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August 8, 2011

**VIA FACSIMILE AND E-MAIL**

Mr. John Van Landingham, Chair  
Department of Land Conservation and Development  
635 Capitol Street, Suite 150  
Salem, Oregon 97301-2540

**Re: Metro Urban and Rural Reserves:  
Exceptions to Director's July 28, 2011 Report**

Dear Chair Van Landingham and Members of the Commission:

Save Helvetia filed valid objections to the planning action referenced above on July 12, 2010, filed exceptions to the Director's decision on October 8, 2010 and filed objections in the remand proceeding on June 1, 2011. The Department issued a Director's Report on remand on July 28, 2011. This letter constitutes exceptions to that Director's Report. In addition to the issues raised here, Save Helvetia incorporates and renews all arguments made by Save Helvetia, 1000 Friends of Oregon, the Oregon Department of Agriculture and others to the original Metro Ordinance No. 10-1238A and Washington County Ordinance No. 733, including all documents and exhibits that are part of the record of those proceedings. We also incorporate by reference exceptions filed by 1000 Friends of Oregon to Ordinance No. 11-1255 and Washington County Ordinance No. 740.

We ask the Commission to remand the reserves decision to Metro<sup>1</sup> because it failed to correctly interpret and apply legal standards; it failed to consider reserves in all three counties; some parts of the decision lack substantial evidence in the record as a whole; and in some cases Metro failed to explain how the facts relied on lead to the legal conclusions it draws from those facts. Based on these exceptions, we recommend that the Commission reject Metro's decisions on remand to designate 352 acres urban reserve, which was formerly undesignated, creating a

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<sup>1</sup> This document will use the term "Metro" to refer to the decisions made by Metro and the three counties, unless otherwise noted.



total 440 acre urban reserve area north of Highway 26 and east of Groveland Road, known as Area 8B as well as leaving the adjacent 233 acres of Foundation Agricultural Land, Area 8-SBR, undesignated.

### **Exceptions to the Department's General Responses**

**A. The Department incorrectly interpreted and implemented the “balancing” obligation as required by OAR 660-027-0005(2) in that it focused solely on Washington County’s quantitative replacement of lands, its findings are inadequate and not based on substantial evidence in the record.**

OAR 660-027-0005(2) explains that the objective for urban / rural reserves is a “balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries ...” Page 3 of the Department report notes that reserves designation within the Metro region is to be a “cooperative process” presumably requiring coordinated application of the factors.<sup>2</sup> On page 6 the Director’s Report from 2010 states that “balance” is achieved by considering the region as a whole. The Department report, and Metro’s decision, utterly fails to explain how altering the overall need and location of urban and reserve designations by trading Cornelius lands for those in Helvetia in Washington County will affect the region as a whole. The report and decision also fail to analyze the qualitative impacts from urbanizing these lands and does not explain how such impacts will alter the overall livability within the region. The impact the Metro decision will have on the viability and vitality of the region was not considered and was in no way coordinated with the other affected counties.

In addressing the obligation of OAR 660-027-0040(10) to apply the factors “concurrently and in coordination with one another,” the Director explains that the reserves process requires that the “county and Metro must consider urban and rural reserve designations in the entire county and region at the same time.” DLCD, September 28, 2010 at 94 and DLCD, August 17-19, 2011 at 32. If this concurrency obligation is imposed as the Department and the administrative rule suggest, it is not at all clear why Washington County did not have an obligation when applying the factors to look beyond its county borders, to the regional impacts resulting from replacing Areas 7B and 7I with Area 8B.

Further, if regional concurrency is required then presumably the reserve factors must be applied uniformly across the three counties as well. As pointed out throughout these exceptions as well as the inconsistency document attached as Exhibit A, Washington County’s interpretation and application of the factors deviated significantly from the approaches taken in the other two counties and not explained or reconciled by Metro. If such inconsistencies are permitted, reasons for the different approaches must be explained.

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<sup>2</sup> As noted in the Decision Inconsistencies document attached as an Exhibit A herein, each of the three counties used entirely different values in applying the factors and balancing objectives.



The Director's response to the objections continually emphasizes that ORS 195.141 *et seq.* and OAR Ch. 660-027 *et seq.* requires merely "consideration" of both need as well as location factors. As noted in the objections, application of the location factors requires an assessment of the qualifications that make the subject lands suitable for urban or rural development. The Director's report fails to make any findings "explaining" how the County rebalanced the factors given the livability objectives required. As the Court explained in *Polizos v. Oregon Liquor Control Commission*, 37 Or. App. 757, 588 P.2d 681 (1978) as well as *Sun Ray Drive-in Dairy v. OLCC*, 20 Or. App. 91, 95, 530 P.2d 887 (1975), in order to analyze the application of factors, one must make findings regarding the purpose which is to be achieved by the application of the factors and explain how each factor was applied to further that purpose.

The decision must explain how the County and Metro reapplied the factors thereby altering the equilibrium required to meet the identified objectives both locally and regionally. Rather, Metro and DLCD merely assumed that since Helvetia meets both the rural and urban factors, Helvetia could just become urban and Cornelius could become rural without any further analysis of the factors as they relate to the specific acreage proposed for designation. Such analysis is merely conclusory and fails to articulate how the balancing occurred when compared with other lands so as to achieve this result. *1000 Friends v. Metro*, 174 Or App 406 (2001). *See also Stewart v. City of Eugene*, 57 Or. App 627, 646 P.2d 74 (1982) (Substantial evidence requires findings not only explaining the quantity of land chosen as well as findings justifying the selection of some lands over other lands.) In addition to the requirement that all decisions are supported by substantial evidence, a court will also review the order for substantial reason to ensure that the order articulates the reasoning that leads from the facts found to the conclusions drawn. *1050 Drew v. PSRB*, 322 Or. 491, 497-500, 909 P.2d 1211 (1996).

The factors mean more than simply considerations that may rush through the minds of the decision makers; rather, they require an analysis and findings that explain how the balance was accomplished. The balancing analysis must change when new facts come to light. Two new facts were established during the remand phase of the County and Metro's review that were not disputed and are ignored entirely in the Director's report: (1) Area 8B contains some of the highest quality soil in some of the highest concentration in the county (28% Class 1), the highest concentration in Washington County, Wash. County Rec. Section VIIIc. p. 360); and (2) ODOT does not need Area 8B to be urban to accommodate a highway interchange (the reason cited for designating the smaller 88 acre Area 8B in the first instance), Wash. County Rec. 774 and VIIIb, p. 633 of 790 at 11107. These facts, coupled with the addition of 352 acres for urban in Helvetia require a re-jiggering of the urban / rural balance analysis especially when all of these facts militate against finding Helvetia area suitable for urban reserves. Without such analysis it is impossible to see how the County or Metro could have balanced the factors, given these higher quality Foundation Lands, in making its decision.

The Director's response claims that the obligation to "balance" the factors is an "objective" rather than a "requirement," p. 22, and in support of that interpretation, it relies on a finding from its 2010 report that the Background and Overall Conclusions support this decision.



However, the overall results of this remand are different from the results drawn in the initial 2010 report. The Director's report reasons that the "total number of acres, the locations of, urban and rural reserves, and undesignated land in Washington County and the region as a whole has not changed significantly." Whether or not the change is "significant" is not included within the qualitative factor analysis required for determining the location of urban or rural reserves under OAR 660, Div.-027 and state law and nothing appears to grant the Director discretion to waive this analysis in the event that the change is not significant.

The 2010 determination to include Area 8B at 88 acres was based on the need for an intersection that has now been proven unnecessary. Metro made no findings explaining why this change does not alter application of the urban factors relying primarily on this intersection. pp. 86-87 of Exhibit B to Ordinance 11-1255. The decision on remand to add an additional 352 acres was accomplished relying solely on application of the urban reserve factors to a 7,890 acre Pre-Qualifying Concept Plan that included the smaller Area 8B. pp. 154-162 of Exhibit B to Ordinance 11-1255. Similarly, rather than applying the rural reserve factors to the 352 acres subject to urban designation, Metro relied on a sub-area analysis which includes about 7,000 acres where the parcelization patterns of this larger area skewed the results so as to lead Metro to conclude that the subject 352 acres were not of sufficient quality for rural reserves protection. pp. 164-165 of Exhibit B to Ordinance 11-1255. Given this broad-brush approach, there is no explanation of why land that once qualified as undesignated, now qualifies for urban reserve.

In addition to the Director's error in failing to require detailed and specific findings addressing Metro's decision to designate 352 acres urban reserve and how that decision altered the overall balance, the Director, the County and Metro erred in concluding that all Foundation Lands are entirely interchangeable for urban uses so long as the findings conclude that the lands satisfy both urban and rural factors. Such an interpretation is inconsistent with the text and context of the Goals, OAR Ch. 660-027 as well as ORS 215.298 as explained in greater detail below.

Finally, the Director is not responsive to objectors' argument that rural reserves are those lands which have "characteristics necessary to maintain their viability" for the "agricultural and forest industries." ORS 195.139(a). The findings utterly fail to explain how the change in urban reserves locations to take in lands that maintain significantly greater characteristics suitable for agricultural viability are not protected and how a balance, based on incorrect and out-of-date factual assumptions, can now be used to justify a different result.

In sum, the Director erred by failing require application of the factors with reference to the objectives and the definition of "rural reserves" that requires consideration of qualitative characteristics of the particular 352 acres of Foundation Farmland that are now designated urban reserves. The findings fail to explain how a balance was achieved given these obligations.

**B. The Department misconstrued its obligation to conduct a meaningful comparative analysis regarding foundation lands as required by OAR 660-027-0040(11) and made insufficient findings that lack support in the record.**



OAR 660-027-0040(11) requires “findings and statement of reasons why foundation lands were selected rather than other land.” The Department affirmed Metro’s interpretation of this “other land” comparative obligation to require only consideration of other non-foundation lands. Nothing in the purpose or multitude of policies favoring protection of foundation farmlands would justify such a result.

Given that much of the land in Washington County is classified as Foundation lands, the Director authorizes the County to merely throw up its hands as evidenced by its findings: (1) many non-foundation areas were designated as urban; (2) many conflicted areas were not suitable for urbanization because of natural resources or topographic issues made urban development difficult; (3) those conflicted areas that rated lower against urban reserves designated lands when considering cost and convenience of extending utilities and services where not included; and (4) lands reserved as undesignated in the event that the population projections turn out to be too low. Metro’s findings go on to explain that notwithstanding the rural reserve factors, the County used a tiered system for determining which lands were first priority for urbanization.<sup>3</sup> pp. 5 – 8 of Exhibit B to Ordinance 11-1255. In all 15 situations where Washington County found that foundation lands rated highly for both urban and rural reserves, the County, without further explanation, elected to designate such lands urban. Again, this begs the question of whether the scale was actually balanced, protecting farmlands over urban demands as required by OAR 660-027-0005(2).

Although these findings may be adequate to identify what general principles guided the County in analyzing foundation lands against other lands, the obligation is more stringent and requires “findings and statements of reasons ... why Metro chose the Foundation Agricultural Land for designation as urban reserves rather than other land considered under this division.” The findings lack any direct analysis comparing the qualities and characteristics of Area 8B at 440 acres against any other properties either within Washington County or within the larger tri-county area. Rather, this same explanation of the prioritization of foundation farmlands for urban uses can be found in the 2010 record at pages 9622-9625. The prioritization system explained in 2010 and relied on in this case fails to provide any fact-specific explanation of why this 440 acre area was designated urban when compared against all other conflicted or foundation farmlands throughout the region.

Further, in effect, the County interpreted the factors so narrowly as to contort and compromise the purpose and policy behind the farmland protection obligations contained within OAR 660-027-0040(11), ORS 195.139(1)(a), ORS 197.298, and ORS 215.243, and Goal 14. All of these standards emphasize the importance of preserving foundation lands which is the “most

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<sup>3</sup> Another inconsistency in approach is highlighted by the fact that Clackamas and Multnomah Counties did not adopt the same Huddleston-based tier approach taken by Washington County for evaluating farmland quality. Therefore, presumably more productive Washington County farmland will be urbanized through an urban reserves designation where as lower quality foundation lands in other counties will be preserved.



important land for the viability and vitality of the agricultural industry.” ORS 197.298 and Goal 14 work together to establish a hierarchy for including lands within the urban growth boundary (UGB), with farm and forestland given the lowest priority for inclusion. Last month, in *1000 Friends of Oregon v. LCDC*, (McMinnville) \_\_\_ Or. App. \_\_\_ (A134379, 2011), the Court of Appeals engaged in a detailed analysis of the relationship between the ORS 197.298 prioritization scheme and the Goal 14 need and location factors. The court concluded that LCDC improperly applied ORS 197.298(1) in approving the city’s conversion of lower-priority lands based on the higher cost of services to the higher-priority area. In other words, only when the designation of all conflicted lands prove insufficient, is the local government authorized to urbanize farmland. Further, in *1000 Friends of Oregon v. LCDC*, 237 Or. App. 213, 225, 239 P.3d 272 (2010) (Woodburn), the Court of Appeals rejected an approach by the City to include within its UGB more lands than needed to create a “market choice” for providing industrial lands under Goal 9.

Washington County and Metro made these same mistakes in this case. They disqualified conflicted lands based on the cost to provide services while at the same time elevating Area 8B for urban designation due to the ease of extending services onto flat farmlands. Additionally, the reservation of conflicted lands as extra lands labeled undesignated that would otherwise be suitable for urbanization but for concern that the need analysis proves incorrect. All of this contravenes the stated objectives for designating reserves as well as UGB expansion decisions generally, that farmland is the last priority for inclusion when all other conflicted lands are unavailable. Such a clear and unambiguous preference favoring the preservation of agricultural land over the demands of urbanization when the lands are suitable for agriculture throughout the statutory and administrative structure suggests that the legislative intent was not to allow this hierarchy to be thrown out entirely based solely on mere “consideration” of factors coupled with a pre-ordained preference for urban development.

Save Helvetia does not dispute that ORS 195.141 authorizes counties to designate urban and rural reserves. Rather, they must do so in a way that gives meaning to the obligations to “offer long-term protection of large blocks of land with characteristics necessary to maintain their viability” for the “agricultural and forest industries” and must explain their decisions in terms of these and other objectives. Without the threat of urbanization, there would be no need for “protection.” Metro’s interpretation deeming lands urban *because* they are under pressure to urbanize is entirely at odds with the objective of protecting lands subject to such threats. If such interpretation is left to stand, nothing would stop a Metro from designating all foundation lands for urban reserves so long as a finding could be made that they are easier to service than conflicted lands and an equal amount of lands further out, those lands not threatened by urbanization, are designated rural.

**C. The Department disregarded objections relating to application of the urban reserve factors to Area 8B by improperly limiting its review to substantial evidence grounds.**



As explained above, even when a decision requires the application of factors to meet a particular balance and series of objectives rather than approval criteria, adequate findings and substantial evidence requires an explanation of how the balancing occurred. In addition to the substantial evidence test quoted in the Director's report, a court will also review the decision to determine "substantial reason to ensure that the order articulates the reasoning that leads from the facts found to the conclusions drawn." *Salosha, Inc. v. Lane County*, 201 Or. App. 138, 117 P.3d 1047 (Or. App. 2005) quoting *1050 Drew v. PSRB*, 322 Or. 491, 497-500, 909 P.2d 1211 (1996). Throughout this process and as part of its objections, Save Helvetia has challenged the factual base as well as the reasoning governing application of the urban reserve factors by Washington County and Metro in this case. Rather than explaining why its reasoning is correct, the Director's response claims that no standard requires any sort of justifiable or meaningful review.

The Director responds to objections regarding application of the urban reserve factors with regard to Area 8B that "Metro adopted findings based on the urban reserve factors" with advice that the Commission view this decision as separate and distinct from the 2010 deliberations when a smaller 88 acre Area 8B was considered. P. 24. Although the report does not cite to any particular Metro findings, pages 154 – 163 of Exhibit B to Ordinance 11-1255 set out the supplemental reserve findings for the enlarged 440 acre Area 8B. However, short of addressing the total acreage now designated urban, the analysis of the factors, such as service levels and development capacity, are based entirely on Hillsboro's Pre-Qualifying Concept Plan (PQCP) where 7,890 gross acres, including the subject 440 acres, were considered. For example, when considering efficient use of existing and future public infrastructure investments, the remand findings rely entirely on the PQCP and Washington County Rec. pp. 3119-3122 & 3163, findings made before Area 8B was expanded by an additional 352 acres.

Merely because services and development capacity are feasible based on analysis of such a large scale planning canvas does not necessarily mean that services and facilities can or should be resized to fit the significantly smaller urban proposal. For example, the extension of public transit may make sense when the service area will occupy an additional 7,890 acres but less so when the service area is an additional 440 acres. Regarding the size of water reservoir, objectors explained that the reservoir was currently required north to Highway 26 and not north of Highway 26. The Director responded that the reservoir could be made larger. The finding fails to explain how much larger it would need to be to serve areas north of Highway 26, an area not expressly referenced in the findings, whether this enlargement analysis was based on demand caused by the urbanization of 7,890 acres or the 440 acres to be designated as part of this decision, finally whether additional enlargement when necessary to serve a relatively small 440 acres makes sense given the significant cost of infrastructure investments and the livability objectives that will (or will not) be furthered.

Again, the findings must explain how the factors were applied to these particular lands placed for designation and how application of those factors weighs with regards to the objectives. As the Court of Appeals has stated LCDC must "demonstrate in [its] decision the reasoning that leads the agency from the facts that it has found to the conclusions that it draws from those facts." *1000 Friends of Oregon v. LCDC*, (Woodburn), 237 Or. App. 213, 224-26,



225, 239 P.3d 272 (2010) and *1000 Friends of Oregon v. LCDC*, (McMinnville) \_\_\_ Or. App. \_\_\_ (A134379, 2011).

A second and related error made by the Director was allowing Metro and Washington County to exclude lands for replacement that were not as highly suitable for industrial use. One of the primary principles guiding the County's adjustment in response to the remand was to "replace loss of land suitable for industrial / employment uses within Urban Reserves with land suitable for those uses." pp. 1105-106 of Exhibit B to Ordinance 11-1255. In effect, the need was not only replacement of land acre for acre but suitable replacements lands must accommodate "large lot industrial." The urban reserve factors do not provide for consideration of, nor do they prioritize, lands for industrial use, specifically large lot industrial, over other uses.

The Metro findings note that Area 8B contains one of the ten potential large industrial sites identified in North Hillsboro. No findings explain why Area 8B was chosen over the other ten areas identified. Given that Area 8B not only contains Foundation Farmland, it contains some of the highest quality soils, currently in farm use and under the greatest threat to urbanization, this explanation is crucial. Yet, all of these facts were ignored by focusing on the need for large lot industrial. Rather than engaging in a delicate balance of various interests, the Director is, in effect, blessing the County's placing its finger on the scale at the beginning of the process favoring industrial and employment uses exclusively so that no matter how many other values or objectives were identified during the process, the scales would never tip so as to favor rural over an urban designation for Area 8B.

The Director's report is not responsive to objectors' arguments that such specific focus on large-lot industrial is too-focused on specific site needs and that such detailed determinations should be preserved for a UGB expansion analysis. *Save Helvetia* renews that objection.

Moreover, the Director's report fails to explain why such detailed land use need could control application of some of the location factors to justify an urban reserves designation and yet these same detailed conditions are not required when applying those factors directed at limiting the impacts from urban development. Rather, with those factors, the County and Metro were free to rely on vague planning activities that may occur in the future without any conditions imposed to insure compliance.

The Director's report at page 31 interprets OAR 660-027-0050(8) to analyze only whether urban reserves "can be designed in a manner to avoid or minimize adverse effects" and need not ensure that such minimization is "certain to happen." In other words, why is it acceptable for the potential for planning adequate buffering, utility, service or transportation extensions sufficient to find these factors are met and yet when it comes to urban demand, lower quality farmland can be excluded in favor of Area 8B based on a certain need for large lot industrial? The grossest example of this inconsistency relates to the issue of adequate buffering. Rather than focusing on what substantial manmade improvement could serve as a hard boundary between urban and rural uses, such as Highway 26, the decision merely concludes that a buffer can be planned for within the undesignated area that is Area 8-SBR sometime in the future.





Again, the findings need to explain why the Director approved a graduated articulation standard when it comes to applying some urban factors, such as the need for large lot industrial sites, and such a strict compliance assurance is absolutely unnecessary when it comes to others.

Second, how can the Director or Metro assure feasibility when a concept plan on this particular 440 acre area was never completed to determine how infrastructure and development could be located while providing such a buffer? Third, no conditions of approval are proposed to make sure that impacts are minimized. Fourth, nothing in the language of the factor "can be designed" allows merely an assumption without any factual support for the claim. Finally, nothing in this section or the County's findings below explain how the existence of an undesignated area separating Area 8B from neighboring rural reserves will serve as a buffer because nothing protects undesignated areas from inclusion in the UGB. To the contrary, in 2010 the County's reason for leaving this area undesignated was for easing the accommodation of development in this area in the future. Metro report p. 163.<sup>4</sup>

**D. The Director erred in concluding that the rural factors do not apply to undesignated lands, the findings are inadequate and are not supported by substantial evidence.**

In response to the objectors' challenge regarding the concurrency obligations, the Director's report explains that the factors need not apply to undesignated lands. p. 32. Such a determination is entirely at odds with the purpose and policy for protecting lands in rural reserves. As explained above, the framework for urbanizing lands whether through UGB expansion or through rural reserves is to preserve farmland for the "long-term protection of farm uses." ORS 197.298, ORS 195.137(1) and .139(1)(a). The purpose is entirely frustrated if local governments can elect to leave undesignated those lands that would otherwise qualify for rural reserve protection setting these lands up for urbanization through the Goal 14 urbanization process.

Determining which farmlands are suitable for protection is based entirely on the quality of the farmland coupled with the intensity of the threat of urbanization. OAR 660-027-0060. The qualitative inquiry required for locating rural reserves is contrasted with the urban reserves factors which focus on how urban development can be logically and efficiently extended in the future. Metro and the county voluntarily engaged in the urban and rural reserves process. Once the county decided to designate lands for urban reserve, the parallel obligation to designate rural lands based on qualitative obligations was imposed. OAR 660-027-0060(2)(a) requires that a county "select[] lands for designation as rural reserves intended to provide long-term protection

<sup>4</sup> The Director's report p. 31-32 cites to County supplemental record p. 12727-12728, Goal 5 issues on p 12283, Metro supplemental record pp. 148 and 164-165, and DLCD's September, 2010 report pp 991-995 as the findings supporting the undesignated designation as well as reducing that designation. However, the County and Metro findings cited either restates the amount of land undesignated or explain how the undesignated area satisfies the rural reserve factors. These are not responsive to application of the factor to the new smaller undesignated area. DLCD's Sept. 2010 report contains 110 pages.



to the agricultural industry...base[d] ...on..., whether the lands \* \* \* are situated in an area otherwise potentially subject to urbanization during the applicable time period..." Metro has identified the applicable time period of 50 years. Therefore, all lands that would qualify for rural reserves that are subject to urbanization pressure within the 50 years must be designated for rural reserves.

The entire 585 acres of Area 8-SBR as originally proposed as well as the reduced 233 acres qualified for rural reserves by Metro and the County's own admission. pp. 148 and 164-165 of Exhibit B to Ordinance 11-1255. Nothing authorizes a county or Metro to elect not to apply rural reserves to lands that would otherwise qualify.

**E. The Director erred by allowing the county to rely on outdated information or factors other than soil quality to classify farmland. (ODA Objection p. 34-35)**

The Oregon Department of Agriculture objections explain that the county's assessment of agricultural land quality is flawed and outdated. The County and Metro's response that because all of the land surrounding the existing UGB qualified as Foundation Agricultural Land, it had to look to additional information such as water availability or parcel size, to classify farmland is not a basis to exclude lands from falling within rural reserve factor OAR 660-027-0060(2)(c), which calls for categorizing lands based on soil quality including available water only "where needed to sustain long-term agricultural operations" or for protection as Foundation Lands.

Nothing in the record indicates that the long-term availability of water rights has historically been necessary for the success of the farms in Helvetia or that it will be in the future. "High-value farmland," the highest quality land where non-farm uses are the most restricted, is defined to include Class I or Class II soils that are "not irrigated." ORS 215.710(1)(b). "Agricultural land," the land that is to be protected under rural reserves, is defined by OAR 660-033-0020(A) to include:

"Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon;"

"High-value farmland," as well as the uses permitted on farmland is governed by the most recent soil analysis compiled by the NRCS. ORS 215.209, .213(3), .263(5)(b)(D)(ii), and .710. Not only did the County not use the most recent soil analysis for distinguishing amongst agricultural lands as required, it used an out-of-date Huddleston report rather than the NRCS as called for in dealing with all Goal 3 protected farmlands.

Finally, as noted above, consideration of the rural reserves factors for Area 8B was accomplished by lumping it into a huge area with lands containing different characteristics. "For the farmland analysis, the entire reserve study area was divided into 41 subareas and through analysis ultimately classified into one of four tiers... Tier 1 indicated candidate areas that were suitable for Rural Reserves." (Metro Exhibit B to Ordinance No. 11-1255, page 123)." Area 8B



is included in Sub-Area 14, which includes about 7,000 acres. This sub-area includes the highly parcelized Bendemeer and Meek Road exception neighborhoods, as well as the West Hills near the eastern part of the county line. Sub-Area 14 goes all the way east to the Multnomah County line and south of Highway 26, north to Helvetia Road and west to Jackson Quarry Road. (WaCo Record page 3023) This high parcelization, coupled with the lack of water rights, resulted in lower Tier category designation and therefore, a refusal by Washington County to designate it rural either due to application of the rural reserve factors or merely as foundation land. Nothing in OAR 660-027.0060(2)(c) contemplates the use of parcel size to dictate whether lands are suitable for agriculture.

This exception goes beyond objectors' disagreement with the county about substantial evidence. The county's decision fails to apply the rural reserve factors to the smaller 440 acre area, to identify what evidence establishing that water rights are required for Helvetia farmland to be productive in the future, and it relied on parcel size, a non-rural reserve factor. It misapplied the standard, putting too much emphasis on irrigation and land parcelization in a way that is inconsistent with OAR 660-027-0060(2)(c), when considered in context with the larger land use preservation scheme.

### Conclusion

For these reasons, Save Helvetia asks that you remand the decision to Metro with instruction to designate all of Area 8B and Area 8-SBR as rural reserves.

Sincerely,

GARVEY SCHUBERT BARER

By

  
Edward J. Sullivan

By

  
Carrie A. Richter

Enclosures

cc: clients  
Mary Kyle McCurdy

## **Urban and Rural Reserves Exceptions based on Inconsistencies**

Metro Ordinance No. 11-1255

Washington County Ordinance No. 740

**Washington County ignores the existing boundaries, buffers and edges - Metro's decision is inconsistent across the counties with no explanation justifying the result.**

Washington County crosses over effective, existing boundaries to designate urban reserves on the other side of these edges and makes no effort to assure that adverse impacts on farm practices will be minimized. (WaCo Record p. 12451-12477). Multnomah and Clackamas Counties separated urban reserves from farm uses based on existing, hard edges, where available. This inconsistency in applying OAR 660-027-0050(8) and 660-027-0060(3)(f) when it comes to providing adequate buffers is neither justified, nor explained.

For example, Multnomah County uses Johnson Creek, an existing riparian corridor and significant flood plain, for the southern edge of Area 1C's urban reserves. (Metro Exhibit B to Ordinance No., 11-1255, p. 44). Because there was no natural edge on the north and east sides, medium-sized roads were used. Multnomah County then designated Area 1B as rural reserves north and east up through the Sandy River Canyon to protect valuable farmland and natural resources. (Metro Exhibit B to Ordinance No. 11-1255, p 45). Beyond the canyon is not threatened by urbanization so it was left undesignated. Over 50% of Multnomah County's Class 1 soils reside in Area 1B, and Multnomah County has protected them with rural reserves designation.

Clackamas County decided that Highway 26 forms a clear boundary for Area 1F and chose not to cross over Highway 26 onto the north side. "The northern boundary is clearly delineated by Hwy 26." (Metro Exhibit B to Ordinance No. 11-1255, page 21). "The two state highways and the rural community of Boring provide logical boundaries for this area." (Metro Exhibit B to Ordinance No. 11-1255, page 19). The eastern edges of urban reserve areas 1D and 1F end at the south side of Highway 26, allowing the farmland on the north side Highway 26 to be protected as rural reserves.

Clackamas County's approach is analogous to Helvetia's Area 8B located on the north side of Highway 26 in Washington County. However, Washington County chose to ignore the substantial boundary of Highway 26 by crossing over the highway and designating an intrusion of urban reserves as Area 8B. Disrupting the hard edge of Helvetia Road and the wide buffer of Highway 26 will adversely affect the large block of Foundation farmland to the north and west. This is inconsistent with the Metro decision in Clackamas County where the northern edges of Urban Reserve Areas 1D and 1F stop at the south side of Highway 26.

Washington County's approach to natural resources varied throughout the County. South of Cornelius and south of Forest Grove, the County chose NOT to cross over the Tualatin River

with urban reserves, presumably to use the river, a recognized natural resource on Metro's Natural Features Inventory map, as a buffer. But, in other locales in Washington County, the County chose to ignore the recognized natural resources and not stop urban reserves from crossing over them: In Area 8A on the south side of US-26, they ignored Waibel Creek and its flood plains and placed urban reserves north of it. In Area 8B on the north side of US-26, the ignored Waibel Creek and its flood plains and placed urban reserves on the west side. Waibel Creek and its flood plains is on Metro's Natural Landscape Features Inventory map as a natural resource to be protected during reserves planning as required by OAR 660-027-0060(3)(f) and yet there is no mention of its protection or use as a boundary in the findings. In Area 8C on the north side of US-26, the County ignored Rock Creek and its extensive flood plains and placed urban reserves on the north side. Rock Creek and its flood plain, like Waibel Creek and its flood plain, are both on Metro's Natural Features Inventory map. In Area 8C west of Tigard, the County ignored the Tualatin River and placed urban reserves on both sides.

The nine state agencies recommended that "The area north of Highway 26 to the west of Helvetia and east of Jackson School roads should be designated rural reserves to form a "hard edge" to the boundary in this important agricultural region..." (Washington County Record p. 10654). The agencies recognized the value of Highway 26 as a hard urban edge and buffer for high value agriculture land. Yet, Washington County ignored this advice and without further analysis, expanded urban uses.

Furthermore, the extensive network of sub-surface field tiling for drainage represents a significant, ongoing capital investment by the farmers in the area north of Highway 26 that is likely to be ruined if the lower end of the network is disrupted. Hundreds of acres of upland Foundation Agriculture lands in the Waibel Creek watershed are drained by this interconnected tiling system. (WaCo Record p. 11743 to 11746).

Testimony has been presented by Washington County Farm Bureau showing that extensive flooding can result on adjacent farmland when any one part of the tiling system is cut, such as when development occurs. (WaCo Record p. 11759). Because the tiling system is interconnected and crosses property lines, cutting into any part of the lower "foot" of this large block of Foundation Agriculture Land on the south side of West Union Road negatively affects thousands of acres of farmland to the north. This is a major reason why the State Agencies and Washington County Farm Bureau have recommended keeping Highway 26 as a boundary to prevent urban intrusion from affecting the rest of Helvetia's large block of agriculture lands. The findings fail to acknowledge how these adverse impacts will be mitigated.

**Washington County does not protect its lands with soils "most suitable to sustain long-term agricultural operations" - Metro's decision is inconsistent across the counties with no explanation justifying the result.**

Washington County's reliance on its contrived GIS Mapping Suitability analysis devalues the importance of soil classification by emphasizing irrigation availability and parcel size, values not relevant when analyzing the rural reserve factors of OAR 660-027.0060 or Foundation lands.

This approach is not consistent with the way soils were characterized or analyzed in Multnomah or Clackamas Counties. Multnomah County, for example, protected most of its Class 1 soils by designating Area 1B as rural reserves. Metro's decision promotes application of different values in applying the factors, resulting in lower quality lands being protected in Washington County and high quality lands being urbanized first contravening the principle that Foundation Land is the most important land for agricultural industry and should be urbanized only as a last resort. OAR 660-027-0040(11).

Washington County insists on using the outdated 1983 "Soil Survey of Washington County, Oregon" as its soil classification method instead of the online, frequently updated U.S. Department of Agriculture NRCS soil classification database used by Oregon Department of Agriculture, Multnomah County and Clackamas County (and much of the U.S.) (WaCo Record p. 3789 to 3790). Application of this scheme results in the Foundation Agriculture land of Helvetia's Area 8B being ranked as Tier 3. Area 8B contains some of the highest quality soil in some of the highest concentration in the County: 28% Class 1 soil. Area 8B is part of the largest block of remaining Class 1 soil in Washington County. Ironically, Washington County protects thousands of acres of Foundation lands that are of lesser quality at the outer edges of Rural Reserve Areas 8F, 7H, 7F, 7G. These rural reserves are far from urban areas and contain no Class 1 or 2 soils. These lands will never be threatened by urbanization but are nevertheless protected. Yet, under Washington County's arbitrary tier ranking system, the best soil is the first to be urbanized. Under the "old" UGB system, Helvetia's Area 8B would be the LAST to be urbanized due to the high value of its soil.

ODA described the shortcomings of Washington County's GIS Suitability Analysis in their 2010 and 2011 Objections filed with DLCD and in the Washington County Supplemental Findings (WaCo Record p. 10630 to 10661). To summarize from page 10658:

"The County is using proximity to UGB as a limitation on agricultural lands and rating those closer to the UGB at a lesser agriculture value, rather than giving a higher value to protecting them because they are under threat of urbanization.

The lack of any additional measure/weight to the existence of large blocks of agricultural/forest lands.

Too much reliance on whether or not lands are located within the Tualatin Valley Irrigation District (TVID). Foundation land with irrigation is given higher value than Foundation land without. Many high-value crops are grown in the region without irrigation.

Using the Wildland Forest Inventory to measure the value of land for agriculture devalues most of the agricultural lands ODA determined to be Foundation Lands.

Viticulture lands are given greater weight when compared to other agricultural lands, devaluing the bulk of the county's agricultural land base located in the

Tualatin Valley. While an important part of the region's agriculture base, they do not rank higher in total value than other products grown in the county."

From Washington County Record page 10631:

"Washington County considers tax lots less than 35 acres to be "parcelized" and thus a lower value. This 35-acre threshold is not a reasonable standard for parcelization and does not reflect the nature of farms comprised of constituent parcels and the practice of renting and leasing lands to create much larger farming units.

Washington County used the "Huddleston" report for rating soils. This survey refers to soils conditions in 1975 and 1982 and is outdated. The "official" soil survey for Washington County (and most others) is now found electronically on the Internet. The USDFA NRCS Soil Survey Geographic (SSURGO) database for Washington County was the source of soils data used by ODA to conduct all analysis related to soils. This database has received several updates since 2000, the most recent in 2010."

**Washington County relied on "Pre-Qualified Concept Plans" (PQCP) - Metro's decision is inconsistent across the counties with no explanation justifying the result.**

Washington County based its decisions on highly detailed, large-scaled Pre-Qualified Concept Plans controlling future urban design as well as artificially limiting the pool of lands suitable to meet the urban development need based on overly restrictive use criteria. Multnomah and Clackamas County did not take this approach.

Washington County had each city submit "Pre-Qualified Concept Plans": Hillsboro, Beaverton, Cornelius, Forest Grove, North Plains, Banks, Tigard, Wilsonville, Tualatin, etc. (WaCo Record pp. 3474-3575).

"Pre-qualifying Concept Planning was a vital component of Washington County's approach to identifying urban reserve areas." (WaCo Record p. 8226). "The overall approach of Pre-qualifying Concept Planning was to prepare a plan map and plan text for each Urban Reserve Candidate Area. The overall intent was to apply the OAR 660-027-0050 Urban Reserve planning factors. The level of plan detail was akin to the detail of the Metro 2040 Plan and of Concept Plans called for in Title 11 of Metro's Urban Growth Management Functional Plan (UGMFP)." (WaCo Record p. 8226).

Washington County's Pre-Qualified Concept Plans form the basis for the County's justification for their urban reserves. The PQCPs analyzed the urban reserve factors but did not evaluate rural reserve factors. Each city did their Pre-Qualified Concept Plan differently: Some PQCP's were so general (City of Cornelius, for example), their claims so broad and their conclusions so

sweeping and vague that they could be used to justify urbanizing any land. Other PQCPs Pre-qualified Concept Plans (such as City of Hillsboro) treated the analysis like a UGB concept plan i.e. very specific on which land and which uses: They mapped out which land would serve as residential: number of acres, location, density, housing options as well as mapped out which land would serve for employment: number of acres, location.

Washington County staff rubber-stamped the Cities' aspirations for urban reserves based on the inconsistent PQCPs with no analysis as to whether or how these plans would satisfy the urban reserves factors, assuming the factors were uniformly interpreted.

“Staff concludes that, in general, higher (more appropriate) Urban Reserve Factor Ratings are found within City Aspiration areas. Likewise, staff concludes that when considering lands potentially suitable for supporting a healthy economy, as measured by NAIOP's unconstrained lands analysis, sufficient amount of lands appear available within City Aspiration Areas.” (WaCo Record p. 3587)

After the macro and standard-less analysis by each city, which concluded that all the land they wanted for urban reserves met the urban reserve factors, no further analysis was conducted for the smaller areas actually designated as urban reserves. It is especially important to re-examine the proposed urban reserves once their shape, size and edges changed in order to ensure good urban/rural edges. The smaller areas do not necessarily meet the factors as effectively as the larger areas do. No rural reserve analysis was conducted of the smaller areas by either the cities or county.

**Threat of Urbanization - Metro's decision is inconsistent across the counties with no explanation justifying the result.**

Washington County's GIS Suitability Mapping scheme has led to a band of Foundation Agriculture Lands located around cities in Washington County being rated lower for protection as rural reserves, and in fact, being designated at Urban Reserves or left undesignated for ease of future urban reserves. (Example: Helvetia's Area 8B urban reserves and adjacent Area 8-SBR undesignated).

Washington County then designated large swaths of rural reserves all the way to the outer edges of the study area - land that will never be under threat of urbanization. Clackamas County and Multnomah County approach involved more careful planning of their outer edges: they protected the land most in danger of urbanization near the UGB as rural reserves, with land further out not under threat of urbanization being left undesignated.

According to the State Agencies letter of October 14, 2009 (WaCo Record p. 10647), rural reserves are to protect agriculture lands, forest lands or important natural features from urbanization. Proximity of land to the UGB is a measure of the degree to which lands are “subject to urbanization”.



“Proximity to major transportation corridors, interchanges, known ‘aspirations’ and past actions further informs the analysis of areas ‘subject to urbanization’... The ODA mapping of foundation and important agricultural lands took into account the implications of urbanization on the long-term viability of agricultural land. A great deal of foundation land shares an edge with an existing UGB. This was not accidental, such lands were reviewed and determined to be viable as agricultural lands over the long term with appropriate protection. The agencies believe that the Clackamas County approach is generally more appropriate unless there is a specific showing of threat or urbanization for an area beyond three miles from the existing UGB or some other specific reason to use a rural reserve to guide the pattern of urbanization in a neighboring community.”

As an example, Washington County surrounded its satellite cities (Banks, North Plains) with undesignated Foundation land, even though this land is adjacent to the city UGB and under threat of urbanization, while Clackamas County surrounded its satellite cities (Estacada and Molalla) with rural reserves to protect it from urbanization.

## Conclusion

Washington County selected a system of weighting factors in ways that favored outcomes biased toward urban reserves. It was an end-run analysis where Washington County, driven by the City of Hillsboro as well as an election cycle, wanted more farmland and it jiggered the reserves factors to justify the results. Certainly, the outcome of this remand was pre-ordained and inevitable based on the narrow boundaries the County put in the solution including (1) acre for acre replacement of lands and (2) replacement that includes lands suitable for large lot industrial uses.

This is not what happened in Multnomah and Clackamas County. Multnomah County, for example applied a rational analysis: working with county staff, groups of people sat down with maps in public meetings where they decided on rational shapes and locations for Urban Reserve and Rural Reserve areas, which were then evaluated relative to each factor. These participants didn't invent GIS rating systems, they didn't toss out the ODA analysis and invent a replacement, they didn't lump together vast areas that were dissimilar into study areas. Multnomah County used common sense. The maps outlining sewer and water suitability, transportation suitability on the urban side and agricultural suitability, forestry suitability and natural features on the rural side were provided by Metro. They used supplemental information - topo maps, landslide maps, etc. They used all that information to decide on edges for their urban reserve and rural reserve study areas that were rationally based on natural features but sometimes using the edges of areas rated higher and lower for sewer and water service. They then broke some of those study areas into smaller areas because the characteristics of these lands proved too different to lump together and evaluate accurately. They then evaluated the factors for each study area against a rough scale (like

low/medium/high), then discussed and voted on what to recommend for each area. They talked it all through in public forum.

Washington County's approach of rigging the evaluations so that the ends justified the means behind closed doors and then announcing the results in a public forum where their committee could rubber stamp the decision is not consistent with the approaches taken by other counties. The factors cannot be interpreted and applied so differently from county to county, so as to leave higher-quality farmland in one county substantially more vulnerable to urbanization than it is in other counties. The obligation to apply the factors "concurrently and in coordination with one another" only has meaning if they are uniformly applied or in cases where uniformity is not provided, an explanation for the different treatment is explained based on the specific facts presented in this remand.

For these reasons, this decision should be remanded back to Metro for reconsideration.