1000 friends of Oregon

534 SW Third Avenue, Suite 300 • Portland, OR 97204 • (503) 497-1000 • fax (503) 223-0073 • www.friends.org
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-9389
Willamette Valley Office • 220 East 11th Avenue, Suite 5 • Eugene, OR 97401 • (541) 520-3763 • fax (503) 575-2416
Central Oregon Office • 115 NW Oregon Ave #21 • Bend, OR 97701 • (541) 719-8221 • fax (866) 394-3089

October 8, 2010

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Attn: Richard Whitman, Jennifer Donnelly, Rob Hallyburton

Re: Metro Rural and Urban reserves
Exceptions to the Director's Response to Objections on Reserves

This letter constitutes the exceptions of the Washington County Farm Bureau, Dave Vanasche, and 1000 Friends of Oregon to the Department's response to our objections to the Metro Reserves decision. Our exceptions focus on the legal flaws in some of the Department's responses to our objections. We have not addressed every response in our exceptions, but wish to make it clear that we disagree with the Department's response to each of our objections and hereby renew those objections.

We first address the Department's response to our general objections, then to specific geographic and issue objections.

We recommend that the Commission adopt the following remedy:

- As required by the reserves statute and rule, Metro entered into separate Reserves agreements with each County. We recommend that the Commission approve the Reserves agreements between Metro and Clackamas County and Metro and Multnomah County.
- We recommend that the Commission approve most of the urban reserves proposed by Metro in Washington County. We recommend that it not approve the urban reserves north of Council Creek in Areas 7I and 7B, and in Area 8A.[1]

There are several legal and factual justifications for not approving these urban reserves in Washington County, which we describe in our objections and exceptions. These include that they do not meet the criteria for urban reserves, that the Department and Metro incorrectly interpreted various provisions of the reserves statute and rule, that Metro has not provided substantial evidence to either support these areas or to support the overall amount of land included in the urban reserves, that alternative sites are available, and most simply, that Metro cannot designate urban reserves for the entire 30-year period while still meeting the other reserve requirements of a balance between urban and rural reserves and protection of Foundation farm land, and therefore must designate urban reserves for somewhere between the allowed 20 to 30 year time period.

[1] The 9-State Agency letter, co- authored by DLCD, also offers a reduced size of Area 8A, using the natural landscape feature boundary of Waibel Creek as a boundary.

Taking this remedy recognizes that the region reached consensus on both urban and rural reserves in two out of the three counties and in most of the third county. The Commission's role as overseer of Oregon's land use program is to ensure the law is followed in reaching that consensus. Certain core areas of Foundation farm land in Washington County do not qualify as urban reserves under the law. The Commission can find success in most of the Reserves decision.

I. Exceptions to Department's General Responses

The Department's Report on Objections, in the sections titled "Summary of Recommended Action" (pp. 3-4) And "Department Analysis" (pp. 15-22), describes the Department's approach to its review of the Metro Reserves decision. We do not believe this approach meets the legal requirements of the Reserves statute or rule, for the following reasons.

A. Contrary to the Department's view, this is not a political decision.

The Department makes the rather startling statement:

> "With two exceptions, the Department believes that the statutes and rules that guide this effort replaced the familiar standards-based planning process with one fundamentally on *political* checks and balances."[2]

There is nothing in the statute or rule that leaves the designation of urban and rural reserves to politics. Moreover, such a conclusion is contrary to the rule of law, the predictability that the rule of law provide to citizens and their expectations for and participation in government decision-making processes, and the ability of a reviewing body to evaluate a government decision.

Rather, the statute and rule contain pages of various factors and policy directions that are to be considered, weighed, and applied. For example, the Legislature stated its purpose in adopting the reserves statute was to ensure "long-range planning":

> "**195.139 Legislative findings.** The Legislative Assembly finds that:
>
> (1) Long-range planning for population and employment growth by local governments can offer greater certainty for:
>
> (a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and
>
> (b) Commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.

[2] Department Report, p. 3, emphasis added. This type of statement is repeated elsewhere in the Department Report. For example, the Department endorses the following statement made by Metro: "Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development … is politically difficult." Report, p. 53. Political difficulty is not a factor.

(2) State planning laws must support and facilitate long-range planning to provide this greater certainty."

The statute goes on to specifically define rural reserves and urban reserves. Metro "*shall* base the designation on consideration of factors including, but not limited to…." and then lists specific characteristics for land to qualify as a rural reserve. ORS 195.141(3). There is a similar statutory provision regarding urban reserves. ORS 195.145(5). The administrative rules further describe the reserve designation process and criteria that must be considered and applied.

There are only **two** political determinations in the reserves process: whether to designate any reserves at all, and if so, whether to include urban reserves. (The statute authorizes Metro and the counties to agree to designate rural reserves alone, but if any urban reserves are designated under this process, then rural reserves must also be designated. ORS 195.143(3), OAR 660-027-0020(3))

The Washington County Farm Bureau and 1000 Friends of Oregon were involved with every step of the crafting of the reserves statute and rule. Leaving this to political checks and balances was never discussed, and if it had been we would have left the process and not agreed to the statute or rule. Leaving the decision to politics is the *antithesis* of Oregon's planning program.

We could have all saved ourselves a lot of time and energy on the Reserves Steering Committee, on the county reserves advisory committees, educating the public about the reserves process, encouraging others to participate, attending open houses, and testifying at hearings if this is "fundamentally" a political process.

B. The discretion of Metro and a county is not as broad as the Department describes.

The Department's report states:

"[I]n the Department's opinion, the region has substantial discretion in determining the *location* of urban and rural reserves.…"[3]

* * * *

"Note these [urban and rural reserve] factors are *not criteria* in the sense that Metro has to show each area complies with each factor. Rather, these are each *considerations*, which Metro must take into account when deciding whether to designate an area as an urban reserve."[4]

This is contrary to the language and purpose of the reserves statute and rule, which provide defined boundaries on Metro's and a county's discretion - boundaries that were carefully negotiated and were not written or intended to be as broad as the Department suggests.

The Legislature provided the purpose for designating rural reserves:

[3] Report, p. 3 (emphasis in original).
[4] Report, p. 18 (emphasis in original).

"[To] offer greater certainty for [t]he agriculture and forest industries, by offering *long-term protection* of *large blocks* of land with the *characteristics* necessary to maintain their viability."[5]

The statute states that when designating rural reserves "to provide long-term protection to the agricultural industry," that Metro and the relevant county "*shall* base the designation on consideration of factors, including but not limited to," whether the land is capable of sustaining long-term agricultural operations, taking into account suitable soils and water where needed, the existence of a large block of agricultural land, existing land use patterns, adjacent uses, the location of the land relative to other farm uses, and the sufficiency of agricultural infrastructure in the area. [6] An additional and important factor is whether the agricultural area is "potentially subject to urbanization."

These requirements are repeated in the Commission's rules.[7]

Thus, if Metro and a county decide to adopt urban and rural reserves under this statute, they *must* do so in a way that provides "long-term protection" for these core characteristics that are "necessary to maintain the viability" of the agricultural industry, if those areas are threatened by urbanization. These are "factors" that must be addressed and met, not mere "considerations."

The Commission's rule *requires* that the designation of rural and urban reserves must achieve a "balance" that "best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of important natural landscape features that define the region…"[8]

Finally, the rule further provides that if an area of land has been mapped as Foundation or Important Agricultural Land by the Oregon Department of Agriculture, and is within 3 miles of a UGB, it is deemed to have met the criteria to be designated as rural reserves.[9] Metro and a county have a heightened burden to explain why, based on the rural and urban reserve factors, Foundation farm land should be designated instead as an urban reserve.[10] That is, there is a built-in legal assumption that the area should be in a rural reserve, and the burden shifts to Metro and the county to justify why an urban reserve designation outweighs the fact that the area is Foundation farm land and already qualifies as a rural reserve, and why removing it from the rural reserves still keeps the region in "balance" for rural reserve factors.

The Department, as it describes throughout its Report, did not apply the rural reserve factors in this manner. It also appears the Department either did not take into account the statutory purpose and the heightened burden required to designate Foundation farm land as urban reserves, or it did not do so legally. And it did not correctly apply the "balancing" requirement.

---

[5] ORS 195.139 (emphasis added).
[6] ORS 195.141(3) (emphasis added).
[7] OAR 660-027-0005(2), -0060.
[8] OAR 660-027-0005(2).
[9] OAR 660-027-0060(4).
[10] OAR 660-027-0040(11).

Instead, in the section titled "Deciding Whether a Particular Area Should be Urban or Rural, or Undesignated, and the Role of Metro and the Role of LCDC," the Department *starts* with evaluating land as *urban* reserves: "The question for the Department in this report…is whether Metro considered the urban reserve factors in deciding to include particular areas…. [T]he Department does not believe that the question is whether an area would be better as a rural reserve than as an urban reserve, or even whether Metro was right in its decisions."[11] Thus, if a county finds that land qualifies as an urban reserve, apparently the inquiry stops there for DLCD.

Unless the land is Foundation land. There, the Department describes that Metro and the county must merely "consider" both urban and rural reserve factors, and "explain why it selected as urban reserves the [Foundation] lands in question instead of other lands."[12] While the statute and rule do provide for a heightened level of review for Foundation farm land, the Department's interpretation of that is incorrect, as follows:

- It starts with a premise that the land is urban reserve.
- Metro and the county need only "consider" the rural reserve factors. If you start with the premise that the land is urban reserve and must only consider the rural reserve factors, you will end the inquiry at urban reserves. This is the inverse of the burden of proof established by OAR 660-027-0040(11).
- There is little, and in some cases no, evidence that Metro and Washington County considered non-Foundation farm land in the region to designate as urban reserves rather than the large blocks of Foundation farm land within 3 miles of a UGB that they did designate as urban, despite the existence of large areas of Conflicted and Important farm land regionwide.
- Metro and Washington County improperly re-defined the rural reserve factors when evaluating all lands, including Foundation farm lands.[13] This infects the entire analysis of rural reserves in Washington County.
- The issue of the qualitative balance between rural and urban reserves is not taken into consideration.

The Department exacerbates this apparently boundless discretion in the way it interprets how the "balancing" requirement is to be met. The Reserves rule states (emphasis added):

> "The objective of this division 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 and protection of the important natural landscape features that define the region for its residents."[14]

[11] Report, p. 18.
[12] Report, p. 19.
[13] See Objections of Oregon Department of Agriculture and 1000 Friends, Washington County Farm Bureau, and Dave Vanasche. This includes re-defining soil capability, improperly evaluating the issue of water availability, and not properly taking into account large blocks of farm land.
[14] OAR 660-027-0005(2).

Yet, the Department only addresses the balancing requirement in the Report section titled "Amount of Rural Reserve Land," and then treats it as though it is a limiting factor *on the amount of rural reserves*. The Department states:

> "Since this 'balance' is not implemented through prescribed criteria, the counties and Metro have considerable discretion in deciding which lands warrant protections provided by a rural reserve designation."[15]

No they don't. Metro and the counties must explain how the lands chosen as rural reserves *best* achieves the requirement to preserve the viability and vitality of the agricultural industry in the region. Clackamas and Multnomah counties did this – they very purposefully did not designate Foundation farm land within 3 miles of the UGB as urban reserves. In fact, Clackamas County designated as urban reserves Conflicted and Important lands in the Stafford Basin – *despite* the *political* difficulty in so doing – because of the County's recognition of its *regionwide responsibility* to do that, rather than urbanize the state's best farmland in the Tualatin Valley and south of the Willamette River.

Washington County did not. As described in our Objections and those of others, Metro and the County turned the balancing requirement on its head – both in the county and regionally, and as it impacts Foundation farm land. The vast majority of the Foundation farm land - in the county and regionally - that is threatened by urbanization has been designated as urban reserves. And, the majority of the Foundation farm land that *is* threatened by urbanization has *not* been designated as rural reserves.

It is difficult to conceive of an area more qualifying of rural reserve designation than the farm land at the heart of the Tualatin Valley agricultural industry, north of Council Creek. It is Foundation farm land, separated from urban areas by the ecologically significant natural landscape feature of Council Creek, located in the core of the Tualatin Valley agriculture industry, not easily accessible from designated mixed-use centers, interdependent on nearby farm-related industries and in-ground infrastructure, and about which there has been the most expert testimony from the Department of Agriculture, the Farm Bureau, and farmers who farm in the area – all of whom support a rural reserve designation. And yet it is proposed as an urban reserve. If this does not qualify as rural reserves, then the discretion of Metro and the county has no real boundaries.

A clear way to achieve the balance required by the reserves statute and rule to "best achieve" the "viability and vitality of the agricultural industry" is to designate fewer urban reserves on Foundation farm land, and Metro does have the discretion to chose a different time period for urban reserves. It has chosen to designate urban reserves for the full 30 year period beyond the 20-year UGB. But it could chose anywhere between 20-30 years beyond that 20-year UGB. If that is the only way to achieve the required balance, then Metro *must* chose a lesser time period. And the Commission can require them to do so to achieve that balance.[16]

---

[15] Report, p. 20.

[16] The 9-State Agency letter of October 14, 2009, of which this Department was a co-author, along with Business Oregon, ODOT, DEQ, ODFW, and the Oregon Departments of Agriculture, Forestry, and Water Resources, recommended just that, stating: "The state agencies strongly support using the lower end of the planning period authorized for reserves – e.g. forty years [20 beyond the 20-year UGB]. We are facing a time of extraordinary

II. Exceptions to Department's Responses to Specific Areas

A. Washington County
Response 2. Areas 7I and 7B: North of Council Creek

Council Creek runs in an east-west direction, to the north of the cities of Cornelius and Forest Grove. It forms a natural boundary between the urban and urbanizable land in those two cities and the heart of the Tualatin Valley agricultural industry to the north. It is also a natural boundary – the Creek and floodplain are hundreds of yards wide in some places, forming a natural and permanent buffer between the conflicting uses of urban and rural.

The land in the proposed urban reserve consists of about 825 acres of Class I, II, and III High Value farm land north of Council Creek. (About 625 acres north of Cornelius and 200 acres north of Forest Grove.) It has been designated as Foundation farm land by the Oregon Department of Agriculture and is within 3 miles of the UGB.

The Washington County Farm Bureau, 1000 Friends, and Dave Vansache, a Century farmer in this area, all objected to designating the area north of Council Creek as urban reserves. It is very important to more that we have *not* objected to designating the 300+ acres east and south of Cornelius, and over 250 acres adjacent to Forest Grove, as urban reserves and that are also in this decision. Most of these alternative areas are also Foundation farm land. **In fact, it was the Washington County Farm Bureau that first suggested all these other areas around Cornelius as urban reserves** – because they make more sense, from both an urban and rural reserves perspective. They are, variously, south of Council Creek, or bounded by the Tualatin River, or are along the Tualatin Valley Highway – a Highway that connects Cornelius/Forest Grove with Hillsboro and would be the proposed HCT corridor for increased bus service. Council Creek and the Tualatin River provide a natural landscape feature buffer between urban and rural uses. These areas make sense, and provide Cornelius and Forest Grove extensive lands for possible future urbanization, including industrial use of any lot size.[17]

This agency, and eight other state agencies, as well as Metro's Chief Operating officer, all strongly agreed with the Washington County Farm Bureau position, and recommended rural reserves for this area.[18]

---

uncertainty in how our communities and industries will evolve. * * * * [W]e believe the region should strike a balance that tends toward the risk management/flexibility end of the scale rather than locking up most lands on the periphery of the UGB for fifty years….One way of providing some flexibility is to set reserves for a forty-year period, and simultaneously plan to revisit whether additional reserves should be designated well before that forty-year period expires (a twenty or twenty-five year 'check-in')." State Agency Letter, p. 4.

[17] This is an example of the agricultural industry and the natural resources community attempting to participate in good faith and follow the rule and statute in offering alternative urban reserves area for Cornelius and Forest Grove, respecting those towns' urban aspirations – which is an enormous compromise, considering that these areas are also largely Foundation farm land. Had they known that this decision would instead be made on a political basis and that *all the areas* - the compromise areas they suggested *and* the areas north of Council Creek - would be designated as urban reserves, the agricultural community would not have participated at all.

[18] http://library.oregonmetro.gov/files/final_consolidated_state_agency_comments.pdf

The Department acknowledges that the justification for this area as an urban reserve is weak (the Department report describes the findings as "general" and states that at least one factor is "not directly addressed." Report pp. 86-88).

It is hard to imagine a more appropriate area in the entre region for rural reserve designation, and one that has such widespread support. Yet the Department recommends approving an urban reserve designation for these two areas. What is truly hard to imagine is what set of facts might compel the Department to recommend something *different* than what Washington County and Metro recommended for urban reserves in the county.

The proposed 7I and 7B urban reserves, and the Department's response to our objections, continue to demonstrate a violation of the law in the following ways:

- Areas 7I and 7B do not meet the urban reserve criteria.
- Areas 7I and 7B meet the rural reserve criteria on *both* agricultural and natural resource grounds, and therefore should be designated rural reserves.
- Foundation farm lands require a higher level of justification for being designated as urban reserves and the Department has not demonstrated that the Metro decision meets that. Those within 3 miles of the UGB require an even higher level, as they automatically qualify as rural reserves .

Areas 7I and 7B Do Not Meet the Urban Reserve Criteria

The Department's report acknowledges that Washington County and Metro have addressed the urban reserve factors (OAR 660-027-0050) in only a "general fashion," and that the Commission could determine that the record does not support designation of these areas as urban reserves. (Report p. 86) The substantial evidence, and in some cases, the only evidence, in the record shows that areas 7I and 7B fail to meet the urban reserve factors in at least the following ways

Factor 1: "Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments."

The Department relies upon the "findings" in the Cornelius and Forest Grove pre-qualifying concept plans (PQCPs) and on Metro's consolidated findings to show this criterion is met. These findings are both conclusory and do not meet the requirements of the factor.

For example, in addressing this factor, the Cornelius PQCP states:

> "The City has comprehensively planned its public and private infrastructure in coordination with surrounding jurisdictions and partners and consistent with state and regional 2040 Plan goals and requirements. The major infrastructure systems are either in place ready for or can be extended for development. The water, sewer and transportation systems that bisect and are adjacent to Cornelius have regional growth capacity. Clean Water Services sanitary and storm sewer lines are sized to serve north to Dairy Creek and the partially urbanized area south and east of Cornelius, and are capable of extending between Hillsboro and Cornelius

north of Dairy Creek. The City has required developers to stub for extension urban sized utilities for future expansion at the City boundary."[19]

This is a conclusory statement that can be made about any area inside the Metro UGB. It simply re-states existing state law and Planning Goal 11, which requires all cities to provide urban scale infrastructure within their city limits, and to plan for its extension to urbanizable lands within its UGB. Cornelius has urbanizable land between its city limits and it portion of the UGB that it has not annexed (including land brought into the UGB for "industrial" purposes over 4 years ago), as well as vacant and undeveloped lands throughout its city limits (according to Metro, over 10% of the land within the Cornelius city limits is currently vacant; even more land is underdeveloped). The above conclusory statement is what one would expect to find in the Cornelius public facilities plan, without reserves being part of the discussion.

Furthermore, it does not explain how, given the large amount of vacant, underdeveloped, and un-annexed land within the Cornelius portion of the UGB, adding over 1000 acres of urban reserves (including proposed urban reserves south and east of the city) to a city of only 1170 acres now, will ensure an urban level of development that makes efficient use of the existing facilities. The existing facilities are under-utilized by the lands within the existing city – those areas must densify to meet Metro's Region 2040 Growth Concept, Regional Transportation Plan, and High Capacity Transit plan for a mixed-use, higher density Cornelius Town Center that can support high capacity transit; adding additional land makes that *less likely* to happen, not more.

The PQCP goes on to state that the proposed urban reserves will develop at a density of 10 units per acre.[20] That does not meet Metro's definition of and requirement for urban densities of 15 units/acre in the urban reserves, and thus reliance on the Cornelius PQCP is flawed.

Cornelius and Forest Grove are designated Town Centers in Metro's Region 2040 Plan. Metro's Region 2040 Plan, High Capacity Transit (HCT) plan, and the Regional Transportation Plan (RTP) all contemplate mixed-use, higher density development and high capacity transit along a corridor running from Hillsboro to Cornelius and Forest Grove. To achieve those laudable goals requires investment inside the existing UGB on lands along those corridors – the Tualatin Valley Highway and the proposed light rail corridor – which are largely vacant and underdeveloped now.

This was pointed out by both the 9-State Agency letter, including this agency, and the Metro Chief Operating Officer's (COO) Report:

"Large scale urbanization in the area to the north may detract from implementing the 2040 Plan by placing thousands of households and jobs farther away from centers and transit corridors, thus increasing Vehicle Miles Traveled (VMT) and making it more difficult to support the recently adopted High Capacity Transit (HCT) corridor from Hillsboro to Forest Grove."[21]

---

[19] http://www.co.washington.or.us/LUT/PlanningProjects/reserves/upload/Cornelius_PQCP_Report_073109Combined.pdf

[20] *Id.*

[21] COO Recommendation, Sept. 15, 2009, p. 24.

Metro also found that urbanizing the area north of Council Creek would be expensive. "To improve such [transportation] access would require considerable regional resources."[22]

There is no evidence showing that urban reserves for areas 7I and 7B north of Council Creek meet urban reserve factor 1; substantial evidence shows these areas do not meet the urban reserves criteria.

Factor 2: "Includes sufficient development capacity to support a healthy economy."

The Department, Metro, and Washington County simply re-state the factor in finding it has been met. This is not substantial evidence. Furthermore, there is no underlying evidence actually addressing economic capacity. Raw land is not development capacity. The Cornelius portion of the current UGB is not dense enough in employees or housing to support increased bus service or a HCT line of any type, the current land supply has substantial vacant and underdeveloped lands, including parcels over 60 acres, with services, and in industrial parks. Cornelius has not yet annexed 60+ acres of land added to its UGB over 4 years ago for industrial development, in part because there is no demand for it. Adding raw land without, among other things, the residential or employment demand for it, does not support a healthy economy.

Factor 3: "Can be efficiently and cost-effectively served with public schools and other urban-level public facilities and services by appropriate and financially capable service providers."

Factor 4: "Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers."

Factor 5: "Can be designed to preserve and enhance natural ecological systems."

Factor 6: "Includes sufficient land suitable for a range of needed housing types."

Factor 7: "Can be developed in a way that preserves important natural landscape features included in urban reserves."

These factors are addressed by similarly conclusory statements in the Department's Report, Metro findings, and the PQCP in that they largely re-state the factor itself and claim it is or will be met. In particular, there is no evidence that the public transit hoped for by Cornelius and Forest Grove and envisioned in the RTP and HCT plan will be realized by almost doubling the size of the city in areas far away from those transit corridors, particularly when those corridors today are low density and contain substantial vacant and undeveloped lands. A conclusory statement that it will be met does not meet the legal factor.

Factor 8: "Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves."

[22] *Id.*

The Department's Report acknowledges this factor was not addressed by Metro in its decision. (Report p. 86)

Finally, the Department, Metro, and the County ignore that a "Purpose and Objective" of the reserves rules is that "important natural landscape features" are to be used to "limit urbanization" and "define natural boundaries of urbanization." OAR 660-027-0005(2) and ORS 195.137(1). The reserves rule and statute do not allow an evaluation of urban reserves without including their relationship to the surrounding farm and forest lands and natural resources, including how those natural features can – and must – be used as the boundary for urbanization by being designated as a *rural* reserve. A promised buffer on the urban side of an urban reserve does not meet the law.

Here, Council Creek provides that natural boundary between urban and rural uses. It is a generally wide floodplain, wetland, and stream. There is no boundary – natural or even manmade – that separates rural and urban lands in the proposed urban reserves north of Council Creek. There is no factual dispute as to this. Therefore, Council Creek and the area north of it in Areas 7I and 7B do not qualify as an urban reserve and should be a rural reserve.

Areas 7I and 7B meet the Rural Reserve Criteria on both Agricultural and Natural Resource Grounds

As discussed in our Objections, but not addressed in the Department's report, areas 7I and 7B qualify for rural reserve designation under both set of criteria – the criteria for "long-term protection for the agricultural industry" (OAR 660-027-0060(2)) and "to protect important natural landscape features" (OAR 660-027-0060(3)). As a factual matter, this is not in dispute. In addition, these two areas are also Foundation agricultural lands within 3 miles of the UGB, for which there is a higher bar for justifying designation as urban reserves.

Few areas under consideration or in dispute meet all these factors – every factor of rural reserve designation as agriculture, every factor for rural reserve designation as an important natural landscape feature, and Foundation farm land. The Commission's discretion is not so boundless as to override the triple bottom line for why, legally, areas 7I and 7B should be rural reserves.

Foundation Farm Lands Require a Higher Level of Justification for Being Designated as Urban Reserves, and the Department has not Demonstrated that the Metro Decision Meets that.

The Department acknowledges that LCDC's rule requires that if Foundation farm lands, as identified by the Oregon Department of Agriculture, are proposed as urban reserves rather than rural reserves, then a higher standard applies to justify that urban designation for the particular area of land. OAR 660-027-0040(11). The Department concludes that Metro's decision meets this standard. This is legally and factually incorrect, for the following reasons:

- The Department acknowledges that Metro's findings are only "general" and that they are not "specific to each of the areas." This does not meet the higher standard criteria of law. (Report p. 87, 88)

- The Department seems to endorse the following rationale for accepting mere "general" findings for the Foundation farm land areas north of Council Creek: that since most of the farm land in Washington County near the existing UGB is Foundation farm land, a whole lot of it is going to be designated as urban reserves, so how can this higher standard be met on any particular parcel? (Report p. 87, Department text and quote of consolidated findings; p. 88) The fact that much of the land around the UGB in Washington County was Foundation farm land was known when the reserves statute was passed by the Legislature and when the Commission adopted its reserve rule. It has been mapped for some years now. Knowing that, this higher level of justification was clearly required by this Commission. And it has not been met concerning areas 7I and 7B. If it cannot be met, one remedy is that Metro and the Commission can adopt urban reserves for a shorter time period than the full 30 years beyond the 20-year UGB.

- The Department endorses the following Metro mischaracterization of the reserve rule's and statute's purpose, and the Department apparently applies it to 7I and 7B: the urban reserve recommendation in Washington County balances "the *need* for future urban lands and the *values* placed on 'Foundation' agricultural lands and lands that contain valuable natural landscape features." (Report pp. 87-88; Metro Rec. p. 62, emphasis added) This is a condescending and inaccurate description of both the factual situation and the law. The reserves rule and statute, and the Department of Agriculture's "Identification and Assessment of the Long-Term Commercial Viability of Metro region Agricultural Lands" Report demonstrates that "Foundation Agricultural Land is the most important land for the viability and vitality of the agricultural *industry*." (OAR 660-027-0040(11), emphasis added)

  As testified to throughout the decision process below by a wide variety of famers, the Washington County Farm Bureau, and the Oregon Department of Agriculture, and the agriculture-related industries in the region, that land is the base for one of the county's and state's top industries. Washington County has consistently been in the top 5 of Oregon's counties in agricultural production. As Oregon's #2 industry, agriculture is a significant industrial engine grossing over $5 billion in 2008. Add in the goods and services farmers purchase from other businesses to grow food and fiber, and the value-added products that are produced, and agriculture is a $10 billion industry, accounting for over 10% of the state's economy. Food processing, in which Multnomah County leads, was the *only manufacturing sector* in Oregon to show positive employment gain in 2008; that processing depends on Washington County farms. And much of that value and product is exported, bringing new dollars into the state, and into Washington County's economy. Agricultural products are #1 in bulk and #2 in value of the shipments out of the Port of Portland. Oregon agriculture has been increasing in value almost every year for over a decade, a claim that no other industry can make, and Washington County's agricultural cluster has been growing for over 150 years.

  Agricultural lands may well be a "value," but they are also an industry and a "need." And unlike traditional "urban" industries, the land on which they rely is not interchangeable, moveable, or convertible into a higher density building. The premise on which the Foundation lands in 7I and 7B were evaluated by DLCD is incorrect; the higher standard to designate them as urban reserves has not been shown.

- While acknowledging the general nature of the Metro and County findings for designating this and other areas of Foundation farm land as urban reserves, the Department endorses Washington County's apparent re-write of the Department of Agriculture's Foundation farm land standards. Rather than focus on the urban reasons for why areas 7I and 7B should be in an urban reserves despite being Foundation farm land, the County has conducted its own analysis – using different standards than the Department of Agriculture – to apparently conclude that the area is not really Foundation farm land. (Report, p. 88) There is no legal basis for this.

  The DLCD Report recognizes that the rural reserve factors are based on the Department of Agriculture's report. The Reserves statute gives deference to the Department of Agriculture in developing the criteria for rural reserves. ORS 195.143. Those rural reserve factors evaluate characteristics such as soil types, whether water is needed and present, adjacent land use patterns, parcelization, threat of urbanization, capacity for long term, agricultural operations, whether the eland is on a large block of farm land, etc… The reserves rule states that to override the Foundation farm land designation requires reference to the urban and rural reserve factors. (OAR 660-027-0040(11)) It does not allow Metro or the Washington County to re-write those rural reserve factors, and yet that is what Washington County has done and Metro and DLCD have endorsed. (DLCD Report, p. 88) The County relied on different definitions of soil capacity, parcelization, and role of water. It also used what appear to be different factors, including among others "high dwelling density," land values, and presence of homes. (DLCD Report, p. 88; various references to the Washington County record) There is no provision for so doing in the Reserves rule.

There is no other area of Foundation farm land about which the agricultural community – including farmers, the Farm Bureau, the Community Supported Agriculture Coalition, small farmers, organic farmers, farm equipment dealers, farm product processors, and more - in Washington County and regionally have been stronger on for a longer period of time: urbanization must not go north of Council Creek; doing so will gut the heart of the Tualatin Valley agricultural lands and significantly contribute to the demise of the agricultural industry in the entire northern Willamette Valley. Truly, if this land does not qualify as Foundation farm land that should not be in an urban reserve, then no land qualifies.

III. Exceptions to Other Department Responses to Objections

A. "B. Amount of Urban Reserve Land - 2. 1000 Friends and City of Wilsonville (pages 34-36)"

1000 Friends and other objectors contend that the amount of land proposed for urban reserves exceeds the statutory 50-year limit, for various reasons explained in our Objections and those of the cities of Wilsonville and Portland. The Department disagrees. We take exception to the Department's conclusions as follows:

- The Department explains that because "100 percent of the maximum zoned capacity of the existing UGB will be used during the reserves planning period," that the statutory 50-

year limit has not been exceeded.[23] However, if it will take the 50 years to attain the already zoned capacity of the 20-year UGB, then there is far more than a 20-year land supply inside the UGB, and the urban reserves far exceed the 50-year limit. Earlier in its Report, the Department concludes that Metro has established as 20-year UGB onto which it can then "tack" 30 more years of urban reserves.[24] Yet here it acknowledges, as the Objectors contend, that the UGB actually has enough capacity for far more than 20 years.

- The Department states that "While some of Metro's planning projections may be characterized as somewhat conservative, others are best described as somewhat aggressive." [25] What does "conservative" mean, which ones, and which assumptions are "aggressive"? These terms and their applications - and more importantly, their relevance and legality – are not explained. Not only does this create a screen preventing participants from understanding and evaluating Metro's and the Department's conclusions, it is not a basis on which this Commission can make a determination. This type of statement is found in several places in the Report.[26]

- The Department seems to misunderstand the issue raised by the city of Portland concerning Metro's built-in vacancy rate of 4% for both the current UGB and the urban reserve.[27] The Metro UGB, as all UGBs, has a built-in "vacancy" factor in the form of a 20-year UGB that is re-visited every 5 years. There is never "no vacant land within the UGB." The vacancy rate is nothing more than another way of looking at market factors, which the long-term 20-year land supply already addresses. Including it on top of a 20-year land supply is contrary to Goal 14 and its requirement to demonstrate that land inside the UGB will be used efficiently prior to adding land. There is no legal or factual basis to extend a 4% vacancy rate to a 30-year reserve, which the Department and Metro claim may never even be urbanized. This doubles the error to 8% of all the lands. Even if a vacancy rate were legitimate for the UGB capacity assumption and/or the urban reserve, Metro has not explained why it is 4%. There is no substantial evidence to support this; the burden is on Metro to provide the evidence for why 4% is the correct vacancy rate, it is not on Portland to explain why it is not.

- The inconsistency between the UGB capacity assumed by Metro in its Regional Transportation Plan (RTP) and Reserves decision violates planning Goal 2 and ORS 195.020- .040, because Metro has adopted two planning documents forecasting population, employment, and UGB capacity that are inconsistent and uncoordinated. The Department explains that this is acceptable because the RTP was adopted one week after Metro adopted the urban reserves decision, and the RTP has not yet been acknowledged. The reserves decision is submitted to LCDC in the manner of periodic review. Periodic review is an iterative process. If during that process other planning decisions are made by the locality that change any of the underlying premises for that iterative planning process, LCDC can and must send the document back to Metro for updating. LCDC

[23] Report, p. 35. The Department continues by explaining that the Damascus area, recently added to the Metro UGB to satisfy a 20-year need, will actually not fully develop for 50 years. Report p. 36.
[24] Report, p. 16.
[25] Report, p. 35.
[26] For example, Report p. 34.
[27] Report, p. 33.

currently has two inconsistent documents from Metro before it – the Reserves decision and the RTP.

- Metro's RTP contains a High Capacity Transit (HCT) strategy, which it designed with local government partners, that designates and directs funding to HCT corridors, in which residential and employment density will be increased to support the HCT. However, in its Reserves decision, Metro has not accounted for any density increases in these corridors. The Department states that it is "reasonable" for Metro to assume no increases in planned or zoned density due to Metro's adoption of its HCT corridors strategy in the 2035 RTP, because it has not yet made changes to its own other functional plans to conform to the HCT strategy.[28] It is not clear what other functional plan changes must be made, but those are Metro's *own functional plans*. It has just *bound itself* to make those changes by adopting its 2035 RTP. It seems unreasonable, and possibly illegal, for Metro to not assume those planned and zoned density increases.[29] If Metro cannot count on itself to make these functional plan changes, it is unreasonable for it to assume that any zoning changes will be made to any urban reserves once they are brought into the UGB.

B. "C. Employment Land/Goal 9 - 1. 1000 Friends of Oregon (pages 43-46)"

The Objectors challenged Metro's assumption that 3000 acres of the urban reserves are needed for large lot industrial use. The Department endorses this Metro finding for the 30-year period beyond the current 20-year UGB: "A reasonable extension of historical demand informed by future growth estimates suggests that approximately 100 acres per year would be appropriate over the reserves time frame, equating to 2,000 acres for the period 2030-50 and an additional 1,000 acres for 2050-60."[30]

The Objectors take exception to this for the following reasons:

- It is conclusory.
- Contrary to Metro's and the Department's assumption described in the exception just above, here Metro assumes that its entire current supply of large industrial lots will be used up in 20 years. Yet as explained above, Metro and the Department assumed that it will take up to 50 years for the Metro UGB to use its zoned capacity. In fact, the Department states in another place that "Metro's analysis shows that the existing UGB has a substantial surplus in the overall amount of employment land that it projected will be needed over the fifty-year planning period (by a factor of 2:1).[31]
- It is unclear how Metro used this 3000 acre assumption in its designation of urban reserves. Is it in addition to the projected need for residential and employment land to the

[28] Report, p 34, 36.

[29] If Metro cannot count on itself to make these functional plan changes, then it is unreasonable for it to assume now that any zoning changes will be made to any urban reserves once they are brought into the UGB – it is not known which municipality, or perhaps county and service districts, will govern each area, plan and zone it, and pay for and provide infrastructure.

[30] Report, p. 45.
[31] Report, p. 48.

year 2060, because of an alleged special need for large lots? And if so, did it result in the selection of Foundation farm lands to meet that need? And if so, which ones? The Department claims that the 3000 acres is simply "one aspect of [Metro's] general land needs for employment over the next 50 years," and that is has no "particular location." [32] It appears that Metro and the Department are trying to have it both ways. In order to not run afoul of the Commission's directives in the Newberg case that a city's long term land need cannot be based on specific siting requirements for particular uses, the Department states that no particular area has been included to meet the alleged need for large industrial lots. If that is the case, then the justification for bringing Foundation farm land into the urban reserves in Areas 8A, 7I, 7B, and other areas no longer exists.

Thank you for consideration of our exceptions.

Sincerely,

Mary Kyle McCurdy

Senior Staff Attorney and Policy Director

On behalf of Washington County Farm Bureau, Dave Vanasche, and 1000 Friends of Oregon

[32] Report, p. 45