves "includes sufficient land suitable for a range of needed housing types." If this factor applies to proposed urban reserve lands considered cumulatively, it may not pose a problem. However, if it applies to individual sites, which we believe is how those preferring "criteria" wanted it to apply, then sites very appropriate for industrial or commercial uses might not meet the standard. It is better to treat these factors as factors to be weighed and balanced, much like the factors in Goal 14. We also believe this is the only approach that is consistent with the wording of the statute.

B. Insert "Considered Cumulatively" but do not Insert "Best", in Proposed OAR 660-027-0040(10)

Proposed OAR 660-027-0040(10) currently concludes the following sentence (11/8/07 draft):

"* * *. The findings and statement of reasons shall explain why the local government selected the areas adopted as urban and rural reserves, and how the adopted reserves achieve the objectives set forth in section 660-027-0005."

At the November 5, 2007 workgroup meeting in Portland, the question arose whether the last clause of this sentence applies to each individually identified adopted reserve or to the reserves considered cumulatively. I believe Metro attorney Richard Benner stated that the "implication" is cumulative consideration. Because this is a question that could easily lead to litigation, we recommend that you be explicit on this matter. Accordingly, we recommend that you amend the last clause to read:

"and how the adopted reserves, considered cumulatively, achieve the objectives set forth in section 660-027-0005."

Also at the November 5 workgroup meeting, several interested stakeholders proposed that this last clause be rewritten as follows:

"and how the adopted reserves best achieve the objectives set forth in section 660-027-0005."

We strongly recommend against this proposal, because we want a rule that is workable and using an absolute term like "best" works against that result. For example, suppose Metro considers a variety of options and selects the alternative it deems "best" to

achieve the three objectives in OAR 660-027-0005(2). Suppose further that people from numerous communities around the region offer many different alternatives that they claim work "best." Does Metro then have the burden of proof to gather evidence to demonstrate why those other alternatives are not best? And is Metro required to make a qualitative comparison of each designated site to other sites to prove its case? Given that there could be an infinite number of possible combinations of land proposed for designation as urban or rural reserves, this could be a nightmare.

Metro's need to do this kind of quantitative comparative analysis did not work very well during the prior urban reserve effort. We believe it would not work well here either. The word "best" is simply too absolute and inflexible to work in this circumstance. It begs litigation, delay and inefficiency. We urge you to reject efforts to include this word in this rule.

C. Definition of "Important Natural Landscape Features".

Proposed OAR 660-027-0010(6) defines "important natural landscape features" to include, among other things, "plant, fish and wildlife habitat." We are fine with this concept, but we believe this term, without more, is worded too broadly. As stated, it could include all lands that are vegetated, regardless of their functional value.

If the idea is to include significant plant, fish and wildlife habitat, such as that identified in a Goal 5 inventory, fine. The rule should then add that term. If the framers of SB 1011 had something else in mind, the rule should reflect that instead. But some reasonable modifier is needed to distinguish "important" plant, fish and wildlife habitat from all plant, fish and wildlife habitat.

D. Foundation Agricultural Lands Deemed to Satisfy the Factors for Designation of Rural Reserves.

Proposed OAR 660-027-0060(4) provides that a county may deem that "foundation agricultural lands" and "important agricultural lands" qualify for designation as rural reserves without further explanation under OAR 660-027-0040(10). We understand the reasoning behind a provision like this, and we also understand that the word "may" means that counties have choices. Still, since the public has not had an opportunity to review and comment on the DOA's study, we wonder whether this approach conflicts with Statewide Planning Goal 1, which requires citizen involvement in all phases of the planning process. Here, there is no opportunity for citizens to review and consider whether their property properly has been identified (or not identified) as foundation or important agricultural land.

Under Goal 3, citizens have the right to challenge an assessment that land is agricultural by obtaining more detailed soils analysis. There is no functional equivalent here. Should there be?

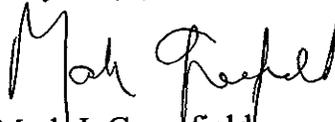
E. Concerns Regarding Proposed DOA "Tiebreaker".

At the November 5 workgroup meeting, the Department of Agriculture proposed language to be used in the event property qualified for designation as both urban and rural reserves. In essence, the language DOA proposed would require that lands qualifying for both an urban and rural reserve designation be designated rural reserves unless they were determined to be "appreciably better" for designation as urban reserves and satisfied certain other requirements, including being capable of and intended to accommodate a pattern and intensity of development that would support a high density mixed use commercial service center and frequent transit service.

There was no consensus supporting this proposal, and it is not included in the proposed rule. Still, we bring it up because we anticipate that DOA will raise this issue before you. If that occurs, please know that we strongly DOA's language. First, it leaves certain lands, like potential industrial lands, entirely out of the equation. This is inappropriate. Second, it places agricultural land on a higher pedestal in a circumstance where the long-term interests of farming, urbanization and protection of resources all need to be weighed and balanced. For instance, it may be that the worst agricultural land is also the most difficult, expensive and impracticable to urbanize. In a region not overflowing with spare cash for roads and public facilities, this could be a problem. Likewise, the best agricultural land might include the most suitable and well-situated land for industrial development, which generally requires flat, easily serviceable lands along or near major highways.

In designating urban and rural reserves, we support the concept of balancing as provided in the proposed rule. Going back to our first point, this rule needs to be workable, and a rule that clearly provides for a fair balancing of all interests achieves that result. We believe the proposed rule is a workable rule that is fair to all interests – farm and forest, development, and natural landscape. Because the language that DOA suggested at the November 5 meeting would undermine the workability of the rule by benefiting one interest at the expense of others, we urge you not to include it in the rule.

Very truly yours,



Mark J. Greenfield
Attorney for Jim Standring

cc: Bob Rindy
Jim Standring



1020 SW Taylor, Suite 760
Portland, OR 97205
503.241.2423 (V) 503.241.2721 (F)

**PUBLIC HEARING BEFORE LCDC REGARDING PROPOSED NEW ADMINISTRATIVE RULES FOR
METROPOLITAN PORTLAND AREA URBAN/RURAL RESERVES
TESTIMONY BY BEVERLY BOOKIN, EXECUTIVE DIRECTOR
COMMERCIAL REAL ESTATE ECONOMIC COALITION (CREEC)
THURSDAY, NOVEMBER 29, 2007**

Chair Van Landingham and Members of the Commission:

Good afternoon. I am Beverly Bookin, Executive Director of the Commercial Real Estate Economic Coalition (CREEC), a coalition of 12 companies, trade associations and business organizations involved in the development, sales and management of retail, office, industrial and institutional properties in the Portland metropolitan area. Providing an urban business perspective, CREEC actively participates in the formulation of land use, transportation and environmental policies and regulations at the local, regional and state levels. As CREEC's Executive Director, I participated in the informal committee that helped to shape Senate Bill 1011 and now am serving on the formal LCDC Urban/Rural Reserves Work Group.

CREEC strongly supports SB 1011, which provides a new method for expanding the Portland Metropolitan Regional Urban Growth Boundary (UGB) as an alternative to the traditional method, the so-called "hierarchy of land", for the simple reason that the latter approach has not worked in our region:

- Composed of 25 cities and the urban portions of three counties, the Portland metropolitan area is the state's largest and most complex urban region. Therefore, the issues related to urban expansion are driven both by the total need for urban acreage and its equitable physical distribution.
- A substantial proportion of the land immediately beyond the current UGB, particularly in Washington County and to a lesser extent in Clackamas County, has been identified as prime agricultural land so that there is significant overlap of land which is both the "best of the best" agricultural land and "optimum" for urban development. As a result, it is critical that we have a process that better balances these equally-critical land use needs.

With regard to rule-making, CREEC requests that LCDC consider the following:

Apply a light touch. Under the new approach, the Metro Council will have to broker a delicate compromise among all the legitimate urban/rural/natural resource stakeholders based upon a firm technical foundation, one that hopefully will have utility and provide certainty for several decades to come. Through our lengthy discussions, many safeguards have been incorporated into the proposed rule to date, including improved clarity of the Metro/county relationship, simultaneous establishment of urban and rural reserves and unified legal findings, but at the end of the day, this will require the good-faith efforts of all participants to find a brokered solution we can all live with. In our opinion, LCDC needs to provide the minimum framework within which this collective decision-making can occur without provisions that inadvertently preclude arriving at the optimum outcome.

Find a legally-sustainable approach to defining the "best outcome". Establishing "best" as the bar for success is problematic as it is both an impossible standard to define for purposes for creating legal findings, and, given the size and complexity of the region, there are virtually unlimited alternatives. Rather, the selected urban/rural reserves plan should be the one that best balances many conflicting values and needs within a realistic, technically-sound range of alternatives.

Consider carefully the status of "foundation" agricultural lands. The Department of Agriculture is to be commended for its work to develop a more sophisticated set of criteria for identifying the most valuable agricultural resource land, which it now refers to as "foundation" agricultural lands. We concur that this work can be used as a "short-cut" for mapping such lands as a starting point for balancing process. However, we do not agree that such land be placed automatically in rural reserves, require a "higher standard" if urbanized or be provided "tie-breaker" status. Otherwise, at the end of the day, the alternative approach in SB 1011 would simply be a more sophisticated version of the existing land hierarchy. As a practical matter, excluding all foundational agricultural land from urbanization would virtually land-lock the west and southwest edges of the metropolitan region.

Thank you for the opportunity to present this perspective.

**Testimony of Randy Tucker, Legislative Affairs Manager
SB 1011 Rulemaking
(Metro Urban and Rural Reserves)
Land Conservation and Development Commission
November 29, 2007**



METRO

Chair Van Landingham and Members of the Commission:

Thank you very much for the opportunity to testify before you today on the rules to implement Senate Bill 1011. As you know, Metro joined with numerous public and private partners from the Portland metropolitan region to pass SB 1011 earlier this year as part of a broad-based, multi-pronged regional effort to improve the way we grow, develop, and protect our agricultural and natural resource base.

SB 1011 provides both more flexibility and more predictability to the growth management process in the Portland area. The changes embodied in this bill support great communities, viable agricultural and forest industries, a strong urban economy, and a healthy environment.¹

The *ad hoc* stakeholder process

After the legislative session and before DLCD convened its rulemaking work group, Metro held a series of well-attended meetings where a very broad group of stakeholders developed a preliminary rule draft so the official process could get off to a quick start. The list of participants in that process is on DLCD's website and includes many people who were later appointed to the official workgroup. The DLCD website also has a document that reflects the agreements reached by this *ad hoc* group. A couple of the group's more high-level agreements are worth reproducing here:

¹ SB 1011 has three main provisions:

- It provides a new pathway for the designation of urban reserves in the Portland metropolitan area based on how effectively land can be woven into the urban fabric of the region, rather the current approach of selecting urban reserves based on factors related to their quality as farmland.
- It also authorizes the creation of rural reserves, or areas that shall not be brought into the UGB in the immediate future. These are lands that are critical to the functioning and long-term viability of the farm and forest industries, as well as important natural areas. Until now, there has been no legal authorization to protect these lands over the long term.
- Because it is important that urban and rural reserves be addressed concurrently, SB 1011 creates a process for designating them simultaneously through agreements between Metro and counties. This agreement-based process also provides a great degree of protection and accountability that allowed a very diverse set of interests, from the development community to the agricultural community to the local governments of the region, to come together in support of the bill.

<p>Level of detail:</p> <ul style="list-style-type: none"> • Should the rule be more prescriptive/include more detail or remain more flexible/include less detail? • Related issue: Are there some specific provisions that might be better adopted as part of Metro's code in order to provide more flexibility over time? 	<p>AGREEMENT: no need to really decide here, though there seems to be general agreement to be less prescriptive and to put more into Metro code rather than in the rule. The watchword seems to be "if in doubt, leave it out."</p>
<p>Should the rules provide guidelines for how to treat land that might be appropriate as either a rural or an urban reserve?</p>	<p>AGREEMENT: The group agreed that the rules should NOT attempt to provide guidelines for this situation, but that these decisions should instead be based on the facts of specific cases.</p>

As noted below, these agreements are consistent with discussions during the development of the legislation itself.

During this ad hoc process, we also made progress toward developing lists of factors to be considered when designating rural reserves for the purpose of protecting forestry and natural landscape features. These factors were not specified in the statute itself.

Rulemaking moving in positive direction

The Metro Council's overriding objective with respect to the rules implementing SB 1011 is to achieve an outcome that sets the stage for the successful designation of urban and rural reserves. In general, Metro supports the current direction of the rulemaking process. To mention several specific issues:

- **Merged rule divisions:** We support the merging of the separate urban reserve and rural reserve rule divisions into one division.
- **Public involvement process:** We support the provision calling for the development of a public involvement process in consultation with the state Citizen Involvement Advisory Committee (page 3, lines 18-23)². The Metro Council is fully committed to providing meaningful opportunities for public participation with respect to the designation of urban and rural reserves, both before and during the development of the intergovernmental agreements identifying those reserves.
- **Urban reserves:** This language clarifies that urban reserves shall be designated to provide 20-30 years of urban capacity beyond the 20-year supply in the existing UGB calculated on a regional basis rather than a county-by-county basis (page 3, line 45-page 4, line 2). This reflects the general understanding of SB 1011 and is the obvious reading of the bill since the UGB itself is a regional tool, but was not explicit in the statute.

² Unless otherwise indicated, all page and line references are to the November 8, 2007 rule draft.

- **Single set of findings:** This provision (page 4, lines 35-42) requires Metro and Clackamas, Multnomah, and Washington counties to work together to develop “a single, joint set of findings and statement of reasons” to justify their collective reserves decision. This is exactly what Metro and the three counties already intend to do, as reflected in the Reserves Steering Committee structure that we have jointly developed.

Issues of concern

While we believe the rule is progressing well, two issues have recently arisen which cause us concern.

1. “Foundation” and “Important” Agricultural Lands

Shortly before the last meeting of the rulemaking work group, Jim Johnson, who represents the Oregon Department of Agriculture on the work group, proposed special protection for lands identified as “Foundation Agricultural Lands” (and, to a lesser extent, for lands identified as “Important Agricultural Lands”) in the Agricultural Land Inventory and Analysis he wrote as part of the so-called “ag-urban study” that was jointly completed earlier this year by Metro, the counties of the region, DLCD, and ODA.

Mr. Johnson’s proposal had two core elements:

- Declare that lands designated as Foundation or Important lands in the Agricultural Land Inventory and Analysis may be deemed to satisfy the factors included in the rule for designating rural reserves for the purpose of protecting agriculture.
- Declare that Foundation lands within two or three miles of the UGB shall be designated as rural reserve unless they are “appreciably better” for urban development than other lands, based on a subset of the urban reserve factors included in the bill and draft rule.

Metro joined with a majority of the rulemaking work group to accept the first item as a timesaving measure consistent with the ag-urban study, with the understanding that this did not presume the designation of any specific lands as rural reserves (see page 6, lines 38-40).

However, we have serious concerns about the second item, and with any other provision that would provide an elevated level of “protection” or special status to any specific lands in the designation process. I discussed this issue with the Metro Council on November 14. **The Metro Council strongly believes that the rules implementing SB 1011 should not attempt to “tilt the playing field” in favor of or against any specific designation for any particular category of lands, but rather should leave the balancing of competing imperatives with respect to particular lands to the designation process.**

This position is consistent with the stance taken by the broad coalition supporting SB 1011 during the legislative session, when certain parties sought to declare a certain

category of lands “off limits” to designation as rural reserves. The coalition strongly opposed this effort on the grounds that we shouldn’t be taking land “off the table” before we even start the designation process, and the bill remained “clean.”

Similarly, during the *ad hoc* rulemaking meetings last summer, the group had the discussions described in the box above (see p. 2 of this testimony), concluding that it would be a mistake to include any kind of “tiebreaker” language in the rule that would bias the outcome in a particular direction. In part this view derives from the “ag-urban study,” which deepened our understanding of the competing interests that need to be balanced as we make long-term land use decisions.

In each case, a broad group of stakeholders, including the Metro Council, agreed on a guiding principle of leaving as much latitude as possible for decisions to be made by Metro and the counties in the reserves designation process, rather than narrowing or foreclosing certain possibilities in the statute or rule. This means leaving the rule “clean” to allow for the balancing of agricultural, forestry, natural, or urban considerations.

While Mr. Johnson’s proposal would not *prohibit* designating Foundation lands as urban reserve, it represents a clear departure from this principle, as does any other provision that tips the scale in favor of designating certain lands in certain ways.

The proposal also raises another serious concern. As described above (and also as described in the third bullet on page 15 of the DLCDC staff report), it provides that all Foundation and Important land within a certain distance from the UGB must be designated either rural reserve or, under limited circumstances, urban reserve. In certain areas of the region, that would mean that there is absolutely no margin of error with respect to how much land needs to be designated urban reserve to accommodate 40-50 years of urban capacity. It could result in irrational outcomes like additional urban reserves being designated beyond the two or three mile rural reserve “ring.”

I should note that the Metro Council does not disagree with what seems to be the broader intent of Mr. Johnson’s proposal, which is to avoid squandering the best agricultural lands for anything but very efficient, high-quality development.

However, the question at hand is not whether to protect the best lands, but whether to insert provisions to this effect into the rules, and to do so only for agricultural lands. The Agricultural Land Inventory and Analysis in the ag-urban study, and its designation of Foundation, Important, and Conflicted lands, provides important input for the process of designating urban and rural reserves, but was never intended to serve as an output or endpoint of that process.

To conclude this discussion, I would draw your attention to the “objective” that has been added to the purpose statement during our work group’s deliberations (page 1, lines 18-21), and to how that objective is referenced in the “findings” provisions (page 4, lines 37-42). It is our view that these provisions authorize the Commission to ensure that a

reasonable balance among relevant values is actually achieved in the designation of reserves, rather than one value being achieved at the expense of another.

2. Designation standard

The rulemaking work group has engaged in a significant and ongoing discussion about how the final decision to designate urban and rural reserves will be judged by LCDC. Until the November 5 meeting, we had settled on the idea described above of establishing an “objective” for the overall effort, to be placed in the rule’s purpose statement (page 1, lines 18-21; see also definition of “livable communities,” page 2, lines 2-4), and requiring an integrated set of findings that document how the decision supports that objective (page 4, lines 39-42).

However, on November 5, it was proposed that we add the word “best” to the findings section (page 4, line 41). This would require the findings to show “how the reserves best achieve” the objective. I voted against this proposal at the time and discussed it with the Metro Council on November 14.³

The Metro Council opposes this proposal. While Metro and the counties obviously aspire to make the best possible decision, adding that word creates a *de facto* standard that no one can really define. This might provide an avenue for endless nitpicking of a regional decision that involves many separate reserves on the basis that one particular piece of land is more or less appropriate than another particular piece of land, thereby undermining the notion that the overall decision will necessarily involve a delicate balancing of interests and objectives.

If it is necessary to insert the word “best,” we could accept what is described in the DLCD staff report as option (b): adding the word to the “objective” in the purpose statement to express a sense of aspiration. However, as the staff report notes, if the Commission does choose to add the word to the findings section, we would strongly urge that language be added to clarify that it refers to the *overall* urban and rural reserve designation decision, as follows: “...how the adopted reserves, *in their entirety*, best achieve the objectives...” This reflects my understanding of the view of the entire rulemaking work group, based on the discussion of this issue in our November 5 meeting. Please note, however, that in the view of the Metro Council, this solution is a last resort.

New issue

There is one small issue that I have not raised with the rulemaking work group. I mention it here to flag it for future consideration:

It would seem to make sense to add “public transit services” to urban reserve designation factor (d), as follows: “(d) Can be designed to be walkable and served with a well-

³ I would also respectfully disagree with the statement in the DLCD staff report that there was a “consensus” in favor of adding the word “best.” There were work group members who did not support adding the word, and I only supported adding it to the purpose statement as a compromise.

connected system of streets, bikeways, *public transit services*, and recreation trails by appropriate service providers;

Conclusion

Thank you very much for the opportunity to testify today, and to serve on the work group that is considering these important issues. The Metro Council looks forward to the conclusion to the rulemaking process so we can begin what we hope will be a successful collaborative effort to chart a long-term course for the Portland metropolitan region.

November 29, 2007

**Testimony on the proposed
new administrative rules establishing a
process and criteria for designation of urban reserves and rural reserves**



29799 SW Town Center Loop E
Wilsonville, Oregon 97070
(503) 682-1011
(503) 682-1015 Fax Administration
(503) 682-7025 Fax Community Development

**Land Conservation and Development Commission Public Hearing
Charlotte Lehan, Mayor
City of Wilsonville**

Dear Chair VanLandingham and Commission Members:

Thank you for the opportunity to speak to you today regarding rule-making to implement SB 1011. As you know, SB 1011 was the result of the work by a diverse group of interests. While it is a leap of faith, the legislation does provide an alternative basis for determining how we will grow in the metro region. Potentially, it will give cities, counties, developers and the agricultural industry more certainty and stability.

Probably no other city has been as much in the forefront of the Portland-metro region Urban Growth Boundary expansions than Wilsonville. We sit on the urban edge and while we champion strong economic vitality and boast an extremely successful business climate, we are deeply concerned about the protection of our most valuable resource and one of Oregon's top traded sector industries—agriculture. The lands of the northern Willamette Valley known as French Prairie are some of the most fertile agriculture lands in the state and have been deemed "Foundation Lands" by the Oregon Department of Agriculture in its study—"Identification of Metro Region Agricultural Lands and Assessing their Long-Term Commercial Viability." We highly support this technical report developed by the Oregon Department of Agriculture and believe the commission should consider it as a "safe harbor" for determining which lands are most suitable for rural reserves and urban reserves.

The rule-making work group has met over several months to outline the details of the rule. Of great concern and importance to Wilsonville and other communities on the edge, is that the rule should at the least provide the same protections contained in the current soils hierarchy—ensuring that the best agricultural soils are protected first and urbanized last. Lands identified as the most viable and important to the region's agricultural industry should be off-limits for urban reserve designation unless a special need is identified with substantial findings that cannot be met on other non-resource lands or agricultural lands of lesser viability. The designation of Rural Reserves to further protect agricultural land is of no real value if Urban Reserves are allowed to be established on land that is considered to be viable agricultural land.

Counties are directed to determine and designate the agricultural lands best suited for long-term viable agricultural operations. We support a high level of participation by affected cities in any rural or urban reserves designation, since it is those entities that will be obligated to serve any new expansion areas. We would welcome any language in rule-making that would encourage inclusion of cities in the designation process at a meaningful level. We need to plan together for the future and keep a broad vision of what we truly want to be.

Thank you.





CITY OF PORTLAND, OREGON
BUREAU OF
Planning

Tom Potter, Mayor
Gil Kelley, Director

1900 S.W. 4th Ave., Ste. 7100
Portland, OR 97201-5380

Phone 503-823-7700

FAX 503-823-7800

TTY 503-823-6868

Email pdxplan@ci.portland.or.us

www.portlandonline.com/planning

November 29, 2007

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

Dear Commissioners:

**RE: Agenda Item 6
Portland Planning Bureau Testimony on the Urban and Rural Reserves Rule**

I thank you for the privilege of serving on your administrative rule workgroup and for the opportunity provide these comments. The proposed rule holds great promise in describing a system of urban and rural reserves for the Portland metropolitan area. Done right, this system would provide a high quality and affordable pattern of urbanization. This pattern would use natural features to help define the identity of new communities and outline the logical outer limits of urban growth. These limits would, in turn, provide the long-term certainty necessary for reinvesting in our region's farms, forests, and commercial nurseries; while also providing a level of incentive to redevelop existing urban areas.

The draft rule, though still a work in progress, goes a long way toward meeting these objectives. It is within this context that I provide this testimony.

A Closed Set of Decision Factors

The work group reached consensus that urban and rural reserves should be identified through the application of multiple factors, that the administrative rule could supplement factors contained in the authorizing legislation, but that Metro and the three counties should not be provided the opportunity to apply factors other than those in statute in rule. The draft rule and staff report properly reflects this consensus. Since the statutory factors are repeated in the rule, the rule would contain all the necessary factors. Should these factors ever need to be improved or supplemented, this could only be accomplished either by future rulemaking or statutory amendment.

Proper Application of the Factors

I raised a concern at the work group that not just any plausible application of the factors should be considered good enough. State land use law and the Commission's own Goals and rules require consideration of alternative course of action, and that Metro and the counties should select a region-wide configuration of reserves that, in their combined determination, "best" met the factors. There was a near consensus among the workgroup that this was the proper course of action. But this is not reflected in the draft rule before you. Because there was a discussion on what might be the better of two places to insert the word "best," your staff has drafted a rule with the workgroup's recommendation appearing in neither place.

This peculiarity is corrected by the staff report discussion on pages 16; and Portland can agree with Metro's proposal referenced on page 17 of the staff report to amend the last sentence of section 0040 (10) to read:

"The findings and statement of reasons shall explain why the local governments selected the areas adopted as urban and rural reserves and how the adopted reserves, **in their entirety, best** achieve the objectives set forth in OAR 6660-027-0005."

Safe Harbor Provisions

The draft rule recognizes that the Oregon Department of Agriculture has done an excellent job in identifying the location, quantity, and quality of agricultural land; and the degree to which this land is "conflicted" by competing uses. The rule also contains an important shift in thinking from protecting "farm land," based on soil type, to protecting "farming" as an industry requiring "Foundation Land."

Accordingly the workgroup recommended two safe harbors:

1. That the Department of Agriculture's report be considered a sufficient inventory of agricultural land; and
2. The designation of Foundation Land as Rural Reserves need not be justified by application of the factors.

I would suggest the next draft of the rule contain similar safe harbors **for natural features and forest land.**

Urbanizing the Best Agricultural Land

The most perplexing problem before the workgroup is whether to allow the designated Foundation Agricultural Land as Urban Reserves, and under what standard. The consensus seems to be that it should be allowed, but that Foundation Land should be harder to designate than other types of agricultural land. There is, however, no consensus on how this burden should be carried out. Opinions range from employment of the factors as drafted, to an "extra weight" for a Foundation Land factor, to criterion standing outside the factors applicable only to the designation Foundation Land as Urban Reserves. The work group requires guidance from the Commission to complete its recommendation of this point.

Related Rule Amendment

Portland is asking the Commission to entertain a related rule amendment to avoid a problem with the application of the draft rule (Proposed Division 27). The staff report recognizes that, should Division 27 be adopted, it is very unlikely that the existing Urban Reserve Rule (Division 21) would ever be employed in the metropolitan region.

There is a little more than 500 acres of Portland's City Limits that lies outside the regional urban growth boundary. This area is preserved in 20-acre or larger parcels by the Goal 2 Exceptions Rule (Division 4) until such time that a Metro Urban Reserve decision is acknowledged under Division 21. Since Metro is unlikely to designate Urban Reserves under Division 21, I ask that the Division 4 rule be amended to include designation under Division 27 as well. I have included exact language in the attachment.

Sincerely,

Gil Kelley, Planning Director

Attachment: Proposed Amendment to the Goal 2 (Exceptions) Rule

Proposed Goal 2 Administrative Rule Amendment

New language to be inserted is in **Bold** faced type.

660-004-0040, Application of Goal 14 (Urbanization) to Rural Residential Areas

Section 8

(d) Notwithstanding the provisions of Section 7, if the Portland metropolitan service district has an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021, any division of rural residential land in that reserve area shall be done in accordance with the acknowledged urban reserve ordinance.

(e) Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if the Portland metropolitan area does not have an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021 **or Division 27**, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act.



Home Builders Association
of Metropolitan Portland



The Forum for Commercial Real Estate
Oregon Chapter

Portland Metropolitan
PMAR
Association of Realtors®



The leader in advocating
for a healthy economic environment

November 29th, 2007

Land Conservation Development Commission
635 Capitol St. NE, Suite 150
Salem 97301-2540

RE: rule making for Rural Urban Reserves

Commission members:

The collection of business organizations including Westside Economic Alliance, Portland Metro Realtors Association, National Association of Industrial and Office Properties, and Home Builders Association of Portland Metro are collectively offering the following comments on the proposed rules for implementation of SB1011. As a member of the broader business community in the Portland Metro region we have had a chance to either directly participate with the passage of SB1011 during the 2007 session or evaluate the progress of the rule making.

As a result of the last advisory committee meeting we have some concerns about a couple of items that remain on the table. This issue comes down to conversation during the November 5th meeting where a conceptual proposal from Jim Johnson Representing Oregon Department of Agriculture was provided. The elements of the proposal include:

1. **Formal recognition of the Ag/Urban Study (Identification and Assessment of the Long-Term Viability of Metro Region Agriculture Lands) completed by the Department of Agriculture.**
 - The advisory committee supported recognition of the mapping exercise as a shortcut to determine whether land satisfies the factors for rural reserves so no additional analysis is needed.
 - From our perspective, this map has yet to be peer reviewed and we are concerned about its formal recognition in the rule. It may well be solid piece of work, but it is important to point out that several other studies from various sources also provide value, yet are not explicitly proposed in the rule.

Recommendation: **The information in the Ag/Urban Study will be used as part of the record and it's not necessary or appropriate to add in the rule.**

2. **Establishing a separate new standard for "foundation lands" contained in the Ag/Urban Study. Declare all foundation lands within the first 3 miles of a UGB shall be designated as rural reserves unless they are "appreciably better" for urban development than other lands available.**
 - This recommendation has come late in the process and if included in the final rule, the premise for balance between (farmland, urban land, and natural features) would be in danger. Balance has been the driving force behind SB1011 in an attempt to reconcile competing interests among different stake holders at the table.

- SB1011 working group rejected similar proposals that were requested during the session including a request to name all lands within 2 miles of a major road intersection as urban reserves or special treatment for a specific property.
- SB1011 specifically included the criteria in the Ag/Urban Study to improve the selection of rural reserves.

Recommendation: The commission should reject any proposal that reduces the value of balancing different objectives and establishes special status for a specific category of lands.

3. *Use the term “best” in 0040(10) to describe how the adopted reserves achieve the objectives in OAR 660-027-0005.*

- We object to the use of “best” in either of the options described in the staff report. It is not necessary and goes without saying that in the end, the reserves selected will represent the best choice(s).
- By inserting “best” the Commission potentially sets the process up for a numerical standard of what “best” represents. We do not view this as helpful to the process envisioned with SB1011 due to possible legal interpretation that includes rating or ranking.

Recommendation: The Commission should reject any option that would insert the word “best” into the rule due to unintended consequences.



Home Builders Association
of Metropolitan Portland

TESTIMONY OF JIM MCCAULEY
Home Builders Association of Metro Portland

Before The
LAND CONSERVATION DEVELOPMENT COMMISSION
November 29th, 2007

RE: rule making for Rural Urban Reserves

Home Builders Association of Metro Portland has been an active participant in the formation of SB1011 well before the 2007 session started. Our interest was simple: the current system of UGB expansion was falling far short of our expectations and far short of what HBA believed to be an important goal. That goal was to establish urban expansion that made sense from a resource protection, from a financial-infrastructure goal, and for the surrounding agricultural communities.

We stayed at the table during the 2007 session and worked SB1011 hard because we felt there was enough balance in the legislation to warrant our support. We in fact opposed amendments to SB1011 and other legislation during the 2007 session that would have offered special treatment for individual land owners or land classes.

So far, my experience with the rule making has been difficult given many of the language adjustments made since earlier this fall. Quite frankly these changes result in less decision space for urban expansion and more decision space for rural reserves. Many of the edits will likely narrow the choices for urban reserves and expand options for rural reserves. Despite these changes HBA remains in support of the rule. This support however hinges on a few remaining elements. These items largely come down to a proposal from the Department of Agriculture. The timing of this proposal comes very late in the process and from our perspective do not present any real value to the rule and in our opinion result in special treatment for a specific land classification, something that has been paramount to the development of SB1011 and its eventual passage this year.

My remaining comments focus on the following details:

1. *Formal recognition of the Ag/Urban Study (Identification and Assessment of the Long-Term Viability of Metro Region Agriculture Lands) completed by the Department of Agriculture.*

- The advisory committee supported recognition of the mapping exercise as a shortcut to determine whether land satisfies the factors for rural reserves so no additional analysis is needed.

15555 SW Bangy Road ♦ Suite 301 ♦ Lake Oswego, Oregon 97035
Phone: 503.684.1880 ♦ Fax: 503.684.0588 ♦ www.homebuildersportland.org

- From our perspective, this map has yet to be peer reviewed and we are concerned about its formal recognition in the rule. It may well be solid piece of work, but it is important to point out that several other studies from various sources also provide value, yet are not explicitly proposed in the rule.

Recommendation: The information in the Ag/Urban Study will be used as part of the record and it's not necessary or appropriate to add in the rule.

2. *Establishing a separate new standard for "foundation lands" contained in the Ag/Urban Study. Declare all foundation lands within the first 3 miles of a UGB shall be designated as rural reserves unless they are "appreciably better" for urban development than other lands available.*

- This recommendation has come late in the process and if included in the final rule, the premise for balance between (farmland, urban land, and natural features) would be in danger. Balance has been the driving force behind SB1011 in an attempt to reconcile competing interests among different stake holders at the table.
- SB1011 working group rejected similar proposals that were requested during the session including a request to name all lands within 2 miles of a major road intersection as urban reserves or special treatment for a specific property.
- SB1011 specifically included the criteria in the Ag/Urban Study to improve the selection of rural reserves.

Recommendation: The commission should reject any proposal that reduces the value of balancing different objectives and establishes special status for a specific category of lands.

3. *Use the term "best" in 0040(10) to describe how the adopted reserves achieve the objectives in OAR 660-027-0005.*

- We object to the use of "best" in either of the options described in the staff report. It is not necessary and goes without saying that the in the end, the reserves selected will represent the best choice(s).
- By inserting "best" the Commission potentially sets the process up for a numerical standard of what "best" represents. We do not view this as helpful to the process envisioned with SB1011 due to possible legal interpretation that includes rating or ranking.

Recommendation: The Commission should reject any option that would insert the word "best" into the rule due to unintended consequences.



November 29, 2007

Land Conservation and Development Commission
Dept. of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, OR 97301

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Chair VanLandingham and Commission,

We appreciate the opportunity to participate and comment on the draft SB1011 rule governing the designation of rural and urban reserves in the Portland-Metro region.

Portland Audubon has actively engaged in urban natural resource planning in the region for over 30 years. It is our experience that Oregon's land-use planning system has major shortcomings in adequately protecting natural resource lands- Oregon's rivers, streams, wetlands, and wildlife habitat- in a fashion that supports their long-term management, stewardship, and ecological restoration. We and other individuals and organizations engaged in natural resource conservation in Oregon have summarized these concerns in a letter to the Big Look Committee.¹

One of our primary concerns with the existing system is the priority given to farmland protection over important natural ecosystem lands when designating urban reserves. This imbalance- coupled with a lack of adequate policies and tools to protect environmentally sensitive lands brought into UGBs- can put species, habitats, and other public values in greater jeopardy to degradation and loss from urbanization. **Even with the best and currently unavailable protections for environmentally sensitive lands brought into UGBs, some species and habitats will be compromised by urbanization.** We have a particular need to better address these issues in the Willamette Valley where urbanization is most intense. We also have the greatest opportunity in having the best available information on the wildlife populations and rare habitats most vulnerable to urbanization.

Hence, we need to better balance the protection of both agricultural lands and natural landscape features in UGB expansion decisions. To that end, SB1011 and the draft SB1011 rule represent an opportunity to optimize regional growth management in the Portland-Metro region by better conserving natural landscape features for multiple public values. We largely support the language in draft rule. The draft rule explicitly recognizes important natural landscape features in the designation of urban and rural reserves and at least lays the foundation for incorporating the Natural Landscape Features Inventory developed as part of Metro's New Look.²

¹ June 30, 2006 draft letter to Oregon Task Force on Land Use Planning, online at: <http://www.urbanfauna.org/files/6-30-06LettertoTaskForceonLandUsePlanning.doc>

² *Natural Landscape Features Inventory*, http://www.metro-region.org/files/planning/naturalland_features.pdf

However, we remain concerned that the SB1011 rule maintains adequate parity in the consideration of both natural landscape features and agricultural lands in designating urban and rural reserves. Currently the draft rule provides counties with a safe harbor process for designating rural reserves for agricultural lands. Currently the rule makes it legally safe and easy for Counties to declare some agricultural lands as rural reserves (as meeting the relevant factors) if they are identified in the Oregon Department of Agriculture's report commissioned by Metro as part of the New Look.³ **The rule should provide a comparable safe harbor for the designation of rural reserves for important natural landscape features using Metro's Natural Landscape Features Inventory.** We believe this addition can better safeguard both important agricultural lands and important natural landscape features. We intend to engage the Rulemaking Workgroup with this additional recommendation in determining where and how we establish urban and rural reserves in the Portland-Metropolitan region.

Much is at stake in these decisions. In addition to supporting the region's biodiversity, natural landscapes provide numerous ecosystem services- especially in and around urban areas where the majority of the population lives, works and plays. Whether it is in providing clean air and water, wildlife habitat, public health and safety, or scenic vistas, the natural landscape sustains the region's unique sense of place, quality of life, and- increasingly- its economic competitiveness. It deserves a central place in the region's growth management decisions.

Thank you for your consideration.

Sincerely,



Bob Sallinger
Conservation Director
Audubon Society of Portland



Jim Labbe
Urban Conservationist
Audubon Society of Portland

Cc: Metro Council

³ *Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands* online at <http://www.metro-region.org/files/planning/agreport.pdf>.



Department of Community Services
MULTNOMAH COUNTY OREGON

Land Use and Transportation Program
1600 SE 190th Avenue
Portland, Oregon 97233-5910
PH. (503) 988-3043 Fax (503) 988-3389
www.co.multnomah.or.us/landuse

November 29, 2007

Land Conservation and Development Commission

November 29, 2007 Meeting, Agenda Item 6, Metro Urban and Rural Reserves

Multnomah County has been a partner with Clackamas and Washington Counties and Metro in development of an alternative approach to balancing urban and rural land needs in the region since the beginning of the effort in November of 2005. A primary motivator for Multnomah County has been to support the long-term viability of the agricultural industry, recognition of important forest land and natural features, coupled with urbanization decisions that result in highly livable cities. These are sometimes conflicting goals that are best resolved through informed planning decisions rather than overly prescriptive formulaic approaches.

The draft rules represent significant progress toward developing a framework within which we can work to achieve these overall objectives. They are not however, the only guidance the region will use to designate urban and rural reserves. The reserves decision will be shaped by additional analysis and comparison of potential reserve areas, and arrived at through a transparent public process.

There are primarily two major elements of the rules that are unresolved. These are discussed on pages 14 through 17 of the staff report, and are generally whether the rules should "raise the bar" to include greater direction for protecting Important and Foundation agricultural land, and where to include the "best meets" concept in the rule. Our view is that there is value in protecting the farmland that is most suitable for and needed to ensure long-term viability of agriculture in the Metro region. However, we believe we can ensure that the most appropriate land is designated as reserves through the public involvement process and technical analysis we envision. In addition, we think that including the term "best" in the purpose statement is consistent with the outcome we expect from this process.

We appreciate the opportunity to provide our input to you today, and look forward to continuing this important work.

Sincerely,

Karen Schilling, Planning Director
Multnomah County Land Use Planning



Oregon

Theodore R. Kulongoski, Governor

Department of Agriculture

635 Capitol Street NE
Salem, OR 97301-2532

November 29, 2007

Oregon Land Conservation and Development Commission
635 Capital Street NE
Salem, Oregon 97301



RE: Comments on proposed Senate Bill 1011/ Metro Area Urban and Rural Reserves rules

Dear Commissioners:

The Oregon Department of Agriculture (ODA) continues to support the concepts that are the focus of Senate Bill (SB) 1011. The establishment of rural reserves to provide long-term protection of agricultural lands and certainty to the agricultural industry has been a long time coming. And while the capability of soils is and remains a key factor in establishing priorities for resource urbanization selection as need is established, ODA also recognizes that many other factors are important in determining the long-term viability of agricultural lands. With this in mind, we offer the following comments for your consideration regarding the proposed new administrative rules for Metro Area Urban and Rural Reserves.

As pointed out in the staff report, SB 1011 establishes a new set of criteria that may be used to designate urban reserves in the metro region. It does not replace the existing urban reserve or urban growth boundary expansion criteria. SB 1011 simply adds another path to the long-term urbanization of resource land. The current paths may still be utilized.

Some believe that the current paths allow the protection of agricultural land to "trump" all other land uses. It is not uncommon to hear "[W]hen it comes to existing policy and law relating to the expansion of urban growth boundaries, protection of agricultural lands trumps all other land uses. There is no balance given to the needs of other land uses." Is this accurate? Based on our experience and analysis of existing policy and law, the answer is no. If anything, it appears that if an imbalance does exist, the system is weighted more towards the ultimate conversion of agricultural lands to urban uses than to their protection as agricultural lands. Consider the following provisions in state law that can lead to the conversion of agricultural lands to urban land uses:

1. ORS 197.296(2): This provision requires a local government to demonstrate that its plan provides sufficient buildable lands within its urban growth boundary to accommodate estimated housing needs for twenty years.
2. OAR 660-009-0025(2): This provision requires local land use plans to provide a twenty-year land supply of "employment lands" (commercial and industrial).

3. ORS 197.298(3): Allows "lower priority" lands (better agricultural lands) to be included in an urban growth boundary if it is determined by the local government that nonresource and poorer quality resource lands are inadequate to accommodate the amount of land needed to meet the determined twenty-year land supplies. The law further provides three specific reasons that may justify conversion of higher quality resource lands.
4. Statewide Planning Goal 14: Requires that UGBs shall be consistent with 20-year population needs. Needs include housing, employment opportunities, livability or uses such as public facilities, streets and roads, schools, parks or open space or any combination of these categories. Allows local governments, when determining "need", to specify the characteristics necessary for land to be suitable for an identified need.
5. OAR 660-024-0040: Implements Goal 14.
6. Regional Problem Solving ORS 197.652: Allows for expansion onto agricultural lands regardless of soils hierarchy if deemed to not be part of the region's commercial agricultural or forestland base. Does not define "commercial agricultural land base."

The provisions listed above provide a path to urbanize agricultural lands regardless of soil type, quality, value or rank. None of these provisions provide any bottom line or ultimate protection for any category of agricultural land. These provisions have been utilized in actual practice. Recent examples include expansion of the Woodburn (775 acres), McMinnville (794 acres) and Metro (industrial lands, 402 acres) urban growth boundaries.¹ These policies and laws have led some in the agriculture industry to coin the term "the rolling urban growth boundary." This focuses on the potential for different cities' UGBs to ultimately coalesce. Unlike other land uses, there are no policies or provisions addressing long-term protection of agricultural lands from urbanization.

The new statute allows for the designation of rural reserves, which can provide longer protection for resource lands. However, the designation of rural reserves to further protect agricultural land is of no real value if urban reserves are established on land that is, in fact, viable agricultural land. We assert that a higher bar needs to be set as to when urban reserves may be established on lands determined to be of the highest commercial viability to the agricultural industry.

The new statute directs LCDC to utilize new factors in developing criteria for designating rural reserves. These new factors are aimed at determining which agricultural lands are best suited for long-term agricultural operations on the basis of commercial viability. The factors listed in the new statute are based on the analysis factors utilized by the ODA in its report, recently completed for Metro in January 2007, entitled *Identification and Assessment of Long-Term Commercial Viability of Metro Region Agricultural Lands*. The ODA report ultimately maps three categories of agricultural land.

¹ According to data available from the Oregon Department of Land Conservation and Development, from 1987 to 2005, 14,840 acres of agricultural zoned land were moved into urban growth boundaries by way of urban growth boundary expansions. This constituted 33% of all the land brought into urban growth boundaries during said time period.

These viability factors in effect replace the soils priority hierarchy in existing law. The current soils hierarchy is designed to insure that the best agricultural soils are protected first and urbanized last. The LCDC rule implementing SB 1011 should do the same. Lands identified as the most viable and important to the region's agricultural industry should be off-limits to designation as urban reserves unless a special need is identified that cannot be met on other nonresource lands or agricultural lands of lesser viability. And the best agricultural lands should only be utilized for the most efficient and effective urban developments.

We suggest the following concept for the Commission's consideration. First, the rules could establish a "safe harbor" that presumes that lands identified as "Foundation" and "Important" agricultural lands in the ODA report that are located within three miles of an urban growth boundary satisfies the criteria for designating rural reserves.

Second, the rules should establish a presumption that "Foundation" agricultural lands located within three miles of an urban growth boundary will be designated rural reserve unless the subject land is significantly qualified to serve as one or more high-density, mixed-use retail service centers and cannot be accommodated on less viable resource lands. We would also recommend that the rule establish that "Important" agricultural land cannot be designated urban reserve without first considering less viable lands (alternatives).

We suggest the following language or something similar to implement this concept under OAR 660-027-0060:

(4) Lands identified as "Foundation Agricultural Lands" and "Important Agricultural Lands" that are located within three miles of an urban growth boundary are deemed to satisfy the factors in section (2) of this rule for designation of urban reserves. For purposes of this rule, the designations contained in the January 2007 Oregon Department of Agriculture (ODA) report entitled Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands control.

(5) "Foundation Agricultural Lands" located within three miles of an urban growth boundary shall be designated rural reserve unless the area is considered appreciably better for urban reserves considering the urban reserve identification "factors" (a), (c), (d) and (f) when compared to other areas that are not identified as "Foundations" lands, and the proposed urban reserve lands are capable of accommodating a pattern and intensity of development that will support retail commercial services within walking distance of all residences in the area and frequent service transit between concentrations of retail services.

(6) "Important Agricultural Lands" located within three miles of an urban growth boundary may be designated urban reserve only if the land is considered better for urban reserves considering factors (a), (c), (d) and (f) of section (2) of this rule, when compared to land that is not "Foundation" or "Important" agricultural land.

During the discussion of this concept at the rule advisory committee meeting, concern was expressed that the ODA report and maps should not be used because they had not been "vetted"

in a public process. Recognizing this concern, we suggest the following alternative approach: counties would be required to determine and designate the agricultural lands best suited for long-term viable agricultural operations. Such lands located within three miles of an UGB should be designated as rural reserves or at least precluded from designation as urban reserves unless the special circumstances identified in (5) above exist and then only if other, less viable agricultural or nonresource lands are not available to meet the special need. As a safe harbor, counties could choose to use the ODA designations in place of doing their own analysis.

One other concern relating to the ODA maps was expressed at the committee meeting. It was remarked that the maps found in the ODA report are not detailed enough to provide adequate boundaries for such use. It is important to note that the page size in the report does not equate to a map scale used. Furthermore, the boundaries of each subregion identified in the report are also described in the text of the report. And finally, a three-mile distance measured from the edge of urban growth boundaries would define the farthest edge of each rural reserve area.

Our last comment relates to the fact that rural reserves are designed to protect agriculture, forest, important natural features, fish and wildlife habitat, steep slopes and floodplains. These are important features that deserve consideration for rural reserve designation. We are concerned that urban reserves could ultimately be located on agricultural lands while the complimentary rural reserve lands could protect one of the several natural resource features, technically meeting the requirement the urban and rural reserves be designated simultaneously but not affording any additional long-term protection to agricultural lands. We would suggest that agricultural lands should not be designated urban reserve unless agricultural lands are also protected as rural reserves.

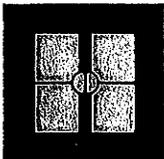
Thank you for the opportunity to provide these comments and recommendations. The Department of Agriculture remains committed to the concepts that form the basis of SB 1011 and the process designed to implement it.

Respectfully,



James W. Johnson
Land Use and Water Planning Coordinator
(503) 986-4706
jjohnson@oda.state.or.us

cc: Bob Rindy, DLCD
Katy Coba



November 26, 2007

Email Transmitted

Hon. John Van Landingham, Chair
And Members
Oregon Land Conservation & Development
Commission
635 Capital Street NE, Ste. 150
Salem, OR 97301-2540

RE: Draft Administrative Rules: Metro Area Urban and Rural Reserves.

Dear Chair Van Landingham & Commissioners:

As an appointee, Hillsboro staff participated in all LCDC Rulemaking Workgroup meetings on Metro Urban and Rural Reserves. We support the latest draft of the proposed Urban/Rural Reserves Rule (dated October 31, 2007) as presented to the Commission by DLCD staff.

Our remarks follow up on the Workgroup Chair suggestion that members should express their views on a couple of significant, unresolved policy issues.

The draft Rule comes to LCDC with two key unresolved policy issues: 1) whether the word "best" should be inserted in draft Sec. 660-027-0040(10) or 660-027-0005(2); and, 2) whether proposed additional "criteria" should be inserted in Sec. 660-027-0060 Rule which would require that "foundation agriculture lands" within two miles of a UGB shall be designated Rural Reserves unless it is shown that such land is "appreciably better" for an Urban Reserve designation. Land would be "appreciably better" for Urban Reserve designation if it is capable of serving as one or more high-density, mixed use service center *that cannot be accommodated on less viable lands.* (Emphasis added.)

Should the Commission decide that "best" should be inserted into the Rule, we concur with Metro staff that "best" should be inserted only in Sec. 660-027-0005(2) which states the "purpose" of the draft Rules. In this placement, "best" would state a clear "policy" direction in the Rule to pursue the "best livable communities" in future Urban Reserves, and to pursue agricultural and forest industries vitality and viability in Rural Reserves in the Metro Area. Placing "best" in Sec. 660-027-0040(10) would make it a "standard" that could lead to endless rounds of debates (both political and legal) whether Metro and its county partners have sufficiently demonstrated that the lands ultimately designated Urban and Rural Reserve Areas would "best" ensure "livable communities" and, concurrently, would "best" ensure agricultural and forest industries viability and vitality, respectively.

LCDC Commissioners

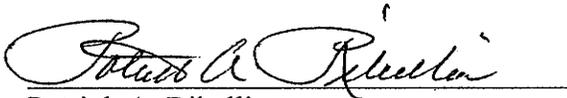
November 26, 2007

Page 2

We do not support the proposed additional "appreciably better" criteria for 660-027-0060. We believe it runs counter to the Legislature's basic intent and objective of SB 1011 – as we perceived them – to put prospective Urban and Rural Reserve areas on an equal, balanced footing when Metro and its regional partners consider the simultaneous and concurrent designations of Urban and Rural Reserve areas.

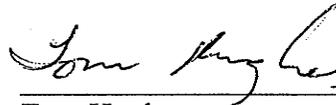
Thank you for the opportunity to present and submit these remarks into your record on possible LCDC Administrative Rules for Metro Area Urban and Rural Reserves.

CITY OF HILLSBORO:



Patrick A. Ribellia
Planning Director

Approved for submittal:



Tom Hughes
Mayor



November 28, 2007

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Portland, Oregon

Land Conservation and Development Commission
Dept. of Land Conservation & Development
635 Capitol St. NE, Suite 150
Salem, OR 97

Chair VanLandingham and Commissioners,

The new process for designating urban and rural reserves in the Portland metro region enabled by SB1011 and the forthcoming work of the Reserves Steering Committee established by Metro is an encouraging step forward for Oregon's Statewide Land-Use Planning System. Both will help ensure natural resources conservation are more fully integrated into regional planning and place natural resource protection on the same level as has historically been accorded to agricultural lands.

In our opinion both the working and natural landscapes are complementary elements of the region's sense of place and ecological sustainability. Agricultural and natural landscapes should be treated as an integrated whole in a holistic landscape mosaic that comprise rural reserves. We view this as an opportune time and process to encourage more cooperation between natural resource and agricultural lands advocates to ensure Oregon's working and natural resource landscapes are accorded equal protection and in the case of the natural landscape restoration where opportunities arise. We believe Oregonians, both urban and rural, agree that both the working and natural landscapes are important to maintain over time. And, both are critical to the economic vitality and quality of life across urban and rural Oregon.

The Urban Greenspaces Institute actively participated in Metro's Natural Landscape Features Inventory (NLFI) by convening natural resource experts, landscape ecologists and land use planners. Participants included representatives from Metro, ODFW, The Nature Conservancy, U. S. Fish and Wildlife Service, the Willamette Basin Ecosystem Consortium, and park and wildlife experts from the four-county Portland-Vancouver metropolitan region. This team identified landscape features that define the region's unique sense of place and natural heritage and that provide important ecosystem services to the region.

Some of the region's most significant landscape features included in the inventory include the Clackamas River Corridor, the East Buttes, Willamette Narrows, Tonquin Geologic Area, Chehalem Mountains, Wapato Lake and other important Tualatin River floodplain sites, restoration opportunity areas in the Willamette River floodplain, and Sauvie Island. Over 300 citizen participants in Metro's New Look public workshop identified many of these same geographic features as critical to the region's sense of place and natural heritage.

In addition to the expert panel map the Natural Features Landscape Inventory map included numerous additional data bases including: FEMA Floodplain maps; Oregon Department of Fish and Wildlife's Conservation Opportunities Map; The Nature Conservancy's priority habitats for the Willamette Basin and Puget Trough; Willamette Basin Ecosystem Consortium's tier 1 and tier 2 restoration opportunity areas map; Metro's Title 13 (Goal 5) regional significant fish and wildlife habitats; and Metro Parks and Greenspaces wildlife corridors map. I am attaching two power point images to my testimony. The first is a collage depicting these data sets and the second is the most recent draft of the composite NFLI map. The NFLI information is on Metro's website: http://www.metro-region.org/files/planning/naturalland_features.pdf.

We strongly urge that you incorporate the Metro's Natural Features Landscape Inventory map into the draft rule by allowing it to serve as a safe harbor in designating rural reserves for natural landscape features. Since the draft rule already includes a safe harbor for putting agricultural lands in rural reserves, this will establish parity between designation of rural reserves for natural landscape features and agricultural lands.

Respectfully,



Mike Houck
Executive Director

O R E G O N

ECONOMIC & COMMUNITY
DEVELOPMENT DEPARTMENT

November 29, 2007

Oregon Land Conservation and Development Commission
c/o Cora Parker, Acting Director
Land Conservation and Development Department
635 Capitol St. NE, Suite 150
Salem 97301-2540

**RE: Consideration of Prime Industrial Land during SB 1011
Rulemaking**

Dear Chair VanLandingham and Members of the Commission:

As you have undoubtedly heard from others today, the Commission's rulemaking workgroup on SB 1011 is proceeding diligently toward finalizing rules for adoption by the Commission in January 2008. I regret that other agency business does not allow me to join you in person today, but please accept my appreciation for including me in the workgroup. While work on the SB 1011 rules is progressing favorably, the Oregon Economic and Community Development Department (OECD) hopes you will encourage the workgroup to undertake some further consideration of the role of employment lands within Urban Reserves.

In correspondence sent to you in July, Walter Van Valkenburg, Chair of the Oregon Economic and Community Development Commission, urged that the SB 1011 rules should ensure that the Portland-metropolitan area is able to create and maintain an adequate supply of prime industrial land suitable for use by traded sector employers and those who support traded sector industries. The draft rules currently acknowledge the need to consider employment lands when evaluating the criteria for urban reserves and rural reserves. However OECD believes the need to protect employment land supply could be more precisely addressed in the rules in a manner that is both concise and balanced. Accordingly, we respectfully suggest the following additions to the current draft rules be considered by the SB 1011 rulemaking workgroup for possible submission to the full Commission:

- Amend 660-027-0060 to include:
 - "(i) Serves to ensure the provision and maintenance of an adequate supply of prime industrial reserve land."

GOVERNOR THEODORE R. KULONGOSKI

775 Summer St., NE, Suite 200 • Salem, Oregon 97301-1280
Phone 503-986-0123 • TTY 1-800-735-2900 • Fax 503-581-5115 • <http://econ.oregon.gov/>

- Furthermore, we recommend that section 660-027-0010 be amended to include:

"(3) 'Prime industrial reserve land' means industrial land within an urban reserve area that:

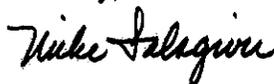
- (A) Is suitable for traded sector industries and other industrial uses that provide support to traded sector industries;
- (B) Possesses site characteristics that are difficult or impossible to replicate in the planning area or the region;
- (C) Has or can readily be provided necessary access to transportation and freight infrastructure;
- (D) Is free, to the degree possible, from environmental constraints or other development constraints to expedite development of industrial uses;
- (E) Is directly accessible to a state highway or to regional transportation facilities, including but not limited to a port or rail services.

This language will enable OECDD to continue assisting Oregon communities with its Certified Industrial Site Program. Through this program, Oregon has now certified 55 sites totaling over 3,300 acres. Of these sites, 22 have been all or partially sold and resulted in the creation – or expected creation -- of more than 3,000 jobs. The program has been a resounding success and been heralded by leading site selectors as a national model. The Certified Industrial Site Program was an essential part of Governor Kulongoski's economic recovery plan during his first term, and it remains just as important today.

OECDD values the role you have created for us in the SB 1011 rulemaking process. I hope through our participation and this correspondence that we are offering a beneficial perspective as you deliberate the final content of these rules.

Thank you for your consideration of these comments.

Sincerely,



Mike Salsgiver
Deputy Director



Portland Multnomah Food Policy Council



Dan Saltzman
City Commissioner

Jeff Cogen
County Commissioner

Chair

Jennifer Erickson

Members

Jennifer Bass
Richard Benner
Eecole Copen
Noelle Dobson
Scott Exo

Steven Hiatt
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Wisteria Loeffler
Carrie MacLaren
Michael Paine
Eric Sopkin
Paul Sunderland
David Yudkin



721 NW 9th Ave.,
Suite 350
Portland, OR 97209
Ph: 503.823.4225

November 27, 2007

Mr. Gil Kelley
Planning Director
City of Portland
1900 S.W. 4th Ave., Ste. 7100
Portland, OR 97201

Dear Mr. Kelley,

In the February 2002 resolution that established the Portland Multnomah Food Policy Council (FPC), the City asked the FPC to provide ongoing data collection and analysis, and recommendations to local governments regarding policies, programs, operations and land use rulings related to local food issues.

The FPC's Guiding Principles to promote, support and strengthen a healthy regional food system, include the following:

- Food and agriculture are central to the economy of the City and County, and a strong commitment should be made to the protection, growth and development of these sectors.
- A strong regional system of food production, distribution, access and reuse that protects our natural resources contributes significantly to the environmental and economic well-being of this region.

In order to fulfill its role in a healthy and regional food system, the Principles state that the City and County are committed to "enhance the viability of regional farms by ensuring the stability of the agricultural land base and infrastructure and strengthening economic and social linkages between urban consumers and rural producers."

In alignment with the Guiding Principles and the Council's establishing resolution, the Portland Multnomah Food Policy Council advises the City and County to recommend that the Land Conservation and Development Commission require, in its rules, that:

- Metro and Multnomah, Washington and Clackamas Counties minimize the use of "Foundation Agricultural Lands"¹ as designated urban reserves and that any Foundation Agricultural Lands designated as urban reserves be found suitable and appropriate for highly efficient urban development patterns. Given their importance to the agricultural land base, Foundation Agricultural Lands should be subject to both a higher threshold for designation and higher development standards.

¹ "Foundation Agricultural Lands" are those lands identified by the Oregon Department of Agriculture as most suitable and capable of sustained contribution to the agricultural economy of the metropolitan region.

- In addition, a higher level of efficiency should be required whenever any agricultural lands are added to urban reserves in order to minimize the urban footprint and the conversion of agricultural land to urban use. As a related matter, the Council affirms the importance of making efficient use of all lands brought into the UGB to reduce the potential to expand development onto valuable agricultural land.
- Finally, recognizing the policy objective to promote a healthy regional food system, the Council recommends that the City and County advocate for the designation of lands as rural reserves in order to provide the long-term protection of agricultural lands.

Thank you very much for your consideration.

Sincerely,



Jennifer Erickson, Chair



3415 Commercial St. S.E. • Suite 117 • Salem, OR 97302-5169 • (503) 399-1701 • FAX (503) 399-8082

November 29, 2007

Agenda Item #6
Regarding Administrative Rules for SB 1011

Members of the Commission:

I am Don Schellenberg, Associate Director of Governmental Affairs for the Oregon Farm Bureau.

The Oregon Farm Bureau is a non-profit, general farm organization with over 8,200 voluntary members representing every county in the state. They meet annually to amend and affirm the policies that govern the Farm Bureau's positions as we advocate for Oregon's farmers and ranchers. According to the first sentence of their policy book the primary purpose of the Farm Bureau is to support the continuation of the agriculture enterprise.

That policy statement doesn't refer just to yesterday or today or tomorrow, farmers and ranchers make plans and investments that affect and provide for many generations to come. Both as evidence of my statement and a side note, during the 2008 special legislative session the Oregon Century Farm and Ranch program will begin honoring those agriculture operations that have been in continuous ownership and operation by the same family for 150 years or more.

While our state-wide land use planning program is concerned about the protection of agriculture land, unfortunately the current design of Oregon's land use planning program doesn't ensure that any farm or ranch regardless of its production quality will survive for the next 10 years let alone the next 150.

To the credit of Metro and the agriculture community in the Metro area, they have embarked on a mission through SB 1011 that moves toward turning that corner. However the designation of Rural Reserves is of no real value if Urban Reserves are allowed to be established on land that is viable for commercial agriculture

production. Therefore, it is incumbent that LCDC adopt administrative rules that ensure the protection of valuable agriculture land in the Metro counties that are best suited for long term commercial agriculture production.

In order for Farm Bureau to support the proposed administrative rules the criteria for identifying the Rural Reserve land in the rules must be the identification criteria utilized by the Oregon Department of Agriculture in its report completed for Metro entitled *Identification and Assessment of Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007*. It is our position that without those criteria and accompanying maps in the rules there will be enough uncertainty and discretion by the counties that the whole effort will be ineffective.

Finally, while the purpose of Rural Reserves is to protect agriculture land they can also be used to protect such things as forest land, floodplains, fish and wildlife habitat and other natural features. We are we are concerned that the language is not clear enough to prevent Urban Reserves from being designated along with Rural Reserves that are in fact protecting these other natural resources instead of protecting viable farmland. Your attention to this matter would be greatly appreciated.

Thank you for the opportunity to comment on this very important issue.

Date: November 29, 2007

To: Chair VanLandingham and Land Conservation and Development Commission

Re: Draft Administrative Rules for Metro Area Urban and Rural reserves, pursuant to SB 1011

From: Carol Chesarek, on behalf of Forest Park Neighborhood Association
13300 NW Germantown Road
Portland, OR 97231

Chair VanLandingham and Members of the Committee,

I appreciate the opportunity to share some comments about the draft rules with you this afternoon. I live in Portland's Forest Park Neighborhood, which includes Forest Park and a broad swath of the Tualatin Mountains.

I'm here today on behalf of my neighborhood. I testified about our strong support for SB 1011 during the Oregon Senate and House hearings earlier this year. I have attended all of the rules meetings held by Metro and the workgroup. Three other neighborhood residents reviewed the draft rules and shared their comments with me, so these comments are a group effort.

Our neighborhood is tired of fighting UGB expansion battles every 5 years, and we want to protect the regionally significant natural resources in our area.

Overall we're very pleased with the draft rules. We strongly endorse the 660-027-0050 Urban Reserve designation factors (e), (g), and (h) that help protect natural features and agricultural lands from urban impacts.

However, we have some specific concerns we'd like you to consider:

1. As a general principle, we'd like to see parity for agricultural lands and natural features. A February 2006 report for Metro prepared by Davis, Hibbitts & Midghall Inc. shows that tri-county residents prioritize protections for natural resources slightly higher than preserving farm and forestlands¹. One of the conclusions of the report reads:

"Environmental values are particularly important to residents throughout the region. Once people are here, their enjoyment of the region is due primarily to environmental considerations. Two-thirds want environmental protection to be more important than economic growth in the coming decade and they want planning designed to protect the region's environmental assets".²

The natural resources in the Portland area help employers attract and retain the best employees, resulting in a positive impact on the economy. At the last workgroup meeting, a "safe harbor" provision 660-027-0060 (4) was added for agricultural lands. We would like an equivalent "safe harbor" provision to be added for natural features based on the Natural Landscape Features Inventory map created by Metro. We are impressed with the work that went into the map and believe it is a unique and valuable resource that should be referenced in the rule. If other new terms are added to the rules that increase protections for agricultural land, equivalent terms should be added for natural features.

2. More consideration of future reserves processes is needed. The draft rules require the use of the January 2007 Oregon Department of Agriculture (ODA) report to Metro. If new reserves are considered 10, 20, or 40 years from now we'd like an updated agriculture report to be used. We

¹ Davis, Hibbitts & Midghall Inc. Regional Attitudes Toward Population Growth and Land Use Issues. Prepared for: METRO. February 2006. Page 13.

² Ibid. Page 24.

suggest that Metro be given the responsibility for ensuring that up-to-date maps and reports for Agriculture and Natural Features are created early in every reserves process. The maps should be completed early in the process ensure that the maps aren't drawn to enable a politically desirable result, and Metro should be encouraged to continue to use independent experts such as ODA and the Urban Greenspaces Institute.

3. If additional Reserves are designated at a later date, we'd like Metro and the counties to have the option to extend the duration of some or all of the older Rural Reserves up to the same end date as the new Rural Reserves.
4. Everyone starts an effort like this reserves designation process like this with good intentions, but when elected officials face difficult decisions strange things can happen. In 2002 Metro brought a portion of our neighborhood ("Area 94") into the UGB, in spite of loud protests from the City of Portland, even though other study areas were better suited for urbanization. This UGB expansion decision was appealed and Metro's decision on Area 94 was overturned. Because of this experience, we favor a "high bar" (see the discussion beginning in the last paragraph on page 14 of the Staff Report) for decisions about which lands will be included in Urban Reserves.

We also suggest the following wording changes in the definitions (changes are shown in bold text and strikethrough):

660-027-0010 (4) "Livable communities" means ... public services and infrastructure, **and greenspaces** ...

660-027-0010 (11) "Urban reserve" means ... designated to provide for future expansion of the UGB over a long term period, ~~and~~ to facilitate planning for ... services, **and protection of natural resources** ...

660-027-0010 (12) "Walkable" means a community in which land uses are mixed, built compactly, and designed to provide residents, **employees, and others** with safe and convenient pedestrian access to **parks and recreation facilities, libraries**, schools, offices, businesses, and other places that provide goods and services **that are used** on a regular basis.

We're pleased that the rules process is off to a strong start, and that Metro is already working closely with Multnomah, Washington, and Clackamas counties on a process to designate a thoughtful set of Urban and Rural Reserves.

Thank you for the opportunity to provide these comments.



Carol Chesarek

Land Conservation and Development Commission
Dept. of Land Conservation & Development
635 Capitol St., NE, Suite 150
Salem, OR 97301-2540

November 29, 2007

Dear Chair VanLandingham and Commissioners:

On behalf of The Nature Conservancy in Oregon, we appreciate the opportunity to comment on the proposed new administrative rules to establish a process and criteria for Urban and Rural Reserves in the Portland Metropolitan region, as enabled by SB 1011. We applaud this effort, and we believe this new approach to managing growth will help protect Oregon's unique natural areas and working landscapes.

The Nature Conservancy is a private, non-profit organization dedicated to preserving the plants, animals, and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive.

With nearly 22,500 member households in Oregon, the Nature Conservancy advocates for Oregon's Land-Use Planning System to better protect key natural areas and waters, as indicated by our recent active role on Measure 49. The Willamette Valley is specifically an area of great concern, having been identified by The Nature Conservancy as a 'Worldwide Crisis Eco-Region'. Thus we support the concept of establishing 'Rural Reserves' to protect 'Natural Landscape Features'.

We are pleased that the Oregon Department of Fish and Wildlife's 'Conservation Opportunity Areas' are recognized and incorporated within Metro's 'Natural Landscapes Features Inventory'. ODFW's 'Conservation Opportunity Areas' represent the results of merging scientific data, existing plans, and local knowledge to identify key natural areas.

- We urge that ODFW's 'Conservation Opportunity Areas' be used to designate key 'Rural Reserves', plus we encourage Metro and the Counties to use The Nature Conservancy's 'Conservation Priority Areas' and The Willamette Basin Partnership's inventory maps in their efforts.

We recognize that farmland protection is crucially important. At the same time we want the protection of 'Natural Landscape Features' to be valued as equally important. With this in mind, we offer a recommendation to the rulemaking workgroup and the Commission:

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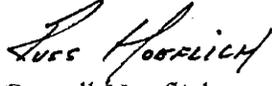
Russell S. Hoefflich
*Vice President
& Oregon Director*

- We urge that a 'Safe Harbor' for 'Natural Landscape Features' be established. Such an Safe Harbor will parallel the Safe Harbor established for 'Important Agricultural Lands' (660-027-0060 (4)). Metro's 'Natural Landscape Features Inventory' can serve as the basis for this Safe Harbor.

Finally, SB1011 and the draft administrative rules set an exciting precedent that will shape the region in a positive direction, protect the Willamette Valley's unique biodiversity for generations, and potentially establish a precedent for other urbanizing areas around the State. We urge consideration and adoption of these recommendations.

Thank you for your consideration.

Sincerely,



Russell Hoeflich
Vice President and State Director
The Nature Conservancy in Oregon

Steven L. Pfeiffer
PHONE: 503.727.2261
FAX: 503.346.2261
EMAIL: spfeiffer@perkinscoie.com

1120 N.W. Couch Street, Tenth Floor
Portland, OR 97209-4128
PHONE: 503.727.2000
FAX: 503.727.2222
www.perkinscoie.com

November 29, 2007

VIA FACSIMILE AND FIRST-CLASS MAIL

Land Conservation and Development Commission
Attn: John Van Landingham, Chair
635 Capitol Street NE, Suite 150
Salem, OR 97301

Re Proposed Related Urban-Rural Reserve Rule Amendment

Dear Chair Van Landingham and Members of the Commission:

On behalf of various clients and development organizations, I participated in the legislative proceedings undertaken to adopt SB 1011 and, to a lesser extent, in the drafting process of the Urban-Rural Reserve Rule (proposed Division 27) now pending before the Commission. The single purpose of this letter is to raise a specific issue relating to urban reserve planning in the Portland metropolitan area and the need for an additional housekeeping correction to insure consistency among the various administrative rule provisions addressing this subject.

As you know, the draft Urban-Rural Reserve Rule before the Commission affords Metro an alternative to the urban reserve designation process currently available under OAR 660, Division 21. Metro has long enjoyed the authority to establish urban reserves under Division 21 and, pursuant to the Goal 2 Exceptions Rule (OAR 660-004, *et. seq.*), the area immediately outside the Portland metropolitan Urban Growth Boundary is preserved in large parcels until such time as an urban reserve is acknowledged by Metro under Division 21. Specifically, OAR 660-004-0040(8)(e) expressly references the ability to establish urban reserves and requires the maintenance of large parcel sites within one mile of the Portland metropolitan area Urban Growth Boundary, until such time as an urban reserve is adopted pursuant to Division 21.

With the pending adoption of proposed Division 27, Metro soon will have a more suitable alternative to establish urban and rural reserves. Since the policy under Division 4 of eliminating the requirement for large parcels adjacent to the Metro boundary is equally applicable to an urban reserve established under Division 27, it seems appropriate to modify OAR 660, Division 4 to include reference to Division 27, as well as Division 21, to insure consistency within these rule provisions. Accordingly, we request that the Commission amend the current version of OAR 660-004-0040(8)(e) as follows:

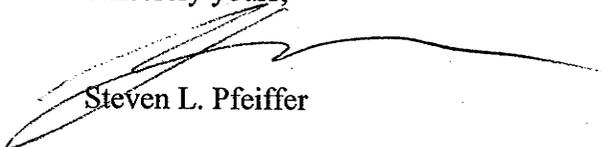
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Attn: John Van Landingham, Chair
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"Notwithstanding the provisions of Section 7, if any part of a lot or parcel to be divided is less than one mile from the urban growth boundary for the Portland metropolitan area and is in a rural residential area, and if the Portland metropolitan area does not have an urban reserve area that contains at least a twenty-year reserve of land and that has been acknowledged to comply with OAR 660, Division 021 *or Division 027*, the minimum area of any new lot or parcel there shall be twenty acres. If the lot or parcel to be divided also lies within the area governed by the Columbia River Gorge National Scenic Area Act, the division shall be done in accordance with the provisions of that act."

(Emphasis added to show requested additional language).

Thank you for your time and consideration of this limited amendment. If you have any questions or require additional information, please feel free to give me a call.

Sincerely yours,



Steven L. Pfeiffer

SLP:crl

Cc: Cora Parker (via email)
Bob Rindy (via email)
Richard P. Benner (via email)
Steven Shipsey (via email)
Al Burns (via email)



Oregon

Theodore R. Kulongoski, Governor

Department of Fish and Wildlife

Fish Division
3406 Cherry Avenue NE
Salem, OR 97303
(503) 947-6200
Fax (503) 947-6202
TTY (503) 947-6339
www.dfw.state.or.us

November 29, 2007

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



RE: Proposed New Administrative Rules Regarding Urban and Rural Reserves in the Portland Metropolitan Area

Dear Bob:

The Oregon Department of Fish and Wildlife (department) has been tracking the rule-making for urban and rural reserves in the Portland metro area. The department is very supportive of the process as well-planned urbanization is better for fish and wildlife resources as well as for people, and is especially supportive of the concept of rural reserves. Rural reserves are a welcome addition to urban reserves. The department supports the concept of addressing important natural landscape features when considering designation of urban reserves as well as rural reserves.

The department supports a balanced treatment of agriculture, forestry and important natural landscape features in designating rural reserves, but is not providing any proposed language at this time. The department requests that as future amendments to the rules are considered, that important natural landscape features, which include fish and wildlife habitat, continue to be addressed in a balanced way with other important natural resources. One concept that could be considered is the addition of a "safe harbor" for important natural landscape features similar to the "safe harbor" for agricultural resources.

Thank you for the opportunity to comment on the proposed rules. Please add these comments to the record of the November 29th hearing for the draft rules. Please contact me if you have any questions regarding these comments at (503) 947-6089.

Sincerely,

Patricia Snow
Land and Water Use Coordinator
Wildlife Division

