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For Save Helvetia

To: Urban and Rural Reserves Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

May 30, 2011

RE: GOAL 1 OBJECTIONS

Washington County A-Engrossed Ordinance 740
Metro Ordinance Number 11-1255

I have appeared on multiple occasions between September 2009 and through April of 2011 before the Washington County Board of County Commissioners and the Metro Council, providing written and oral testimony in the matters of Urban and Rural Reserve designations, both in the phase leading up to the Intergovernmental Agreements and the Washington County Ordinance Processes: Ordinance 733 (2010) and the revision Intergovernmental Agreements and Ordinance 740 (2011). I have been a member of the Save Helvetia Steering Committee since its inception, a citizen organization that was formed to educate decision makers about the reserves factors regarding the agricultural lands under study and north of the Sunset Highway. I am now concentrating our education on the lands north of the Sunset Highway, south of NW West Union Road, and between NW Helvetia Road, and NW Jackson School Road to the west. It has been termed Area 8B by Washington County. With Save Helvetia, I have provided substantial and detailed testimony. I am raising objections for myself and for others who are signatories in the attachment.

I contributed to the input of **citizen involvement objection 1** submitted to DLCD by fellow Save Helvetia member, Linda Peters, dated 7/14/10, with respect to the previous Washington County Ordinance 733. **See Attachment 1.** I/we endorse the citizen involvement objections submitted on 7/14/2010 to DLCD. DLCD inadvertently failed to respond to Linda Peter's objections during its review of Ordinance 733. These objections endorse them again and pick up on how Washington County has involved citizens since 10/29/10.

Because the findings in Metro Ordinance 11-1255 and Washington County Ordinance 740 are almost identical, this document will refer to the Washington County Ordinance 740 and Findings, where applicable. References to "the County" or "County" mean Washington County.

Washington County erred in treating reserves designation processes as NOT Land Use Actions, and therefore bypassed requirements for notice and citizen involvement in all stages of planning as required by Goal One and the County Development Code. Whether or not reserves designations are adjudged "Land Use Actions", Washington County failed to meet its own code requirements regarding notice to landowners and CPOs, and violated public meetings laws in preparing Ordinance 740. DLCD's failure to produce timely findings and order implementing LCDC's 10/29/10 Remand decision is arguably illegal. Harm is done to landowners not receiving notice, harm is done to real citizen involvement, and harm is done to the principles and standards of expected citizen involvement due to the closely guarded improvisations of process revealed in Washington County e-mails.

Objection 1.

Washington County and Metro failed to comply in good faith with Citizen Participation and Public Involvement requirements of Goal 1 OAR 660-015-0000(1)(1) and OAR 660-015-0000(1)(2) and OAR 660-015-0000(1)(3) and OAR 660-015-0000(1)(4). There are no allowed exceptions for disregarding citizen involvement. Washington County and Metro assumed their citizen process during Ordinance 733 was sufficient. It was not. Regardless, citizen involvement is expected during revision. Hearing opportunities are not a full citizen

participation program, especially when decision makers have already made up their minds.

Explanation of Objection 1.

In Exhibit B to Ordinance No. 11-1255, page 12, Washington County asserts “In the last phase of the reserve process-adoption of ordinances that designate urban and rural reserves-each government followed its established procedures for adoption of ordinances: notices to citizens; public hearings before its planning commission (in Metro’s case, recommendations from the Metro Planning Advisory Committee) and public hearings before its governing body. But in the more-than-two years leading to this final plan, there were additional advisory bodies established.” And on page 108, Washington County asserts: “Following the oral remand, Washington County and Metro continued their efforts to balance the Reserves in the county by evaluating information and comments provided by the public and community partners”.

Since the time of the 10/29/10 LCDC “oral remand” Metro has kept citizens in the dark regarding the Reserves Process. “Reserves” topics did not appear on any Metro work session agendas from October 30, 2010, to the current date. Metro studiously avoided giving notice of any reserves discussions until the Hughes-Duyck Proposal was issued February 22, 2011. By this time, multiple backroom discussions had taken place and that were invisible to citizens. This resulted in citizens being kept in the dark regarding Metro’s intentions of the Reserves Process in Washington County. Citizens were excluded from any consideration of how to approach resolving the written remand order delay. When Metro finally scheduled hearings, no evening hearings were made available to the public. This exclusion kept a portion of the public from providing valuable input to this decision making body, which included three Metro councilors: two newly elected Metro councilors and one newly appointed Metro councilor. This was a lost opportunity for vital citizen involvement and input. This included 3 councilors new to the Reserves Process. This harmed public involvement, orientation of new Metro councilors to citizen perspectives, and together with other exclusionary practices described above violated Goal One, Citizen Participation.

Since the time of the 10/29/10 LCDC “oral remand”, Washington County has failed to involve the public in anything but a few hearings. A majority of commissioner’s decisions were made in advance of those hearings. This subjected the public to a charade of hearing deliberations. At one point, Chair Duyck even apologized to the public at their final April 26th hearing, saying that the law required the hearing take place, but that the hearing was “meaningless” as they had already made up their decision and any change would require them going back to Metro and throwing them off their calendar: “that is not going to happen”. See video or transcript of hearing dated 4/26/11 and toward the end.

Citizen influence (3) under Goal 1 specifically indicates that “Major Revisions in the Plan” are subject to the expectation of public involvement. Revisions by their very nature go back over “old ground” and make changes. Because citizens were/were not involved at a previous planning point does not make their subsequent involvement superfluous during a revision planning process. There is no exception to this. Washington County treated the revision process as an internal and inter-governmental revision process and limited citizen involvement to a few hearings and well after a majority of votes had been aligned. The then Chair Brian had already developed a majority of board votes. Whereas in Goal One, and under 6, Revisions, it explicitly indicates that citizens “should have the opportunity to review and make recommendations on proposed changes in comprehensive land use plans **prior** to the public hearing process...”.

Washington County expended no effort to engage citizens or their organizations as the two commissioners (Brian, Duyck) developed their proposal and then developed majority commissioner support for it. A majority of commissioners had already committed to the Brian/Duyck plan before hearings took place on December 14th, 2010. Because new urban reserves were proposed (adopted) in areas that had not been considered for urban reserves since December of 2009, many citizens were unaware that these areas were at risk of urban reserve designations. The most recent broad public outreach was an online survey by Metro that showed large areas of Area 8 north of Highway 26 as undesignated, and more importantly, the survey did not request any public input about that specific area. This led citizens to believe that the area was not likely to be designated either urban or rural reserve. Urban reserve designations are a significant long term land

use decision, and proposed changes called for a much broader public outreach than was provided after October 29, 2010. (Phase 4, January 2010, Urban and Rural Reserves Public Comment Survey, page 44).

Chair Brian indicates in an e-mail that he wanted assurances that his and Duyck's plan would have a majority before 1/1/11 and after. New and critical information brought forward by citizens were to have no impact: soil analysis; ODOT letter re Helvetia-Brookwood Parkway Interchange. Later, on March 2, 2011, Washington County's Planning Commission voted to reverse many of the proposed designations north of Highway 26 and north of Cornelius. They were scolded by Chair Duyck for engaging in decision making. He indicated that that was the purview of the commissioners, and the majority that had already been aligned for the multiple hearings ahead: 3/15/11, 3/29/11, and 4/26/11. See **Attachment 2**.

It is interesting to note that Chair Duyck, several county commissioners, and county staff briefed the Washington County Planning Commission at a joint meeting on February 16 in preparation for the then upcoming hearing by the Planning Commission on March 2. Chair Duyck's staff handed out proposed reserves maps to the Planning Commission and at no time did Chair Duyck suggest they should not take a vote on the proposed reserves map. The purpose of the meeting was to inform the Planning Commission of the reserves process and issues and answer their questions in preparation for the planned hearing. Later, on March 2, 2011, when the Planning Commission voted in a manner differently than what Chair Duyck expected, he excoriated them for their vote, saying "On something like this, they truly are just a rubber stamp." See **Attachment 2** and Planning Commissioner Matthew Larrabie's response to Chair Duyck in **Attachment 3**.

The vacuum created by the lack of a written remand order contributed to a context in Washington County where several decision makers were able to say what the oral remand was and was not, and this created a **technical information** void, making it difficult for citizens to appreciate their standing, their rights, and whether what was unfolding was proper, was legal, or what standards applied, or not. With this lack of a written remand order never having occurred before, we could find nobody with clear ideas about what it meant and what the consequences

were. Save Helvetia finally wrote to DLCD and asked for an explanation: copy of this request is in the record. We await response. **See Attachment 4.** I also submitted written concern about this lack of order into the record through my Supplemental Information for the Urban and Rural Reserves Record to Multnomah County, April 28, 2011. **See Attachment 5.**

I requested information from DLCD Director and DLCD staff, through a public record request. We were informed that while several meetings took place between Mr. Whitman and Mr. Benner of Metro, no notes were taken by Mr. Whitman. **See Attachment 6.** There was no comment on whether any other meetings had occurred between Washington County, Metro, and DLCD staff. We could see from public records received from Washington County that Metro's Mr. Benner was actively advocating by e-mail to Mr. Whitman "not to write the remand order". Then Mr. Benner communicated this by his e-mail of 1/5/11 to Brent Curtis and others titled Draft Remand Findings. **See Attachment 7.** This gap created a technical void making the process less comprehensible for citizens and for citizen involvement.

The DLCD response to my public records request was provided in my oral and written testimony of March 29th and before the Washington County ordinance hearing. **See Attachment 8.** A public record request of Washington County finally revealed a back room decision making process that was far from transparent to the public. Deep within the mass of documents received from Washington County, we found a thread of e-mails that revealed the true decision making process. These were substantially generated from past Chair, Tom Brian, and directed to other commissioners, and/or to his key staff associated with the Reserves Process, and with reference to planning with Metro and DLCD. From these documents, we were finally able to develop some perspective on Washington County's tone and approach to citizen involvement in this post-remand revision period.

It details a closed and internal process, private meetings of public officials, a closed circle of decision-making, a perception of citizens and citizen groups as opponents, and a get-it-done-before-January 1st " culture that recognized Chair Brian's imminent departure and his fear that possibly newly elected commissioners might be more protective of farm land.

The following e-mail references are in the record: 1) titled Supplemental Information for the Urban and Rural Reserves Record authored by myself and submitted to the Multnomah County hearing of April 28, 2011 when Multnomah County endorsed the plan. 2) They were also submitted into the record through Washington County from Save Helvetia, as we submitted the full contents of the CD we had received from our public records request of them. **These e-mails are within those documents and are referenced as e-mails, 0150i.arc.pdf Adobe Acrobat Document, 20,549 KB. Scroll down to less than half way and the thread of Tom Brian e-mails begins.**

In Tom Brian's e-mail of December 4th, 2010, page 2, item 6) he indicates that "There is general agreement that sufficient analysis and public comment is in the record from which the amendment can be fairly considered; neither Metro nor the County feels it is necessary to re-open the analysis process or conduct an extensive outreach and public information effort". **See Attachment 9.**

Citizen Participation Organization #8 represents the area now being proposed by Tom Brian for acreage replacement. CPO # 8 endorsed rural reserves for the acreage north of Highway 26 by a 35 to 0 vote, of those present, during their October of 2009 review of the reserves process: in the record from Ordinance 733. **See Attachment 10.** It was self-serving for Chair Brian and Metro to conclude that "extensive outreach and public information effort" was not necessary during the revision phase when they would turn to this acreage for designation as industrial, urban reserves.

Brian learns from Chair-elect Duyck in his 11-1-10 e-mail that "my inclination is to not roll over on this one", referring to the LCDC remand. **See Attachment 11.** Chair Brian, in his 11-2-10 e-mail, shows concern for his waning tenure on the Board of County Commissioners and wants to move quickly, internally, and move the board to action, and then advocate its passage among the Metro Council. **See Attachment 12.**

Chairman Tom Brain set an anti-citizen tone in his communication of 11/10/10 to key staff and Chair-elect Duyck: "We are attempting to keep these ideas

CONFIDENTIAL and do not want to give opponents any more lead time than legally necessary. So, I am concerned about WHO makes these revised, draft maps. Usually we have had John Williams at Metro do these maps, haven't we? You should do whatever you have to do, but please keep these discussions and options as confidential as possible for the time being." **See Attachment 13.**

From there, Tom Brian indicates in his November 14th e-mail to his DLUT staff, Brent Curtis, that he will be vetting the proposal with Metro's Hughes, Hostika, and Harrington on 11/19/10, and 11/22/10. **See Attachment 14.**

By his November 14th e-mail, Brian indicates he is closing in on having the majority of votes on the county commission, both before January, and after. **See Attachment 14.** This is a full month before any public testimony would be taken, December 14th. Brian then first communicates his and now Duyck's proposal to his full board of commissioners for discussion late the first week of December.

The public is notified on 12/6/10, one week before this December 14th hearing, abruptly sandwiched between the Thanksgiving and Christmas holidays. **See Attachment 15.** On December 7th, as spokesperson for Save Helvetia, Cherry Amabisca responded to the press about Cornelius lands being replaced with foundation farmlands in Helvetia, some of the best farm soils. Commissioner Desari Strader on December 7th verbally attacks Save Helvetia members, dismissing our motivations to protect prime farm soils, by saying that we "are intellectual, wealthy, elitists wanting to protect their McMansions". **See Attachment 16.**

By December 12, Tom Brian indicates in his e-mail to commissioners and staff that he is within reach of obtaining majority support on the Metro Council. He has already vetted it with Councilors Hughes, Hostika, and Harrington through a series of private meetings. **See Attachment 17.** Councilor Colette was to follow. This is long before any hearings would be scheduled, which eventually were set for mid March and April of 2011. One Metro Councilor would, at the end of each of Metro's Ordinance hearing, pull out her prepared, written decision, and read it into the record. See video of final voting of Metro hearings.

In response to this incivility to citizen involvement voiced by Commissioner Strader on December 7, I submitted oral and written testimony on 12/14/10 before the Washington County Board of County Commissioners. **See Attachment 18.** I testified that I was a Harold Haynes Citizen Involvement Award recipient from 2007 and that it distressed me to see this disrespect directed at my fellow citizens by an elected commissioner. I identified Save Helvetia members as among the best in citizen engagement in behalf of their community and providing factor based education based on OARs. We did not know at the time that Tom Brian's term for citizens with opposing views was "opponents". **See Attachment 13.**

A Washington County Planning Commission hearing is scheduled for March 2, 2011. The Commission had been briefed by Chair Duyck and staff the previous week. The Planning Commission takes testimony from the public, including Save Helvetia, and they vote a different decision that the Duyck-Hughes plan: re-designating lands in Cornelius (back toward urban reserve) and re-designating lands north of Highway 26, back to undesignated from the proposed urban reserves of Duyck-Hughes. This becomes an embarrassment to the Duyck-Hughes plan coalition. Chairman Duyck announces that the Planning Commission should have stayed out of the decision making process and that they should let the Board handle decisions. **See Attachment 2.**

Remedies for Objection 1.

Remand Ordinance 740, for its planned strategy of not involving citizens in the decision making process during this revision process.

We recommend that LCDC commissioners object to DLCD for its not distributing a written remand order, a contributor to limited citizen involvement.

Adopt the remedies proposed by Linda Peters in her Objection to Ordinance 733, dated 7-14-10. We re-endorse those. Had DLCD responded to our earlier concerns about Washington County's citizen involvement, it might have intervened on Washington County's pattern of ignoring citizen involvement.

We recommend that a member of the state DLCD Citizen Involvement Advisory Committee be tasked to monitor the next citizen involvement plan and process in Washington County and confer with the state Citizen Involvement Advisory Committee and LCDC commissioners about the adequacy and sufficiency of the

citizen involvement plan before Washington County re-engages its next Reserves revision.

This plan should also receive public comment during a county hearing, including a vetting by the Washington County CCI and CPOs.

Objection 2.

Washington County failed to abide by its Resolution and Order No. 86-58, adopted June 3rd of 1986 and entitled Exhibit A, “Citizen Participation in Washington County, Oregon.” Post 10-29-10, Washington County treated the revision planning process as an internal matter, and strategically chose not to engage citizens, citizen organizations, and the CPOs. Chair Brian and some Metro Councilors viewed their previous public involvement plan under Ordinance 733 sufficient for the purpose of Ordinance 740. The past citizen involvement was neither sufficient (see Linda Peters’ DLCD objection # 1 of 7-14-10 - **Attachment 1**) nor is there any exception for failing to involve citizens based on one’s personal view of past performance, or one’s departure from office.

Explanation of Objection 2.

Resolution and Order No. 86-58 is Washington County’s County Order that enshrines Citizen Participation in Washington County. The explanations and support made in the preceding Objection 1, also provide some support for Objections 2. However, if the process was “Not Land Use”, then Washington County (initially Tom Brian, then Chair-elect Andy Duyck) violated their own ordinance re Citizen Involvement , by their choosing not to re-engage citizens in the revision process, hurrying the planning in the face of Tom Brian’s departure from the board, and Brian’s desire to complete the Reserves Process. However, the Washington County Order and Resolution does not provide for this type of exception of excluding citizens.

Remedies for Objection 2.

Remand Washington County Ordinance 740, for its planned strategy of not involving citizens in the decision making process during this revision process.

We recommend that LCDC commissioners object to DLCD for its not distributing a written remand order, a contributor, we believe and experienced, as limiting our and others full citizen involvement.

Adopt the remedies proposed by Linda Peters in her Objections re Goal One to Ordinance 733, dated 7-14-10. Had DLCD responded to our earlier concerns, LCDC might have remanded a warning to Washington County about its citizen participation program, or lack thereof.

We recommend that a member of the state DLCD Citizen Involvement Advisory Committee be tasked to monitor the next citizen involvement plan and process in Washington County and confer with the state Citizen Involvement Advisory Committee and LCDC commissioners about the adequacy and sufficiency of the plan, before Washington County re-engages its next Reserves revision. This public involvement plan should also receive public comment during a county hearing, including a vetting by the Washington County CCI and CPOs.

Objection 3.

Washington County failed to comply in good faith with Land Use Planning per OAR 660-015-0000(2) by failing to assure an adequate factual base for its designation decisions within Ordinance 740, further failing to “evaluate alternative courses of action and ultimate policy choices”. “In each case where there are conflicting policies or strategies, the Review Authority shall adopt findings stating how the conflicting policies or strategies were weighed and balanced, and why the specific decision was reached.” This did not occur nor would this then become available for citizen input during preparation, review, and revision and this occurred without Washington County adopting any exception to this goal as would be required.

Explanation for Objection 3.

Land Use Planning (OAR 660-015-0000(2)) requires Washington County to evaluate alternative courses of action and ultimate policy choices and to allow citizens input into this, before hearings. Following the LCDC oral remand of 10-29-10, and in Tom Brian’s words, he set out to replace “acre for acre”, “type for type”. Tom Brian promoted his criteria for selection: adjacent to UGB; less

productive soils than north of Cornelius. Adjacency to a UGB was never a reserves factor, per se. Washington County did not effectively assess soil type or productivity and carried on with an assumption that if north of Cornelius was “the best of the best”, and then the foundation farm land north of Highway 26 must automatically be less productive. Washington County also discriminated in favor of membership in the Tualatin Valley Irrigation District without ever fully assessing the natural water and sub-irrigation resources of the Helvetia acreage. Save Helvetia provided detailed soil analysis at the 3/29/11 and 4/26/11 ordinance hearings but the county plan was stuck in concrete and they would not back out. Save Helvetia, through my testimony, submitted detailed hydrologic information into the record and complained about their discriminating in favor of Tualatin Valley Irrigation District and against the sub-irrigation water resources north of the Highway 26. There was not any discussion about not replacing “acre for acre”. Perhaps elsewhere in the region would be suitable acreage that would not take foundation farm land with the rare type I soils and beneficial water resources. There was not any discussion about not replacing “type for type”, irrespective of whether it is even proper to pre-designate “type”. There was no developed response to Greg Mecklem’s Soils Analysis for Save Helvetia. Washington County never defended their discrimination of water resources.

When the City of Cornelius came to the 3/29/11 hearing with alternative designation suggestions (and 3-15-11 hearing), they were quickly tabled. When the Washington County Farm Bureau came in with eventual alternative designation suggestions (3-15-11 and 3/29/11 hearings), they were quickly tabled.

Washington County would not make its Findings available for the hearing on December 14, 2010, not for the joint Metro/County hearing on 3/15/11, nor available to the public at their ordinance hearing on 3/29/11. It was available to the Metro hearing on 4/21/11. While it was available for the 4/26/11 final ordinance hearing, but as Chair Duyck said, this hearing was “meaningless”, required by law, but their decision was set and irreversible. Citizens lacked access to weighing the findings in a timely manner. See video or transcript of hearing of 4/26/11.

At the 4-26-11 hearing, property owners came forward complaining that they had just learned of the pending decision about to impact their property and they

objected to not having received public notice of the proposed action. Washington County responded by saying this was not a “land use action” and did not require notification. See video or transcript of hearing.

Remedies for Objection 3.

Remand Washington County Ordinance 740.

Require the subsequent revision include specific compliance with Land Use Planning per OAR 660-015-0000(2).

DLCD should assign an Urban and Rural Reserves Specialist to the next Washington County revision planning to assure that this occurs and that citizens have access and comment to weighing the alternate course of action and the ultimate policy choices.

Washington County should provide public notice to all property owners whose property might be affected by a reserve designation.

Objection 4.

Washington County failed to comply in good faith with its Rural/Natural Resources Plan Element, Policy 2, Citizen Involvement: “Comprehensive Planning requires, and depends on, an informed citizenry. For the plan to reflect the needs and values of the citizens of Washington County, citizen participation is essential. This meaningful involvement is necessary throughout the planning process and is an integral part of the on-going planning program.” Washington County Board of Commissioners did not engage in meaningful dialogue, post 10-29-10, and evidence shows that a majority of decision makers had their minds made up ahead of time. There is no exception in the Plan element for this significant departure.

Explanation of Objection 4.

Washington County Rural/Natural Resource plan, Element Policy 2, Citizen Involvement, is yet another standard through which the county asserts its citizen involvement policies. The County indicates here that they will involve citizens in “all phases”. In this instance, citizens were not involved in the revision phase and there is no exception allowed for this omission. From the Tom Brian e-

mails, it is evident that haste and his ending tenure were guiding factors: get the revision made in a few months, before a written order of remand comes out, and before newly elected parties can influence the process. This perhaps contributed to a short, hasty process that did not re-engage citizens in a thoughtful and meaningful way.

At the Washington County hearing of December 14, 2010, a number of citizens including myself submitted oral and written testimony asking to slow the process down, to undertake a longer assessment, to involve the citizens, and to let newly elected commissioners and councilors take their seats. Tom Brian communicated during the hearing that it was preferable for him to complete this while he had the “relationships” and his “history of information”. However, this Policy 2 on Citizen Involvement does not account for any such exceptions. See video or transcript of 12/14/10 at the end.

Remedies for Objection 4.

Remand Washington County Ordinance 740, for its planned strategy of not involving citizens in the decision making process during this revision process. We recommend that LCDC commissioners object to DLCD for its not distributing a written remand order, a contributor to limited citizen involvement.

Adopt the remedies proposed by Linda Peters in her Objection to Ordinance 733, and dated 7-14-10. We endorse those. Had DLCD responded to these earlier concerns, Washington County might have been pressured to change its citizen involvement pattern from ignoring citizen involvement.

We recommend that a member of the state DLCD Citizen Involvement Advisory Committee be tasked to monitor the next citizen involvement plan and process in Washington County and confer with the state Citizen Involvement Advisory Committee and LCDC commissioners about the adequacy and sufficiency of the citizen involvement plan before Washington County re-engages its next Reserves revision.

This plan should also receive public comment during a county hearing, including a vetting by the Washington County CCI and CPOs.

Objection 5.

One Washington County commissioner (Duyck) failed to comply in good faith with ethical standards under ORS 244.020(12) and (15) by not making a public disclosure of a qualifying family relationship of a relative with land under rural reserve and that could create a potential conflict of interest in his voting for Ordinance 740. This individual voted for Ordinance 740. Another Washington County commissioner (Terry) failed to comply in good faith with ORS 244.120(2), (a) by failing to make a public disclosure that his ownership of property within those lands under urban reserve designation could create a potential conflict of interest. He voted for Ordinance 740 without making a disclosure.

The public body served by the two public officials does not possess official records of disclosures as they are required to, under ORS 244.130(1). In retrospect, it seems extraordinary to us now that no conflict of interest standards were applied to the Reserves Process, even though the long term financial benefits could be substantial. At a minimum, regular standards for conflicts of interest for elected commissioners should be expected and upheld. While this is a matter for the Oregon Ethics Commission, it constitutes a taint on the Reserves Process in Washington County.

Explanation for Objection 5.

On March 15th, 2011 and at the joint IGA hearing, I submitted oral and written testimony expressing concern about several commissioners having potential conflicts of interest and not making public disclosures. **See Attachment 19.** In testimony preceding mine, the Washington County Farm Bureau asserted conflicts of interest with Commissioner Bob Terry and with Chair Duyck, through his father. Both commissioners, on the record, confirmed that one owned land subject of an urban reserve designation within the ordinance (Terry), and one's father (Duyck) owned land subject of the rural reserves designation within the ordinance.

As to public disclosure of potential conflict of interest, Mr. Olsen indicated that this was an IGA hearing and not the appropriate place to make the public disclosure, but instead at the subsequent county ordinance hearings set for 3/29/11 and 4/26/11. Mr. Olsen indicated that Commissioner Terry owning property

subject of an Urban Reserves designation did qualify for a public disclosure. Mr. Olsen indicated that Chairman Duyck's father, owning property subject to a (preferred) rural reserves designation, did qualify for public disclosure. At the subsequent ordinance hearings, no public disclosures of potential conflict of interest were made. Both Bob Terry and Andy Duyck proceeded to vote on Ordinance 740.

On 5/23/11, Washington County responded to my public record request and indicated that if the disclosures did not take place at the hearings, they did not have any other record of them being made. I witnessed that there were no disclosures that took place at the hearings as the video and the transcript will show. See transcript of 4-26-11 votes by Chairman Duyck and Commissioner Terry. No vote was taken at the 3/29/11 hearing and Commissioner Terry was absent that hearing.

Remedy for Objection 5.

Remand Washington County Ordinance 740.

Clarify in the remand order subsequent adherence to Oregon Ethical Standards for Elected Officials.

Require public disclosure of potential conflict of interest in the subsequent revision. It is essential that these several failures to disclose potential conflict of interest not taint the end product of the Reserves Process in Washington County.

Objection 6.

Washington County and Metro expended substantial time and funds touting an open, transparent, and citizen-involving process throughout the Reserves Process. It was not until March 15, 2011 when I testified orally and in writing about the appearance of **non-compliance to Oregon's Public Meeting Laws (ORS 192.410-192.505)** that the government attorneys then testified that the process was not subject to the public meeting laws because it was a "legislative mandate". Mr. Olsen and Mr. Benner asserted this before the joint Metro/Washington County IGA hearing. However, the Reserves Process was/is not a legislative mandate and the public should have received adherence to the Oregon

Public Meeting Laws, or be clearly told under what exemption governments were proceeding differently.

Explanation of Objection 6.

I provided oral and written testimony to this concern at the March 15th, 2011 Metro/Washington County IGA hearing. When I complained that Oregon Public Meeting Laws were not being adhered to, Washington County and Metro called their attorneys up to the table: Mr. Olsen and Mr. Benner. They opined that the Public Meeting Laws did not apply because the Reserves Process was a “legislative mandate”. If the Reserves Process was a “legislative mandate”, did this truly exempt the county and Metro and their respective councilors and commissioners from compliance with Oregon Public Meeting Laws? If this Reserves Process was excluded, this exemption and context should have been clearly communicated to citizens during both the initial Reserves Process, throughout the process, and again during the revision process. Knowing this would lead citizens to possibly exercise different expectations of decision makers, different expectations of the decision making processes, and possibly cause them to seek other avenues of transparency. Citizens were given the expectation that with this substantial and multi-governmental program, adherence to the basic rules of governance would apply. What we heard in the last inning of play was that the basic rules and standards of conduct we thought applied, did not apply.

But, is this accurate? The Reserves legislation and the OARs developed to implement them speak with the word “may”, not must. We contend that the Reserves Process was/is a legislative opportunity, not a legislative mandate.

Several hundreds of thousands of dollars were expended on the public relations program related to this program. Nowhere was there any fine print that warned: “You, as a citizen, should not expect governmental transparency in this case, as decision makers are responding to a “legislative mandate”. These decision makers can meet secretly with whomever they want, whenever they want, then arrive at whatever decisions they choose. You will not be made aware of their meetings nor will you be welcome.” I doubt that the legislation would have passed had this been made clear.

Nonetheless, we do not understand ORS 195.141 and OAR 660-027-0020 to **require** action (legislative mandate) but to **invite** action (a county and Metro “may” enter into an intergovernmental agreement to designate urban and rural reserves.) Public Meeting Laws should have been abided.

Remedy to Objection 6.

Remand Washington County Ordinance 740.

If the process is indeed outside of the jurisdiction of Oregon’s Public Meeting Laws and during the next revision process, require Washington County and Metro to clearly communicate this to the public: which laws apply, which do not apply, what recourse citizens have to gain perspective on how these decision makers are coming to their deliberations.

If the process is indeed inside the purview of Oregon’s Public Meeting Laws, then Washington County and Metro and their councilors and commissioners need to adhere to these laws during the next revision process.

Objection 7.

DLCD failed to write and distribute a written order of remand of the LCDC commissioner’s deliberations of 10-29-10 as per OAR 660-002-0010: Delegation of Authority to Director (DLCD). This continues to be the case as we approach June of 2011, some 6 months later. This is unprecedented. One LCDC commissioner expressed shock and surprise that this was the case, several months after 10-29-10. The e-mail evidence gleaned from a public records request of Washington County substantiates that this created a beneficial context for Washington County to repair its earlier weaknesses in its Ordinance 733. This omission of a written order held back possible appellants, with legal standing, and prevented them from appealing. This is an infringement of public participation and involvement.

Explanation to Objection 7.

A public record request of DLCD regarding this delay in writing and distributing the remand order was sent to DLCD, and the response only indicated that Mr. Whitman has two meetings with Metro's Mr. Benner, but no written notes were taken. We then sent a letter to DLCD requesting an explanation as to why the written order was not being finalized and distributed. This has yet to be addressed at time of this writing. This has contributed to a lack of decision making transparency and has increased the perception of unknown conflicts of interest between and among government bodies. E-mails are attached from Washington County that show Metro and Washington County advocating for delaying the written order, and references to communication with the DLCD Director. **See Attachment 7.**

From the Washington County and Metro e-mails, the lack of a written remand order appears to be related to delaying groups or individuals with standing from appealing the original reserves decision because those appeals would throw off the Metro calendar for UGB expansions in 2011. There may be other reasons it was held back. We clearly see that Metro's Mr. Benner promoted it not being written.

Regardless of why this lack of written remand order occurred, citizens and community organizations did not receive any communication about this during the interim. This has had an impact on citizens knowing what the "oral remand" said. The lack of a written order left both citizens and elected officials confused about the exact meaning the 10-29-10 LCDC decision. This also created considerable confusion about the reserves process, Objections, and the next round of LCDC hearings on urban and rural reserves. Save Helvetia sought public records in an attempt to read between the lines of this gap in a written remand order. We got a response from our public record request of DLCD that was overly brief and did not include items we then received through our request of Washington County. **See Attachment 6.**

Citizens and community organizations were also told by DLCD (staff and website) to expect that an order would be issued by the end of December, 2010, or within a few weeks of that date. The December 2010 date for a final written order remains on the DLCD website as of June 2, 2011. **See Attachment 20.** This expectation, together with the accelerated appeals process specified in SB 1011

meant that citizens were hiring attorneys and preparing for appeals of a decision that was never finalized, while local governments were preparing in secret to modify their reserves decisions and render any preparation for an appeal meaningless.

We have been disappointed by the lack of transparency in the process of DLCD not issuing the written remand order, and especially by DLCD's failure to proactively notify interested parties of the potential for a significant delay in issuing the written order and to explain the consequences of that delay to the reserves process.

I provided objections to this lack of written order and these are within my written submittal to Multnomah County, entitled Supplemental Materials for the Urban and Rural Reserves Record, submitted 4/28/11, through Multnomah County's hearing that day.

Remedies to Objection 7.

Remand Washington County Ordinance 740 and distribute a written order of remand to all appropriate parties, within a reasonable period of time. DLCD should explain to the 46 parties with standing how/why the lack of a written order occurred and whether it violated their (46 parties) standing in the process. The Advisory Committee on Citizen Involvement should review this from the perspective of Goal One Citizen Involvement and provide feedback to DLCD and to the 46 parties.

Summary

Washington County erred in treating reserves designation processes as NOT Land Use Actions, and therefore bypassing requirements for notice and citizen involvement in all stages of planning as required by Goal One and the Washington County Development Code. Whether or not the reserves designations are adjudged "Land Use Actions", the County failed to meet its own code requirements regarding notice to landowners and CPOs, and violated public meeting laws in preparing Ordinance 740. DLCD's failure to produce timely and written findings and orders to implement LCDC's 10/29/10 Remand decision is arguably illegal.

Harm is done to landowners, affected citizens, and due to a closely-guarded improvisation of process in Washington County, reflected by the e-mail trail obtained through our public records request.

The Reserves Process outcomes are far-reaching and will become part of Oregon's land use legacy. While consensus was achieved in Multnomah and Clackamas Counties, consensus has not yet been achieved in Washington County. Please remand Washington County's Ordinance 740 and Metro Ordinance 11-1255 and order remedies to set the revision process on a path that might result in a consensus agreement and map. This will then bring credit to the governments and citizens involved, and proudly add to Oregon's land use legacy. It will re-emphasize Oregon's value in public participation and citizen involvement as central components of Oregon's traditions and laws. It will re-emphasize that adherence to Oregon's Public Meeting Laws are required and that public disclosures of potential conflict are an ethical and legal requirement of county commissioners.

It has been said that the Reserves Process started with a motivation to bring certainty to the agricultural community. In addition to providing certainty to farmers, citizens in Washington County now need certainty: certainty that their participation and involvement rights are meaningfully upheld; certainty that they can expect public disclosures of possible conflicts of interests from their commissioners; certainty that their governments in Oregon meet a basic standard of transparency in their decision making and deliberations.

Submitted,

Robert Bailey
Steering Committee, Save Helvetia

GOAL 1 OBJECTIONS

ATTACHMENTS

<u>#</u>	<u>Date</u>	<u>Description</u>
1	7/14/10	Linda Peters: Objection 1: Lack of Citizen Involvement, Ordinance 733
2	3/3/11	The Oregonian: "Andy Duyck Irked" by Planning Commission vote
3	3/12/11	Matthew Larrabie: Planning Commissioner response to Andy Duyck
4	4/25/11	Cherry Amabisca: Letter to DLCD
5	4/26/11	Robert Bailey: Letter regarding records requests
6	3/9/11	DLCD: Response to record request
7	1/5/11	Dick Benner: Urged DLCD not to enter order
8	3/29/11	Robert Bailey: Testimony - Concern about no written order
9	12/4/10	Tom Brian/Andy Duyck: No extensive outreach needed
10	11/24/09	CPO 8: Endorses Rural Reserves north of Highway 26
11	11/1/10	Andy Duyck: No rollover on this one
12	11/2/10	Tom Brian: Get deal done before election
13	11/10/10	Tom Brian: Keep confidential and away from opponents
14	11/14/10	Tom Brian: I want 3 votes lined up
15	12/4/10	Tom Brian notifies commissioners of new reserves areas and acreages
16	12/7/10	The Oregonian: Commissioner denigrates Save Helvetia
17	12/12/10	Tom Brian: After meetings with Metro, we are within reach
18	12/14/10	Robert Bailey: Testimony - Slow down, include citizens in process
19	3/15/11	Robert Bailey: Testimony - Transparency and disclosure needed
20	6/2/11	DLCD Website: Still lists December as target date for written order

