



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

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

GARVEY SCHUBERT BARER

A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

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

July 12, 2010

VIA OVERNIGHT COURIER

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

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

Dear Mr. Whitman:

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

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

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

¹ See www.savehelvetia.org.



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

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

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

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

OBJECTIONS TO AREA 8B – URBAN RESERVES

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

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

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



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

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

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

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

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

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

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



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

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

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

According to Exhibit E to Metro Ordinance No. 10-1238A, Reasons for Designation of Urban and Rural Reserves, Area 8B, the sole reason for designating Area 8B for urban uses was the identification of a future road improvement. It states that Area 8B "...ranked favorably as both an urban or rural reserve. The properties in the urban reserve area (8B) were identified as the location for future interchange improvements." The County's findings provide "Urban Reserve Area 8B sits at the northwest corner of a major highway interchange which has recently received funding commitments for significant improvements." Ex. 4. Although ODOT was unable to specify how much acreage is required to accommodate the interchange, the following calculation can be used to arrive at a reasonable estimate of the net acreage available for development. From the Area 8B's 73.3 acres, subtract 20 acres for Waibel Creek floodplains⁷ and subtract an estimated 10 acres for interchange improvement, which leaves 43 acres. Using Washington County's assumed average of 40 percent overhead for employment lands, results in net buildable acres of 25.8 acres for Area 8B.⁸ Although utility demands are a basis for an exception to add lands to the UGB, one need not put the whole of the property in the UGB to allow only some of it for highway improvements. Further, there is no evidence that the needed improvements can be made so as to preserve the integrity of the remaining agricultural land Exhibit E of Metro Ordinance No. 10-1238A added "This site will provide flexibility in planning for needed interchange improvements as well as other infrastructure needs (e.g. sewer and storm water management) for developing urban lands to the east." No evidence in the record supports the statement that Area 8B is necessary to meet any identified sewer and stormwater management demands. This approach would not meet the standards for the exception to the criteria of ORS 197.298.

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

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