

June 1, 2011

Urban and Rural Reserves Specialist
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Sent via e-mail

Re: Metro Urban and Rural Reserves; Ordinance No. 11-1255

The following are objections to Metro Ordinance No. 11-1255, titled “For The Purpose of Revising the ‘Urban Growth Boundary and Urban and Rural Reserves Map’ in Title 14 (Urban Growth Boundary) of the Urban Growth Management Functional Plan,” which includes, among other things, the new Intergovernmental Agreement executed by Metro and Washington County on March 15, 2011 proposing revisions to Washington County urban and rural reserves, as well as the intergovernmental agreements previously adopted by Metro and the counties of Clackamas, Multnomah, and Washington in 2010.

These objections are submitted, jointly and individually, by the individuals and organizations listed at the end of this document. Their signatures are scanned and attached. All testified orally and/or in writing during the proceedings leading to adoption of this ordinance, including but not limited to testifying orally and/or in writing at the March 15, 2011 joint hearing of the Metro Council and the Washington County Board of Commissioners and testifying orally and/or in writing at the April 21, 2010 hearing of the Metro Council on Ordinance No. 11-1255.

These Objections are divided into the following sections:

- I. General Objections
- II. Objections to Specific Geographical Areas
 - A. Areas North of Council Creek
 - North of Forest Grove: Failure to remove urban reserve designation from northern portion of area 7B
 - North of Cornelius: Failure to designate entire former area 7I as rural reserve
 - B. Areas North of Highway 26 (Helvetia):
 - Area 8B (former Area 8B plus 352 more acres): designated as urban reserve
 - Area 8-SBR: adjacent undesignated area (233 acres)
 - C. Rosedale Road area: Newly converted from rural reserve to undesignated (383 acres)

The Objectors also incorporate herein by reference and renew all the objections and exceptions they made 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.¹ In

¹ See Objections and Exceptions at http://www.lcd.state.or.us/LCD/state_review_of_metro_reserves.shtml#Objections_for_State_Review and http://www.lcd.state.or.us/LCD/state_review_of_metro_reserves.shtml#Exceptions_to_Staff_Report.

particular, we renew the objections and exceptions made to inclusion of all of Area 8A (Evergreen),² to inclusion of the Peterkort property,³ and to moving roads at the edge of urban reserves in Washington County to the rural reserve or undesignated side of an area, thereby including far more Foundation farm land,⁴ as well as previous objections and exceptions to Areas 8A, 8-SBR, 8B, 7I, and 7B, and to Metro’s need analysis.

The Land Conservation and Development Commission (LCDC) heard these and other objections and exceptions in October 2010 and provided oral direction to Metro and the local governments. LCDC has not issued a written order of those proceedings.

This document focuses on those decisions and matters that are new, revised, or unaddressed in the most recent set of proceedings by Metro and the counties. This document uses the term “Metro” to refer to the decisions made by all four local governments unless otherwise noted.

I. General Objections

Objection 1: Metro’s decision fails to meet the “balancing” required by OAR Chapter 660, division 27 between urban and rural reserves. This is particularly reflected in Metro’s attempt to “make up” for lands “lost” by LCDC’s October 2010 decision; in Metro’s treatment of so-called “undesignated” lands; in discounting alternative lands; in designating as rural reserves lands not threatened by urbanization; and in not considering reducing the urban reserve time period. ORS 195.137-.145; OAR Ch. 660, div. 27.

Metro and Washington County incorrectly treated the Commission’s oral remand as one of “making up” for “lost acres;” they compounded that error by looking only to Washington County for specific types of land, an analysis that is not appropriate for an urban reserve decision.

ORS 195.145(4) provides that if designated, urban reserves shall be for a period of time that is at least 20 years, but not more than 30 years, beyond the 20-year time period for the urban growth boundary (UGB).

If urban reserves are designated under this statute, then rural reserves must also be designated. However, rural reserves can be designated alone – that is, there is no requirement to also designate urban reserves. ORS 195.143(3)

In contrast with urban reserves, there is no set time period or acreage for establishing rural reserves. Rather, it is a *qualitative* requirement (ORS 195.137(1)):

² See Objections and Exceptions filed by the Washington County Farm Bureau, 1000 Friends of Oregon, and Dave Vanasche on July 12 (http://www.oregon.gov/LCD/docs/murr/objections/Mary_Kyle_McCurdy.pdf) and October 8, 2010 (http://www.oregon.gov/LCD/docs/murr/objections/Mary_Kyle_McCurdy.pdf).

³ See Objections and Exceptions filed by Cherry Amabisca and Carol Chesarek on July 14, 2010 (http://www.oregon.gov/LCD/docs/murr/objections/Carol_Chesarek-Amabisca.pdf) and on October 8, 2010 (http://www.oregon.gov/LCD/docs/murr/exceptions/Carol_Chesarek-Amabisca_100810.pdf).

⁴ See Objections filed by Linda Peters on July 14, 2010. (http://www.oregon.gov/LCD/docs/murr/objections/Linda_Peters.pdf)

“Rural reserve’ means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.”

The statute and this Commission’s rule go on to describe in detail the qualities of land and surrounding characteristics that would qualify an area as rural a reserve. (ORS 195.141(3); OAR 660-027-0010(1), (6); 660-027-0060))

These qualities are based on scientific and economic data, to meet the Legislature's findings that rural reserves must “offer long-term protection of large blocks of land with characteristics necessary to maintain their viability” for the “agricultural and forest industries.” ORS 195.139(1)(a) This is reflected in, among other things, the Legislature's direction to this agency to consult with the Oregon Department of Agriculture (the only state agency so singled-out) and this Commission’s recognition of the Oregon Department of Agriculture’s 2007 report to Metro titled *Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands* as the basis for identifying and designating rural reserves. (OAR 660-027-0010(1), (2))

Those “necessary” characteristics include soil type, water where needed, large blocks of farm land, and the existence of agricultural infrastructure. (ORS 195.141(3); OAR 227-027-0060(2)) The “long-term” protection for the industry includes designating lands as rural reserves that are “subject to urbanization” during the period of time chosen for urban reserves. (ORS 195-141(3)(a); OAR 660-027-0060(2)(a))

Thus, the law and this Commission recognize that meeting the requirement of protecting the long-term viability of the agricultural industry is *not a matter of acres*, but of the *quality and location* of that land. And therefore, the balancing between urban and rural reserves required by law cannot be measured in acres of rural versus urban reserves or any other simply numerical comparison. Nor is the legal requirement of balancing one of looking at each county individually; rather, it is a regional requirement.

OAR 660-0027-0005(2) explains:

“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.”

LCDC directed Metro to remove the urban reserve designation from 623 acres north of Council Creek, north of Cornelius, and to re-evaluate whether the area north of Council Creek and north of Forest Grove (approximately 200 gross acres) was properly designated as an urban reserve. The Commission took this action based on the *qualitative* nature of these agricultural areas. In addition, LCDC’s direction provided the region the ability to evaluate whether the urban and rural reserve designations met the balancing requirement of law, which the region would have to

do in any event under the law. It was *not* a direction for an acre-for-acre replacement. Yet, that is how Metro and Washington County handled it.

Metro's findings contain many statements showing a fundamental misunderstanding of the balancing and qualitative requirements of law, which lead Metro and Washington County to create additional urban reserves and undesignated areas.

Metro states:

“The amount of Urban Reserves acres [sic] is connected to a determination of the long-term need for potential urban land. There is no corresponding need requirement for Rural Reserves; only that *some* rural reserves must be designated if Urban Reserves are designated.”

The findings go on to state that “there is no overall ‘need’ requirement for Rural Reserves.”⁵

This is an astoundingly inaccurate statement. Actually, there are *two* need requirements: (1) to protect the long-term viability of the region's agricultural industry, and (2) to ensure the viability and vitality of the agriculture and forestry industries and natural landscape features while balancing with urban needs. ORS 195.139(1)(a); 195.141(2), (3); OAR 660-027-0005(2), -0060.

This lack of understanding of the agricultural industry and the law's requirements is displayed in Metro's meaningless comparisons of the percentages of farm land designated for urban reserves versus the amount studied and the amount of EFU land designated as urban reserves.⁶ None of these comparisons has anything to do with the *quality or location* of the land, and in particular its threat from urbanization. How uninformative this is can be illustrated by applying a similar standard to urban reserves: What if Metro designated most of the 29,000 acres of urban reserves in areas 3 miles or more from the current UGB? It would still be only an 11% increase in the UGB area, but would be located in an area that is useless for urbanization. Or what if Metro designated most urban reserves on steep slopes? Washington County has already lost a greater percentage of its agricultural land base (46%) than the state as whole (22%).⁷ So perhaps even less farm land should be designated in Washington County as urban reserves than elsewhere in the region?

Using this misunderstanding of the law, Metro approached the oral direction from LCDC as requiring it to “replace... lands lost” [to urban reserves] in the Cornelius area by converting other acres from undesignated to urban, and from rural to undesignated.⁸ The deliberations of the Metro Councilors and Washington County Commissioners, as reflected in the findings, show that the “replacement” was intended to be approximately acre-for-acre; there was no qualitative

⁵ Ex. B to Ord. No. 11-1255, p. 169.

⁶ Ex. B, pp. 3-4. US Census of Agriculture

⁷ Farmland loss; 1954-2007; US Census of Agriculture: Washington County: 108,219 acres = 46%; Oregon: 4,647,693 acres = 22%

⁸ Ex. B, p. 170. Metro converted 352 acres in Helvetia from undesignated to urban reserve, and converted 383 acres south of Rosedale Road from rural reserve to undesignated. It also left 363 acres north of Cornelius undesignated rather than as rural reserve. *Id.*, pp. 170-73.

assessment of the impact of doing so on the viability of the agricultural industry or the other purposes of rural reserves.

For these reasons, Metro's choice of lands to convert from rural to undesignated and from undesignated to urban do not meet ORS 195.137-.145 and OAR chapter 660, div. 027.

Regarding the balancing requirement of the reserves law, on remand Washington County and Metro improperly evaluated only whether there was a balance within the county.^{9, 10}

This is compounded by Metro's and Washington County's acknowledged use of "undesignated" as a holding zone for future urbanization of lands that would otherwise qualify as rural reserves; in particular because those lands are threatened by urbanization. Thus, some areas were intentionally left as "undesignated" *because of their future urbanization potential* – not because they did not qualify as either rural or urban reserves.¹¹ (For example, south of Rosedale Road; specific examples are described in Part II of these Objections.) This is in contrast to how Clackamas County approached implementation of the law.¹²

Metro's findings on how its use of "undesignated" lands fits into its requirement to balance urban and rural reserves consist of this statement, made in the course of evaluating one area:

“The decision to leave 363 acres undesignated is ultimately best explained by the record of Metro and Washington County's joint public hearing on March 15, 2011. It was at that joint hearing that Metro and Washington County elected officials fulfilled the balancing objective of OAR 660-027-0005(2).”¹³

That hearing was 9 hours long. This “finding” does not meet Metro's legal obligation for any use of “undesignated.” Because Metro views undesignated lands as providing a future urban potential, that should be taken into account in its balancing analysis, but it was not.

Finally, Metro explains why, in general, it designated *any* Foundation agricultural land as urban reserves, and why it did not designate various other areas.¹⁴ This misses the point. The Objectors do not and never have disputed that some Foundation agricultural land would be designated as urban reserves – that was well understood from the beginning.

⁹ Ex. B, p. 108: “Following the oral remand, Washington County and Metro continued their efforts to balance the reserves *in the county*...” (Emphasis added.)

¹⁰ Some of the contortions in the resulting decision are an attempt to ensure that the issue of balancing was *not* reopened because of the risk of failure to agree among the four local governments; it did not have to do with legal requirements or the qualitative needs of the agricultural industry *See, e.g.*, in Objections of Robert Bailey, e-mail from then -Washington County Commissioner Tom Brian to Andy Duyck, Dennis Mulvihill, and others. dated November 2, 2010.

¹¹ See, for example, the findings regarding the Rosedale Road area, which was previously designated as a rural reserve but was converted to undesignated so it can move up the queue towards urban reserve designation. Ex. B, p. 173. *See also* the findings on North Plains and Banks.

¹² Clackamas County left as “undesignated” those lands that did not qualify as either urban reserves or rural reserves.

¹³ Ex. B, p. 173.

¹⁴ Ex. B, p. 4-10.

However, the rationale for designating some Foundation lands as urban reserves and discounting non-Foundation lands are conclusory or legally flawed. Significantly, in several instances, Metro improperly substitutes a UGB expansion analysis for a reserve analysis. A UGB is designed to meet specific needs for residential, employment, schools, institutions, and other urban land needs. In contrast, urban reserves are to meet only a *general* urban need:

“Urban reserve’ means land outside an urban growth boundary that will provide for:
(a) Future expansion over a long-term period; and
(b) The cost effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.”

ORS 195.137(2)

Metro’s findings fail to meet the legal requirements as follows:

- Metro declined to designate some non-Foundation lands as urban reserves because the current “low density rural residential development” pattern would be “very expensive” to convert into mixed-use communities.¹⁵ This statement might be relevant to a UGB expansion, but not for a designation of a general land supply that *might* be urbanized over 50 years. In addition, there is no evidence in the record that it would, in fact, be very expensive to convert low density rural houses on septic systems and wells to a suburban development pattern over the urban reserve time period.
- Metro states these areas would also be “politically difficult” to urbanize.¹⁶ That is a legally irrelevant factor and without any evidentiary base.
- Metro states those cities without large expanses of flat farm land around them stated they did not want urban reserves, while those cities with flat farm land did want that land for urban reserves. Metro explained that had it “not designated some Foundation Land as urban reserves in Washington County, it would not have been possible for the region to achieve the ‘livable communities’ purpose of reserves in LCDC rules.”¹⁷ This improperly assumes that *only by designating significant areas of Foundation farm land near certain cities can the region be livable*, that is, that more raw land is the only method to achieve a livable community . This fails to recognize, among other things:
 - Those cities without large areas of adjacent farm land use other tools to maintain their livability.
 - It fails to compare the cost of servicing new land with the cost of accommodating the same number of people and employees inside the existing UGB.

Again, this is not about whether *any* Foundation land should be designated as urban reserves, but the *quality* of that land and whether a robust set of alternatives was really examined and balanced.

¹⁵ Ex. B, p. 5.

¹⁶ *Id.*

¹⁷ *Id.*

Metro failed to meet the balancing requirement of law. Instead, it focused on approximating an acre-for-acre replacement of the urban reserves “lost” by LCDC’s decision; it made quantitative rather than qualitative comparisons; it improperly relied on “undesigned” lands as a future urban reserve holding zone; it failed to demonstrate that the decision meets the balancing requirements of law; and it improperly discounted alternatives to Foundation lands.

Washington County’s designating rural reserve lands that extend to the edge of the county boundary where there is no threat of urbanization fails to provide the “balance” contemplated by the rule. Providing protection for lands that are not threatened is simply cynical; it does not serve to offset the large amount of urban reserve assigned to lands directly adjacent to the existing UGB.

Metro does have a way to balance urban and rural reserves that it never examined: reduce the number of years for which it is designating urban reserve from the upper limit, where it is now, of 30 years to something closer to 20 years. This would remove Foundation farm land currently in urban reserves, and would therefore lessen the balancing requirement. This is also what the nine state agencies recommended.¹⁸

Remedy: These can be applied separately or in combination. Direct Metro to reduce the urban reserve period from 30 to 20 years; reduce the amount of Foundation Agricultural lands designated as urban reserves;¹⁹ and/or designate certain areas now left as “undesigned”²⁰ as rural reserves.

II. Specific Geographic Areas

A. Areas North of Council Creek

North of Forest Grove Area

Objection 2: Designation of the Foundation Agricultural Land north of Council Creek and north of Forest Grove (northern portion of Area 7B) as an urban reserve violates the reserves statute and rule. ORS 195.137-.145; OAR Ch. 660, div. 27.

Metro originally designated over 400 gross acres of land north of Forest Grove as urban reserves; the original area was Area 7B. This land is bounded by Forest Grove to the south and west, Highway 47 to the east, and Purdin Road to the north. It is bisected by a tributary of Council Creek that runs east-west.²¹ There are two other stream tributaries running more north-south in the area.

¹⁸ State Agency letter of October 14, 2009.

¹⁹ As explained in part II, this could include the 352 acres in Helvetia that were converted to urban reserves and the area north of Council Creek, north of Forest Grove.

²⁰ As explained in Part II, this includes the 363 acres north of Cornelius, and the 383 acres south of Rosedale Road.

²¹ See map at Ex. B p. 143.

The Washington County Farm Bureau, individual farmers, and others objected to including the land north of the east-west tributary of Council Creek, which we will call here “7B North.” The land area objected to comprises about half the gross acreage but *less than half of the net* – or buildable – acreage.²²

Area 7B North meets all the rural reserve factors; no evidence demonstrates it meets the urban reserve factors. Metro’s and Washington County’s findings focus on the wrong area.

Area 7B North qualifies for rural reserve designation, which Metro’s findings acknowledge and about which there has been no dispute. It is Foundation Farm Land, comprised predominantly of Class II soils; it is rated as “high value farmland” by Washington County,²³ and lies within the Tualatin Valley Irrigation District. The land is currently in nurseries, orchards, grass seed, hay, and other crops.²⁴ Washington County and Metro acknowledge that this area is “a large block of agricultural resource land with a concentration of farm operations.”²⁵

LCDC directed the region to re-examine area 7B North. Commissioners’ comments included observations that the area was very similar to the area north of Council Creek in the Cornelius area that the Commissioners found did not qualify as an urban reserve; one Commissioner observed that the rationale for using Council Creek as the boundary was perhaps even stronger in area 7B because of the lack of any other meaningful boundary north of the city; and its key location relative to Washington County’s core agricultural region was noted.²⁶

There has been apparent confusion by some as to the Commission’s direction; this confusion is reflected in staff reports and in the findings. The Commission’s discussion clearly was about the over 200 acres north of the east/west branch of Council Creek; representatives from Forest Grove present at the LCDC meeting gave that information to the Commission orally when asked to clarify the amount of land within 7B that lies north of Council Creek.²⁷ The LCDC Commissioners discussed the northern portion of the area as bisected by the east-west tributary.²⁸ Individual Commissioners opined that just as Council Creek provided both the practical and legal boundary north of Cornelius, it did north of Forest Grove as well.

Instead, the proposal leaves all but 28 acres (Area A) as urban reserves. Metro converted the 28 acres to “undesignated” for the sole purpose of making a future road improvement that the County believes may not be possible if that 28 acres is in any sort of reserve.²⁹ This is not responsive to LCDC’s directive.

It derives at least in part from Washington County’s use of the wrong tributary in its analysis. Washington County’s underlying decision acknowledged and agreed with LCDC that “using

²² North of the tributary includes 133 net acres; south of the tributary includes 169 net acres. Ex. B, p. 143.

²³ Ex. B, pp. 148-50.

²⁴ *Id.* p. 149.

²⁵ *Id.*

²⁶ Audio of October 29, 2010 LCDC hearing.

²⁷ Audio of October 29, 2010 meeting; remarks of Forest Grove Planning Director Jon Holan.

²⁸ *Id.*

²⁹ Ex. B, p. 147.

Council Creek as a boundary would be appropriate.”³⁰ However, the County then went on to remove the urban reserve designation from only 28 acres “on the east side of Council Creek.”³¹ That is the wrong tributary; the only stream that meets the County’s description is in the northeast corner of Area 7B. The stream in the northeast corner runs north-south. It does not resemble in any way the east-west tributary that the Commission and the Forest Grove staff discussed at the October 29 hearing. That discussion was based on the objection before LCDC, an objection which contained photos and a description of the east-west Council Creek.

In addition, although Washington County acknowledged that “using Council Creek as a boundary would be appropriate,” the tributary it chose was *not* picked for boundary or buffering purposes, as required by law (OAR 660-027-0060(3)(f)), it was done to build a traffic circle.³²

The Metro Ordinance and underlying findings reflect this confusion about the area LCDC directed the governments to re-evaluate. The correct Area 7B North qualifies as a rural reserve. To the extent the Ordinance and findings can be construed as referring to 7B North, they do not justify the continued designation of Area 7B North as an urban reserve.

Metro’s Focus on a Specific Use of Land Not a Legal Justification

Metro’s justification for designating all of Area 7B as an urban reserve is for “employment expansion, particularly industrial,” with one site in mind, “a 115-acre parcel located in the northwest portion of Area 7B.”³³

- As the Commission has already determined in other urban reserve cases that have come before it, this is an impermissible level of specification for the time frame of a reserve decision, and this one – at 30 years – is longer than perhaps any other the Commission has considered. Choosing specific parcels of land for specific uses is a UGB consideration, not one for reserves, especially not on the scale of a *regional* reserve. The scale and time period in this decision makes such a particularized parcel choice a bit absurd, in addition to being contrary to law. ORS 195.137(2), 195.145; OAR 660-027-0050(2), -0010(11), -0050.
- Metro’s primary justification for designating land north of Council Creek as urban reserve is to include the 115-acre parcel, because it does not require any lot assembly and because the owner “has indicated that the orchard currently on the property is nearing the end of its useful life and would be available for development within the next 2 to 5 years.”³⁴ Neither of these is the basis for an urban reserve decision, or even a UGB decision. Oregon land use law is not about the preference of current owners, their interest in continuing farming, or their business acumen. Imagine making land use decisions inside a UGB based on that; it would create an unacceptable level of

³⁰ Staff report of December 6, 2010 from Dept of Land Use & Transportation to Board of Commissioners, p. 3; Staff report of Dec. 14, 2010, p. 2.

³¹ *Id.*

³² Ex. B, p. 147.

³³ Ex. B, p. 134-35.

³⁴ Ex. B, p. 135.

uncertainty for neighboring residents and businesses, just as it would outside the UGB. There is even more buildable land in the area south of Council Creek; over a 30-year reserve timeframe those parcels will consolidate if that makes investment sense.

- Even if this were a permissible consideration, Washington County’s findings – incorporated in Metro’s ordinance – describe “large lots” as 50 acres or more.³⁵ However, Metro defines a large lot as 25 acres or more.³⁶

Findings Based on Infrastructure Fail to Meet Urban Reserve Factors, Lack Substantial Evidence, and Fail to Meet the Balancing Requirement of Law

- The findings state that designating area 7B “optimizes major public improvements to Martin Road and Highway 47. Martin Road...provides the most direct access to the Sunset Highway corridor via Verboort Road, Cornelius-Schefflin, Zion-Church and Glencoe Roads.”³⁷ However, those improvements were planned, financed, and constructed without reliance on any urban reserves or UGB expansions, and to use them to shoehorn in an urban reserve designation is impermissible. Moreover, the route described is on the farm roads that lie in the heart of the Tualatin Valley farm country – creating exactly the type of conflict that *rural* reserves are suppose to stop. This actually supports rural reserves north of Council Creek.
- Metro’s findings describe at length how Area 7B can be designed to avoid or mitigate adverse effects on farm and forest practices by using Purdin Road as the northern boundary of Area 7B, rather than Council Creek. It is claimed that Purdin Road will be a better buffer than the Creek because the road can be widened from 22 feet to 52 feet, with a 98-foot right of way, allowing for shoulders so farm equipment would have room to pull over and out of the way of faster commuter traffic.³⁸ Thus, Metro’s argument goes, since “Purdin Road is already carrying urban levels of traffic,” which is expected to increase regardless of urban reserves, designation of the whole area as an urban reserve will somehow decrease future traffic levels and “allow for needed future road improvements,” because development in the area will “help defray the costs of roadway improvements.”³⁹

³⁵ Ex. B, p. 142.

³⁶ Metro *Urban Growth Report*, Appendix 4, *Forecast-based large employer/large lot analysis*, 2002; pp. A4-1, A4 5.

³⁷ Ex. B, p. 136.

³⁸ Ex. B, pp. 139-41. For example: “[T]his road [Purdin] would need to be at least a three lane road with wide shoulders and bike lanes. The wide shoulders would allow slower farm traffic to operate on the roadway.”

³⁹ Ex. B, pp. 146-47. Metro’s findings state: “In addition, development along the south side of Purdin Road would help defray the costs of the roadway improvement. The City would receive Transportation Development Tax funds from the development to assist in construction. Leaving this road within the Rural Reserve or undesignated would require the County to make future improvements which may be difficult due to other pressing needs for limited County funds. Improvement of this road would likely be a low priority given demands in the more urbanized (and urbanizing) portions of Washington County.”

This circular argument is an excellent example of the deeply flawed “balancing” approach in the overall findings: Here, the traffic generated by future development will be routed through bigger roads in rural areas; roads that will be created by paving over more farm land. These bigger roads will attract more commuter traffic to the Sunset Highway along farm roads. The bigger roads are only necessitated by urban development, not rural, and yet the solution to more urban development is to look at where and how to widen rural roads. The findings never consider alternatives to rural roads, such as not locating more development north of the Creek, or developing in ways and places that reinforce alternatives to driving such as transit (which should be looked at due to the hoped-for high capacity transit line to Forest Grove and Cornelius); or widening or creating more road capacity inside the UGB so they farm road route is not as attractive. If the needs of the agricultural industry were addressed, it would be by making farm roads – such as those described as the cut-through route to Highway 26 – *less attractive* to urban commuters, not more.

- The findings cite infrastructure that exists inside Forest Grove that could be extended to Area 7B. Those justifications apply, perhaps even more strongly, to the portion of 7B that is *south* of Council Creek. There is no evidence that serving Area 7B North is necessary for the infrastructure extensions, and in fact stopping at the Creek would lessen the cost.
- The findings rely on certain other road improvements (a traffic circle) at Highway 47 and Purdin Road, which can be made without designation as an urban reserve.⁴⁰

Metro’s findings regarding the area north of Council Creek do not refer specifically to the area LCDC directed Metro to re-evaluate. To the extent road improvements are contemplated in Area 7B, they do not require an urban reserve designation; in fact, that will only exacerbate the need for more road “improvements.” No legal or factual justification has been provided to designate Area 7B North as an urban reserve.

A Road is Not a Better Buffer than a Creek

Metro’s findings state: “To date, there has not been any explanation why a stream course makes a better buffer than a roadway.”⁴¹

- Contrary to this statement, there has been almost 4 years of testimony at every level of the reserves decision-making process describing the problems with roads in and acting as buffers to rural reserves. Recently, it has been in the Washington County Farm Bureau presentation, including photos, made to LCDC in October 2010 and to the joint meeting of the Washington County Board of Commissioners and Metro Council in March 2011. It has been made by various objectors and Save Helvetia concerning Washington County’s last-minute action to move the boundaries of urban reserves to the far side of roads. This testimony has described numerous incidents traffic conflicts, accidents, harassment over farm operations and vehicles, and more. Here, Metro and Washington

⁴⁰ *Id.*, and pp. 146-47.

⁴¹ Ex. B, p. 146.

County state that because the Council Creek tributary buffer is 69 feet wide, and the proposed, urban-level Purdin Road right-of-way would be up to 98 feet wide, that the road would be the better buffer because it would be wider.⁴² This illustrates a lack of knowledge of the agricultural industry, agricultural practices in Washington County, and the nature of the conflicts between urban and agricultural uses – which frankly further undermines the entire rural reserves analysis in Washington County. It also illustrates exactly why the certainty of rural reserves are critical to the agricultural industry.

- As the Farm Bureau and individual farmers have testified, the major conflict with roads is traffic, and roads used by commuters to the UGB are the most significant source of conflicts in farming areas. A bigger road increases those conflicts by attracting more non-farm users to it, causing accidents and blocking the necessary movement of farm equipment. This does not happen with streams, plus streams and riparian areas absorb sounds, dust, and light that those not familiar with farming sometimes object to.
- The road as a buffer paves over existing farm land. That larger right-of-way then impacts an even larger farming area, because farmers do not farm “up to the line” due to the turning radius needed for equipment, keeping sprays and other materials off public rights-of-way, etc...

Area 7B North qualifies as a rural reserve; there is no disagreement on that. It does not qualify as an urban reserve; as described above, none of the justifications used by Metro stand up upon examination. The proposed urban reserve south of Council Creek, which is larger than that north, is also located on Foundation farm land and also qualifies for rural reserve designation. However, in the balancing required by the reserves statute and rule, and to keep Council Creek as the practical and natural buffer between rural and urban throughout this agricultural area, designating the southern portion as urban reserve can fit as part of an overall reserve decision.

Remedy: Remand with direction to remove the urban reserve designation for Area 7B North, located north of the east-west Council Creek tributary, and re-designate it as Rural Reserve.

North of Cornelius Area

Objection 3: Leaving 360 acres in former area 7I as “undesigned” fails to comply with the reserves statute and rule; it should be designated as rural reserves.

Area 7I originally contained 623 acres, all of which was located north of Council Creek, north of Cornelius. LCDC directed Metro to remove the urban reserve designation from Area 7I. Metro did so, redesignating the northern portion of the area (263 acres) as rural reserves (now part of Area 8E), but leaving the southern portion (360 acres) as undesigned (which we will call Area 7I South). The dividing line between the north and south is formed by lot lines; that is, lines on a map. There is no use of a natural or any other type of buffer.

Leaving the area undesigned fails to meet the reserves statute and rule. The undesigned area qualifies for rural reserves designation for two reasons: as both Foundation farm land and as a

⁴² Ex. B, p. 146-47.

significant landscape feature. It does not qualify as “undesigned,” and leaving it as undesigned impairs the integrity of the rural reserve area to the north.

- Area 7I South meets all rural reserve factors: it is Foundation farm land; it is “highly” subject to urbanization during the time period; it is capable of and does sustain long-term agricultural operations; it is primarily Class I, II, and III soils; it is an intact large block of farm land; and the farm use and ownership patterns demonstrate long-term stability. It is in the Tualatin Valley Irrigation District.
- Written and oral testimony from the Washington County Farm Bureau and from individual farmers, some of whom farm north of Council Creek in this area, attest to the fact that this area is the heart of the Tualatin Valley agricultural industry and contains some of the most productive blocks of farm land in the state.
- The area has significant and irreplaceable agricultural business “infrastructure” in and near it, which depend on these lands and on which the farmers in the area, in turn, depend.⁴³ These include, among others: Tualatin Valley Irrigation District infrastructure; VanDyke Seed, a seed-cleaning plant; Jacobsmuhlen’s Meats, a meat processor; Spiesschaert Enterprises; and Duyck Produce.
- The entire area north of Council Creek, but in particular *this* area of 7I South, also qualifies as rural reserves because it is a mapped significant natural landscape feature under the rural reserves statute and rule.⁴⁴ Council Creek and its floodplain form a natural boundary separating urban and rural uses, and qualify as an important natural landscape feature. Crossing Council Creek would be a significant intrusion into the heart of Tualatin Valley agricultural land and industry, without any other logical, natural boundary.
- Metro’s findings do not explain why this area was left as undesigned, including *why lot lines* were chosen as the boundary between undesigned and rural reserves. This is the entirety of Metro’s findings:

“For the reasons above under the discussion of “Undesigned Lands” and because LCDC invited Metro and Washington County to provide more Undesigned lands, ultimately 363 acres directly north of the city of Cornelius were left Undesigned. * * * The decision to leave 363 acres undesigned is ultimately best explained by the record of Metro and Washington County’s joint public hearing on March 15, 2011. It was at that joint hearing that Metro and Washington county elected officials fulfilled the balancing objective of OAR 660—27-0005(2).”⁴⁵

As explained earlier, that was a 9-hour hearing. This statement does not qualify legally as findings explaining why land that qualifies as rural reserve on two grounds, and has been found by LCDC to not qualify as urban reserves, and is Foundation land, has been left undesigned. This mistaken “undesigned” category is compounded by the fact that

⁴³ See, e.g., testimony of Fisher Farm & Lawn; Ag West Supply; Rick’s Independent Crop Consulting Services; Wilco; Winfield LLC; Metro New Holland; Western Ag Improvements.

⁴⁴ Metro *Natural Landscape Features Map; Washington County Map 5 Natural Landscape Features Inventory – Metro (February 2008)*

⁴⁵ Ex. B, p. 173.

Area 7I South contains the natural buffer of Council Creek and its riparian area, and qualifies as the “boundary or buffer...between “urban uses and natural resource area.” OAR 660-027-0060(3)(f). Lot lines do not qualify as a boundary or buffer.

The only possible “reason” is to keep this area as a potential future UGB expansion area which, as explained above, would cause the overall reserves decision to violate the balancing requirement of the statute and rule. It is certainly not a permissible reason for an area that qualifies on *two* grounds as a rural reserve.

Remedy: Remand and direct Metro to designate Area 7I South as Rural Reserve.

B. Helvetia: Areas North of Highway 26

Introduction

In the original 2010 reserves decision, Area 8B contained 88 acres located at the northwest corner of NW Helvetia Road and NW Groveland Drive and was designated an urban reserve. Save Helvetia and others objected to these 88 acres as urban reserves, arguing instead that it better satisfies the rural reserves factors.

In 2011, Metro Ordinance 11-1255 expanded Area 8B to 440 acres: the “original” 88 acres plus an additional 352 acres. This Objection is to the entire 440 acres as urban reserves, arguing instead that it better satisfies rural reserves factors.

Area 8-SBR is 233 acres of Foundation Agricultural Land left “undesigned.” It is located to the west of Area 8B and separated from Area 8B by NW Groveland Road. These objections will refer to this area as “Area 8-SBR” for convenience.

All prior testimony, objections and exceptions contained in the record in Washington County, Metro and DLCDC for Metro Ordinance No. 10-1238A (2010) are hereby incorporated, applied, and preserved in these Objections to Metro Ordinance No. 11-1255.

Area 8B

Objection 4: The findings in support of designating of Area 8B as an urban reserve violate the reserves statute (ORS 195.137-.145), rules (OAR chapter 660, div. 027), and Goal 2, adequate factual base, and are not supported by substantial evidence in the whole record.

1. The decision lacks findings and substantial evidence for designating Area 8B as urban reserves, rather than other non-Foundation Lands

Area 8B consists of 440 acres of Foundation farm land located north of Highway 26. The Metro decision fails to satisfy the urban reserve factors of OAR 660-027-0050. When designating Foundation Agricultural Lands for urban reserve, OAR 660-027-0040(11) requires “findings and statement of reasons” that explain, in reference to OAR 660-027-0050, “why Metro chose the

Foundation Agricultural Land for designation as urban reserves rather than other land considered.” *This provision imposes an extra obligation* of identifying what it is about this land that satisfies the urban reserves factors and why that obligation cannot be satisfied by other non-Foundation Lands. Metro’s decision lacks this necessary alternative lands analysis.

For example, there is no analysis of whether the “St. Mary’s” property in South Hillsboro could serve for industrial purposes, instead of Area 8B’s Foundation Agricultural Land.⁴⁶ The St. Mary’s land contains over 400 acres in a single ownership with no pre-existing development. It is located near rail and a major transportation line, and would enable employees in the surrounding residential areas to live near work, reducing vehicle miles traveled and emissions. Exactly the rationale Metro uses to justify other urban reserves (see, for example, the Evergreen area), and they are even stronger here. Instead, employees in the large residential areas surrounding St. Mary’s will travel many miles north, cross US-26, to Area 8B, far from the urban core, increasing already congested traffic on north-south routes.

In addition, Metro and Washington County did not evaluate Important and Conflicted Agricultural Lands as an alternative to Area 8B’s Foundation Agricultural Land.

Finally, the approximately 2,500 acres of “undesigned” land reserved by Washington County were not considered as an alternative to Area 8B’s Foundation Agricultural Land, even though this option was proposed by the Washington County Farm Bureau. Metro’s decision lacks any of this alternative lands analysis.

When considered in its entirety, on balance and against other lands around the Metro region, the area located north of US-26 and west of NW Helvetia Road is much more suitable for rural reserve designation, given its high quality soils, its high productivity for farm use, its relative separation from the urbanized portions of the county, and its existing protective boundaries of already existing US-26 and NW Helvetia Road, ensuring the continued operation and profitability of these agricultural lands.

Area 8B is not only Foundation Agricultural Land; it is high-value farmland. While the most productive farmland is often the easiest to convert to industrial uses - Area 8B is generally flat, has good drainage, and is in close proximity to a freeway interchange - that alone does not satisfy the purpose of urban and rural reserves in ORS 195-137-.145 and OAR chapter 660, division 27.

The Area 8B findings do not identify any unique or limited property characteristic that requires an urban designation. OAR 660-027-0040(2) requires that urban reserves be limited to the amount necessary to “accommodate the estimated urban population and employment growth.” Although this does not require mathematical certainty, it does require a connection between the need for additional urban lands and the amount of land designated to meet the need. There are no general or particular findings suggesting that Area 8B is needed to accommodate the estimated urban population and employment growth in this particular area.

⁴⁶ In fact, the reason the St. Mary’s area was *not* analyzed for industrial use is because Hillsboro contemplates that the area will be mostly residential. That is not a legal justification under the reserves law and, in fact, is another example of this decision’s illegal use of a UGB evaluation standard.

With the addition of 28,256 acres of urban reserves, which is on the high end of Metro’s recommendation of 15,000 to 29,000 acres, Metro and the four governments believe the region can accommodate 50 years of employment growth. The Metro Findings state: “The existing UGB has sufficient capacity - on vacant land and through re-development over the 50-year reserves period - for overall employment growth in the reserves period. However, this supply of land does not account for the preferences of some industrial employers for larger parcels.”⁴⁷

Rather than take Area 8B’s Foundation Agricultural Land out of production, Metro could use some of the thousands of acres of Important and Conflicted Agricultural Lands it reserved to “remain undesignated for possible designation as urban reserve if the region’s population forecast proves too low”:⁴⁸

Clackamas Heights
East Wilsonville
West Wilsonville
Southeast of Oregon City
Southwest of Borland Road
Between Wilsonville and Sherwood
Powerline /Germantown Road-South”

Metro’s acknowledgment that these Important and Conflicted farm lands could be urbanized belies any argument that they are not suitable. In addition, there is nothing unique about Area 8B that will make it easier or less-expensive to develop than any other area within the Metro area. This analysis was never conducted and Metro made no attempt to compare other locations to determine if the same services and objectives could be met by avoiding Foundation Lands.

2. Hillsboro’s Pre-Qualified Concept Plan did not analyze Area 8B adequately

When the City of Hillsboro submitted their Pre-Qualified Concept Plan, Area 8B’s 440 acres were a miniscule portion (5%) of the 7,890 gross acres of land under consideration for proposed Urban Reserves in the North Hillsboro study area. Because it was lumped into a huge area, Hillsboro’s Pre-Qualified Concept Plan did not adequately assess Area 8B for urban or rural reserves. There is no rational basis for selecting an initial 88 acres, increasing that amount to 440 acres without any further explanation. Even when the North Hillsboro urban reserves were reduced to 2,754 acres, Area 8B was never analyzed independently. Metro’s reliance upon the city’s Pre-Qualified Concept Plan as a reason for designating Area 8B as urban reserves is flawed and not supported by substantial evidence.

Remedy: Remand Area 8B for re-designation as Rural Reserve.

⁴⁷ Ex. B, p. 14.

⁴⁸ Ex. B, p. 8.

Objection 5: Area 8B does not meet any of the urban reserve factors. The findings in support lack an adequate legal or factual basis.

The reserve rule, OAR 660-027-0050 describes 8 factors to use in evaluating whether an area qualifies as an urban reserve. Area 8B meets none of these.

“Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

“(1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments....”

Metro’s findings for Area 8B do not meet this requirement.

1. Area 8B was lumped into 7,890 acres and was not analyzed in the first instance

Metro’s findings state that Hillsboro’s Pre-Qualifying Concept Plan outlines “the City’s infrastructure service availability to Area 8B and the entire North Hillsboro Urban Reserves areas.”⁴⁹ However, the PQCP does **not** refer to Area 8B, only to the North Hillsboro study area (an area of 7,890 acres as noted above).⁵⁰ This results in misleading information about the availability and cost of providing services to Area 8B specifically. For example, the Metro findings regarding plans for a new reservoir to serve existing underserved area customers refers to areas north to Highway 26, not north of Highway 26. The reservoir capacity is not planned to accommodate the increased needs from areas north of Highway 26. The additional investment required to serve these areas far from the urban core would be useful and required information for this decision, given that it will cost taxpayers more and may not be an efficient use of public and private infrastructure investments, but it is not here.

Metro findings that “Area 8B has the necessary infrastructure readily available” and that “Hillsboro has a track record of successfully delivering infrastructure services to UGB expansion areas...” are conclusory and belied by all the evidence contained in the record...⁵¹ According to Metro findings,⁵² a 51-acre site north of Highway 26 brought into the UGB in 2002 cannot be developed for high tech until upgrades to the West Union substation are made. This potential large lot site is languishing *inside* the UGB for lack of infrastructure while valuable Foundation Agricultural Land in Area 8B has been proposed as urban reserves for large lot industrial sites.

⁴⁹ Ex. B, p. 155.

⁵⁰ Washington Co. record, p. 3120.

⁵¹ Ex. B, p. 156.

⁵² Ex. B, p. 159.

2. Infrastructure improvements can be made without Area 8B being an Urban Reserve

Metro's findings describe why the original Area 8B was designated urban reserve:

“Why This Area was Designated Urban Reserve: Urban Reserve Area 8B sits at the northwest corner of a major highway interchange which has recently received funding commitments for significant improvements. This interchange is located at the northwestern edge of a very large technology-based industrial area. This area will provide flexibility in planning for needed interchange improvements as well as other infrastructure needs (e.g. sewer and stormwater management) for developing urban lands to the east.”⁵³

This is not an accurate statement. To the extent that the planned improvements to the Highway 26/Brookwood Interchange at NW Helvetia Road and NW Groveland Drive have been identified, it is designed to address *only existing* capacity issues related to land *inside* the current UGB.⁵⁴ ODOT has been clear that additional traffic resulting from any new urban reserves north of Highway 26 will require *additional* investment in the interchange and associated roads. The only funding available is \$45 million, which will cover only a portion of the planned improvements to address current capacity within the *current UGB*. Another \$25 million to address the remaining needed improvements for current capacity is unfunded. Designating urban reserves on another 2,700 acres in Areas 8A (Evergreen) and 8B, when funding to serve traffic generated from the existing UGB is inadequate and underfunded does not demonstrate compliance with ORS 195-139, .145(5) or OAR 660-027-0050.

3. Improvements can be accommodated in Rural Reserves

None of the urban reserve factors of OAR 660-027-0050 contemplates potential demands for urban freeway interchange expansion. There is no evidence to suggest that Area 8B must be designated urban reserves to meet Metro's identified objectives. Similarly, there is nothing in OAR 660-027-0050 that allows designating land urban reserves for a freeway. The policy of creating livable communities does not include any reference to expanded highway access.

Moreover, Area 8B does *not* have to be designated urban reserves in order to accommodate a roadway interchange or provide sewer or stormwater management. ORS 215.213(2)(q) expressly authorizes the expansion of travel lanes and roadways in areas zoned for exclusive farm use, which is presumably the designation that would remain on these lands if they were designated rural reserves. Similarly, utility facilities such as stormwater collection or sewer pump stations are allowed outright on lands zoned for exclusive farm use under ORS 215.283(1)(c). Retaining the EFU zoning and designating the land rural reserve does not impose a planning limitation of any sort.

Area 8B does not legally have to be designated as an urban reserve to meet any identified sewer or stormwater need, or freeway interchange improvements, and no evidence in the record supports a different conclusion. There is no evidence that operation of an urban-scale

⁵³ Ex. B, p. 87.

⁵⁴ Ex. B, p. 156.

interchange in this area is inconsistent with farming activities likely to occur if Area 8B is designated for rural reserves. In fact, the *only* evidence in the record shows the opposite: the overpass at NW Jackson School Road over Highway 26 - the next interchange to the west of Highway 26/Brookwood Road/Helvetia Interchange - operates with minimum impact to the surrounding farm uses currently zoned EFU. Nothing in the urban/rural reserve factors provide that areas planned for roadway expansions must be zoned for urban use.

4. State Agencies Recommended Rural Reserves for Area 8B; ODOT does not need Urban Reserve designation in Area 8B

In a letter dated October 14, 2009, nine Oregon state agencies recommended **rural reserves** for what is now Area 8B:

“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, except for area just east of the City of North Plains, which could remain “undesigned.”⁵⁵

The state agencies’ letter made an exception for the original 88 acres of Area 8B in the northwest corner of the Shute Road interchange (now Highway26/Brookwood/Helvetia Interchange), declining to state whether this 88 acres should be undesigned or urban reserves based on the understanding that “...additional transportation investments are anticipated.” In 2010, Metro designated Area 8B’s original 88 acres as urban reserve “...for needed interchange improvements.”⁵⁶

In the hearings leading to this most recent Metro decision, ODOT made very clear that an urban reserve is *not* necessary for any interchange improvements. In a March 29, 2011 letter from ODOT to Washington County Chair Andy Duyck and Metro President Tom Hughes, ODOT stated:

“Also, we wish to set the record straight that ODOT does not need an urban reserve designation in order to make currently proposed or future improvements at this interchange. The Transportation Planning Rule sections -0065 and -0070 provide for certain transportation improvements to be made on rural lands without and with exceptions to Statewide Planning Goals 3, 4, 11 and 14. In fact, an Urban Reserves designation does not affect any of the applicable requirements for interchange improvements.”⁵⁷

This is the only substantive evidence in the record relating to this intersection other than conclusory assumptions made by the County and Metro. Furthermore, ODOT needs only 5.05 acres for an interchange - not 88 acres (or the now 440 acres that is the new 8B). ODOT’s design team “...calculated that approximately 5.05 acres of property (220,000 square feet) would

⁵⁵ Washington Co. Rec., p. 774.

⁵⁶ Ex. B, p. 87.

⁵⁷ Wash. Co Rec., VIIIb, p. 633 of 790, at 11107.

be needed in fee for the proposed project in the northwest quadrant...,” not even the 88 acres designated as urban reserves by Metro in 2010.⁵⁸

Metro’s 2010 Findings for designating the original 88 acres of Area 8B as urban reserve were based on wrong information - the interchange improvements can be done in a rural reserve. As a result, the designation of urban reserve for the rest of Area 8B bootstrapped onto a flawed decision, resulting in designating high-value Foundation Agriculture Land as urban reserve.

Therefore, the findings do not satisfy OAR-660-027-0050(1), are inconsistent with OAR 660-027-0040(11), violate Goal 2, and are not supported by substantial evidence.

“(2) Includes sufficient development capacity to support a healthy economy”

The evidence in the record does not support a finding that Area 8B meets the factor – alone or in conjunction with land inside the UGB, that it supports a healthy economy. In fact, evidence supports the opposite finding – that including Area 8B will harm the economy by perpetuating a pattern of inefficient use of land in this area.

1. Hillsboro city comparisons unrealistic

Metro’s findings rely upon evidence submitted by Hillsboro. The city retained CH2M/ HILL and Johnson Reid to study large industrial sites in the Hillsboro area and other markets they believe are competitive with Hillsboro.⁵⁹ Comparing Hillsboro to the much larger cities of Austin, Colorado Springs, Albuquerque, and Raleigh is unrealistic and has led to erroneous conclusions. Austin, at 271 square miles, eclipses Hillsboro’s 21.6 square miles and is almost twice as large as Portland’s 145 square miles. Regardless of its larger land mass, Austin has much to offer that Hillsboro does not and, given the most optimistic circumstances, will not: it is the state capitol of Texas, it has no state income tax, it is a major hub for pharmaceuticals and biotech firms (85 companies), and it has an extensive University of Texas campus whose graduates feed its extensive high-tech industry. Colorado Springs is also larger than Hillsboro, at 186 square miles. It is the home of NORAD, a major defense industry sector and two universities: the Air Force Academy and the University of Colorado.

Comparing Hillsboro to substantially larger cities is a false proposition: amassing land availability does not equate to economic value - it is the utilization of that land that creates value. There are many cities around the country today with lots of land, but little economic activity,⁶⁰ and with limited land, but thriving economic activity.

The Hillsboro experience has already shown that more land doesn’t guarantee success in high tech or other industries. In the last Metro UGB expansion in this area, Hillsboro took in some of the best agricultural land in the county and state: It is flat and next to a major east-west freeway (US-26) and a major north-south road (Cornelius Pass). This land, south of West Union Road,

⁵⁸ Wash. Co Rec., VIIIb p. 631 of 790, at 11544.

⁵⁹ Ex. B, p. 156.

⁶⁰ For example, Buckeye, Arizona, has a land area of 400 square miles, 18 times larger than Hillsboro. It has almost zero economic value: no university, no industry, but lots of unbuilt planned communities.

was promoted as providing high-tech, high wage R&D jobs - over 7,000 jobs were expected. Ten years later, there is *no* high tech anchor or ripple clusters. The only subsidies offered are free rent for four months. Non-industrial uses have moved in to fill up the empty warehouses and office buildings, and this area has the *lowest economic value* of any studied by Hillsboro's consultants and lobbyists.

That UGB decision destroyed hundreds of acres of Foundation Agriculture Land that had been a steady, stable producer of traded sector crops for decades. The basis of Hillsboro's comparisons is flawed, inaccurately fueling Hillsboro's request for even more thousands of acres of prime agriculture land to take from the stable productive agriculture industry.⁶¹

2. Metro overstates future large lot needs

Metro's findings state that West Washington County will need approximately 1,200 acres for large lot industrial use north of Hillsboro in the next 20 years.⁶² Metro alleges this is due to "the preferences of some industrial employers for larger parcels."⁶³ There is no substantial evidence in the record to support this; in fact, it is contrary to past experience and evidence.

Over the past 30 years, which included two decades of boom growth, only three high tech companies purchased large lots over 50 acres in Hillsboro, for a total of 680 acres (Intel, Solarworld, Genentech).⁶⁴ Even assuming boom growth for the next two decades (which is highly unlikely), the need based on past experience would be for 450 acres of large lot sites over the next 20 years, about one-third of land area as the 1,200 acres proposed.

One could argue that Hillsboro has done very well with the allotment of 680 acres for large lot industrial sites over the past 30 years. It has, according to the CH2M /HILL analysis, established Hillsboro as the "heart of the Silicon Forest" and "its economic importance for the region cannot be overstated." Based on this historical usage, Hillsboro and the region need only 1133 acres for the next 50 years for large lot industrial sites. However, the urban reserves in this area are about *200% more* than historically used for large lots, even with two decades of boom growth. Even assuming there is a preference for large lots that must be met in this urban reserve decision, no evidence supports the amount of land provided. And it certainly does not justify the 440 acres of Foundation Agriculture Land in Area 8B *north* of Highway 26, in addition to the proposed urban reserves to the south.

Finally, as described above, a reserve analysis that is too-focused on specific site needs is improper. That is a UGB expansion analysis.

⁶¹ Wash. Co Rec., VIIIc page 315 of 870 at 12018.

⁶² Ex. B, p. 156. The study was paid for by Hillsboro.

⁶³ Ex. B, p. 14.

⁶⁴ Wash. Co Rec., VIIIc p. 385 of 870, at 12088.

3. Subsidies and tax breaks are more important than land availability

Metro's findings justify the higher need of 1,200 acres by citing the number of inquiries Hillsboro has received from siting brokers.⁶⁵ However, inquiries do not represent solid candidates or even demand and, in any event, are irrelevant to a reserves decision.

Even if this was a relevant consideration for a reserve decision, to truly understand if Hillsboro or the region was losing candidates to other cities and if so, why, one would need to follow-up with each prospect to determine where they actually ended up locating and why. Otherwise, the list is misleading. Many factors are at work in where a company decides to locate. Land availability is just one. Subsidies are a major factor not illustrated by Hillsboro's use of a coded list of prospects. For example, SpectraWatt is listed as a prospect for 20-25 acres. Based on their own press accounts, land availability was not an issue: they were *given* 20 acres by their lead investor, Intel. They chose not to locate on this land north of Highway 26 for two reasons: (1) it was too expensive to develop raw farmland, and (2) they did not receive enough subsidies from the State of Oregon. They relocated to New York State, where they received \$65 million in subsidies and leased existing facilities from IBM. What the region *should* have taken from this example is that the cost of developing raw land justifies a smaller urban reserve.

Apricus, listed as wanting 250 to 300 acres, is a code name for a solar company that ended up locating in Singapore, which is not a location with either cheap land or large lots. So, Hillsboro did not lose this prospect to another U.S. city because of land, but rather due to subsidies and low labor costs. Subsidies are not even listed on Hillsboro's list of seven requirements of high-tech companies. Hillsboro, and consequently Metro's findings, would have decision-makers believe that these were "lost" opportunities they could have won if only the city had more raw land. This is disingenuous at best - an adequate follow-up of these prospects by an unbiased evaluator will show that there are multiple factors in play besides land availability.

4. Metro and Hillsboro fail to mention subsidies as important factor

Save Helvetia presented evidence that the reason Hillsboro is not securing solar and bio-pharma companies is because of lack of subsidies, *not* because of lack of land. Out of the ten solar companies to come to Oregon, Hillsboro attracted one (SolarWorld), but the last five have gone to Gresham and North Portland due to more attractive subsidies and not because of a lack of land. In fact, these last five companies are not buying raw land in large lots but are going into existing facilities of less than 25 acres. Hillsboro has over 1.5 million square feet of available manufacturing, R&D and flex space advertised for lease right now and another 1.0 million square feet of commercial office space.⁶⁶ Hillsboro does not really have a bio-pharma cluster: it has one packaging and fill company and one medical device company. The evidence is that bio-pharma companies locate where they receive large subsidies.

Metro's findings state that West Washington County is uncompetitive for large lot industrial employers because it does not have enough development-ready sites.⁶⁷ This is an improper scale

⁶⁵ Ex. B, p. 157.

⁶⁶ Wash. Co Rec., VIIIc, pp. 332-341, at 12035-12044

⁶⁷ Ex. B, pp. 158-59.

of evaluation for reserves; the reserves statute and rule do not provide for a specific type of site, only that an adequate supply of land be reserved for the region. Additionally, the reserves statute and rule do not require that a specific type of land be provided, i.e. employment or residential. It is only when considering a UGB expansion that the type of land is determined.

5. UGB north of Highway 26 is a poor economic performer

Metro's findings cite the Economic Productivity of Employment Mapping Pilot Project as demonstrating the economic benefits of industrial lands, especially those currently located in North Hillsboro.⁶⁸ However, this Project shows that the area inside the UGB north of Highway 26 performed the *lowest* in market value, payroll, and property tax revenue, averaging 2.95 employees per acre and not coming close to the statistics stated in the decision on page 158. In fact, the economic data in the project were based on 2005 data, at the height of the boom, so the economic impact portrayed is much less. Hillsboro's Helvetia Concept Plan, which details the plan for the area north of Highway 26, is for warehouses and distribution centers, which tend to have lower economic benefits.

Again, land does *not* equate to economic value - it is the utilization of that land that creates value. The evidence shows that the Foundation farm land north of Hwy. 26 is one of the last two remaining concentrations of Class 1 soils in Washington County; it now contributes to the production of traded-sector products. Converting this to urban reserves for a speculative and likely low-value use is not a permissible justification for designating Foundation farm land as urban reserves.⁶⁹

6. Area 8B provides few buildable acres

Metro's findings state that Area 8B "will provide for an additional 340 buildable acres of large, seismically stable, vacant sites for industrial uses..."⁷⁰ Evidence has been presented that four property owners in Area 8B oppose having their properties included in the urban reserve and oppose annexation to Hillsboro.⁷¹ These properties represent seven tax lots totaling 161 acres. One property spans the width of Area 8B, from NW West Union Road on the north to NW Groveland Drive on the south, effectively bifurcating Area 8B.⁷² Subtracting 161 acres of potentially unavailable land leaves 179 acres. It is questionable whether sufficient site sizes can be stitched together out of the non-contiguous parcels to warrant converting high-value Foundation Agriculture Land.

This factor requires a finding that the land has sufficient development capacity to support a healthy economy. Metro's decision lacks any analysis, simply concluding that 8B will provide "additional development capacity to support a healthy economy." There are no findings as to

⁶⁸ Ex. B, pp. 157-58.

⁶⁹ Wash. Co Rec. p. 353-384 at 12056.

⁷⁰ Ex. B, p. 159.

⁷¹ It is unclear why the desires of the property owners and the political difficulties associated with designating 363 acres of rural residential for urban use north of Council Creek was adequate to leave this area undesignated when nearly a majority of the owners of acreage within Area 8B are similarly opposed. See Ex. B, p. 5.

⁷² Wash. Co. Rec., VIII p. 7274, 10885, 10886.

how the original area, or the net 179 acres available for private development after rezoning, will support a healthy economy.

Therefore, the findings do not satisfy OAR-660-027-0050(2).

(3) Can be efficiently and cost-effectively served with public school and other urban-level public facilities and services by appropriate and financially capable service providers;

Metro findings state that “Area 8B would be targeted for industrial uses and, as such, schools and parks would be prohibited in the area by applicable provisions in the Metro Code and City Industrial Zoning rules.”⁷³ This is a problematic provision, since the West Union Elementary School has been at their 11-acre site on the northeast corner of Area 8B for the past 62 years. This rural school, which prides itself on its historic, country roots, hosts city-wide baseball league games on its athletic fields, resides adjacent to actively-farmed grass seed, clover and wheat fields.

This finding does not support Metro’s designation of Area 8B as an urban reserve.

(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;

Metro findings show limited multi-modal transportation options for Area 8B; a potential east/west bike route traverses the area.⁷⁴ The findings note that opportunities will be studied to bring transit to Area 8B and further refine transportation options but there are no current approved plans or funding to achieve them. Urbanizing Area 8B will be entirely auto-focused with no realistic alternative transportation opportunities. The closest Tri-Met bus service is 4.52 miles away at Evergreen/Shute. Figure 1 suggests a Tri-Met stop might be placed on the south side of Highway 26, requiring commuters to trek over the Highway26/Brookwood Interchange overpass and walk several more miles to access facilities inside Area 8B. The closest Max station is 7.2 miles away. Metro’s recently approved HCT (High Capacity Transit) plan has the closest potential stop/station at NW Evergreen and NW Brookwood, but that is still well over 3 miles away; and not within the recommended one-half mile walking distance to HCT.

Metro’s own finding describe Area 8B as an isolated industrial block largely accessible today and in the future only by car, further contravening the purpose identified in OAR 660-027-0005 that urban and rural reserve designations result in the creation of “livable communities.” Just because land is flat enough to accommodate alternative transportation does not mean it will, and the findings show this area will not accommodate during the reserves period.⁷⁵

Therefore, the findings do not satisfy OAR-660-027-0050(4).

⁷³ Ex. B, p. 160.

⁷⁴ Ex. B, p. 160, Figure 1.

⁷⁵ Interchange improvements can be done without Area 8B being designated as urban reserves, as noted above.

(5) Can be designed to preserve and enhance natural ecological systems

Metro’s findings state that “an outline identifying natural resources within Area 8B is provided in the PQCP (Washington County Record page 3133).⁷⁶ The table provided does *not* reference Area 8B, but rather summarizes the natural resources in the entire study area of 7,890 acres. There is no independent break-out of Area 8B’s natural resources. This factor requires a finding that land can be designed to preserve and enhance natural ecological systems and landscape features. The Metro findings makes no mention of what natural resources exist on-site in Area 8B, only that “It is Hillsboro’s intent to preserve and incorporate these areas as open space into future neighborhoods.” There is no explanation of what these natural resources are, how they will be protected, or how much land will be developable after protective measures are installed. This violates OAR 660-027-0050(5).

Furthermore, Metro’s findings assert that the riparian and upland resources in the undesignated area to the immediate west of Area 8B will serve to further this factor and will “remain untouched.”⁷⁷ Stating that undesignated land will remain “untouched” is misleading and has no basis in fact, especially in Washington County. As described above, this decision considers undesignated land, at least in Washington County, as an extension of urban reserves

We do not understand the comment in Metro’s findings: “Moreover, these extensive natural areas along the westerly edges of Area 8B will provide a strong, protected and enduring buffer between future industrial activities in the balance of Area 8B and the agricultural uses/activities north and west of, and beyond these natural areas.”⁷⁸ There are *no* extensive natural areas along the westerly edges of Area 8B - Groveland Road is the western edge of Area 8B and there are farmed fields along the western edge but no natural resources. NW Groveland Road is not serving as a buffer. There is no factual basis for this conclusion.

This urban reserve factor is not met.

(6) Includes sufficient land suitable for a range of housing types;

Metro’s findings state that “...this area would be targeted for large-lot industrial and employment uses if urbanized and annexed to the City.”⁷⁹ Making the assumption that certain urban reserve lands will be used for certain purposes during the reserves process is legally flawed, as earlier described. Urban reserves are to create a general land supply for needs 20 to 30 years beyond the current 20-year UGB, so as a practical matter, specific needs for specific lands cannot possibly be determined now.

⁷⁶ Ex. B, p. 161.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Ex. B, p. 161.

(7) Can be developed in a way that preserves important natural landscape features included in urban reserves

It is undisputed that Area 8B contains approximately 28 acres of natural resources located both within and beyond the floodplain of Waibel Creek.⁸⁰ Metro's Habitat Protection Map shows this area consists of "High habitat conservation area."⁸¹ Metro's Inventory of Regionally Significant Habitat map shows the following resources on this site: Class I Riparian (highest value habitat), Class 2 Riparian (medium value habitat), Class 3 Riparian (lower value habitat, Class B Upland (Wildlife) habitat and Class C Upland (Wildlife) habitat. In addition, Area 8B contains an expansive oak woodland of over 200 old-growth Oregon white oak trees.⁸² The Oregon Department of Fish and Wildlife (ODFW) has identified Oregon white oak woodlands as "Strategy Habitats" and Metro has identified Oregon white oak woodlands as "Habitats of Concern."⁸³

Metro's findings do not even mention these resources in Area 8B. Therefore, there is no indication that these resources can or will be protected. No evidence in the record shows that Washington County or Hillsboro has been successful in preserving and enhancing these strategic woodlands within an urban setting. Washington County has standards for tree removal but not for tree preservation.⁸⁴

Nothing in these findings suggests that these resources or features are necessary to serve urban-scale development (especially when slated for industrial uses), nor is there any evidence of how Metro will protect these resources. Additionally, there is no comparative analysis of whether other lands that contain fewer significant natural resources could not serve the same purpose.

Metro findings say "These protection/preservation provisions would apply to the extensive natural resource areas along the west edges of Area 8B if and when it is urbanized."⁸⁵ Again, there **are no natural resources along the west edges of Area 8B** - the west edge of Area 8B is NW Groveland Road and farmed fields. There are extensive floodplains and natural resources along the east edges of Area 8B, as discussed in the above paragraphs.

Metro findings claim that the undesignated area to the immediate west of Area 8B will serve to protect these resources and serve as a buffer.⁸⁶ However, nothing in law requires that undesignated land provide such protection: new roads can be built on that land, development can occur on that land, the city and county and Metro can jump over other land in urban reserves if cities can show they need it. Undesignated status provides no certainty on how long this land will remain rural.

⁸⁰ Wash. Co. Rec. p. VIIIc p. 289-290 at 11992.

⁸¹ Wash. Co. Rec. VIIIc p. 291 at 11994.

⁸² Wash. Co. Rec. pp. 5976 – 5993.

⁸³ Wash. Co. Rec. p. 5965.

⁸⁴ "Comparison of Key Tree Code Provisions Across Jurisdictions" Link: <http://www.washcotreegroup.org/docs/matrixsummary-rl.2.pdf> with "Regional Urban Forestry Assessment" June 2009, p. 26-27, prepared by Audubon Society of Portland and Portland State University's Department of Environmental Science and Management with funding from Metro

⁸⁵ Ex. B, p. 162.

⁸⁶ Ex. B, p. 162.

This urban reserve factor is not met.

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

Metro's findings discuss the concept of buffering, how it can be achieved through planning decisions and the use of planning controls, and how buffering standards have potential suitable application to the future urban use of Area 8B if it is designated urban reserve.⁸⁷ However, none of it is certain to happen. There are no rules, ordinances, or legislation to assure the farming community that if Area 8B becomes urban reserves, that any of the protections will be in place to adequately buffer the surrounding rural reserves.

Metro's findings list three ways that "Area 8B can be adequately buffered..."⁸⁸

1. Natural Features. The findings suggest that the natural features (wooded area) on the 233 acres of undesignated land west of Area 8B will serve as a buffer between urban reserves of Area 8B and rural reserves to the west. As mentioned above, undesignated land has no protection and no certainty it won't be used for urban purposes.
2. Industrial use. The findings suggest that industries' landscaping and berms serve as buffers. The Farm Bureau has documented actual situations of conflicts with industries - such as being asked to stop harvesting due to dust. High tech clean room operations are sensitive to large amounts of dust generated next to their buildings.
3. Man-made buffering. The findings suggest that West Union Road and vegetative buffering could reduce conflict between urban and rural industrial uses. However, this has not been done in Washington County or the region. There is nothing in place to define adequate buffers - no ordinances, no plan.

The Objectors submitted testimony about the inadequate buffer of NW West Union Road further east.⁸⁹ The abandoned fields held by speculative owners inside the UGB east of NW Helvetia Road blow noxious weed seeds onto the farms on the north side of NW West Union Road, reducing crop purity. NW West Union Road, a two-lane rural road only 35 feet wide, is not a buffer on the east side of NW Helvetia Road. It will not be a buffer on the west side of NW Helvetia Road.

Based on all the above, the findings applying the Urban Reserve Factors do not satisfy OAR-660-027-0050, are inconsistent with OAR 660-027-0040(11), violate Goal 2, adequate factual base, and are not supported by substantial evidence in the whole record.

⁸⁷ Ex. B, pp. 162-63.

⁸⁸ Ex. B, p. 163.

⁸⁹ Wash. Co Rec. at VIII p. 6170, 5710.

Remedy: Remand Area 8B's 440 acres of Urban Reserves to Metro for re-designation as Rural Reserve and remand the undesignated area to the west of Area 8B (233 acres) to be re-designated as Rural Reserve.

Objection 6: Area 8B should be designated as a rural reserve. Metro's findings demonstrate that Area 8B meet all the rural reserve factors, OAR 660-027-0060(2), (3). However, some of Metro's findings are inaccurate or incomplete in addressing the rural reserve factors.

OAR 660-027-0060 provides the factors to be considered when evaluating an area for rural reserve designation. Area 8B meets every factor for designation as a rural reserve, both on agriculture and natural resource grounds.

Area 8B meets the *agricultural* land factors for rural reserves:

“(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation:”

(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land.

Metro's findings conclude that Area 8B is highly subject to urbanization.⁹⁰ However, that very pressure has artificially led to an urban reserve designation for this area. Efforts to urbanize the area have been unending for over a decade.

The current owner of the two parcels constituting the original 88 acres of 8B, in the corner of NW Groveland Drive and NW Helvetia Road, bought these parcels for investment. In 1995, he attempted to sell the property as a hotel and conference center.⁹¹ Area 8B is subject to redevelopment pressure not because it is ill-suited for agricultural preservation, but because it is the next domino in the line to fall to urbanization, and it must be assumed that Area 8-SBR domino would fall shortly thereafter.

Area 8B meets this rural reserve factor.

(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land.

(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations.

⁹⁰ Ex. B, p. 164.

⁹¹ Wash. Co. Rec. p. 7179.

Evidence presented by Save Helvetia shows that Area 8B contains one of the last two remaining concentrations of Class 1 soil in Washington County - 28% of Area 8B is Class 1 soil, far better than Sauvie's Island, for example. Area 8B's high concentration of Class 1 soil is not merely "suitable" but superb. The Oregon Department of Agriculture testified that using the Huddleston method of assigning soil capability, which relies on data from the 1970s, as Washington County and Metro did, is of questionable validity given more recent data. No testimony was presented to discredit the Department of Agriculture findings. A far more accurate method of assigning soil capability is the more recent data from the Natural Resource Conservation Service. Reliance on an outdated classification system, contrary to the expert state agency and updated studies, does not meet the test for substantial evidence.⁹²

Area 8B produces high-value traded sector crops using available water. According to the Oregon Department of Agriculture's testimony, Washington County, and hence Metro, placed too much emphasis Washington County on the value of irrigation, thus ranking land that does not need irrigation to produce high-value crops lower than it should be. In this era of sustainability and finite resources, land that can produce high-value crops without irrigation is of greater value than land that requires higher inputs, uses more natural resources, reduces the water supply, generates greater carbon emissions, and requires more energy to produce.

Area 8B meets these two rural reserve factors.

(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:

- (A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots.**
- (B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses.**

Metro's Findings state that Area 8B has been farmed for at least the last several decades.⁹³ This understates the long-term agricultural production of Area 8B. The Grossens' 125 acres has been in agricultural production for over 100 years. The Schoen hazelnut orchard has produced traded-sector hazelnuts for over 60 years.

⁹² Reliance on the outdated Huddleston report to contradict expert and current information from the Oregon Department of Agriculture and US Natural Resource Conservation Service, which Washington County did, is not substantial evidence. This legal and factual error infects the entire agricultural lands evaluation done by Washington County and relied upon by Metro. The entire rural reserves analysis and balancing between rural and urban reserves is therefore legally flawed. See Objections and Exceptions of Washington County Farm Bureau and 1000 Friends of Oregon, 2010.

⁹³ Ex. B, p. 165.

The 440 acres of Area 8B is part of a larger block of surrounding Foundation Agriculture Land that comprises over 5,000 acres. Testimony presented by Save Helvetia demonstrates that the thirty or so farming families who farm within those 5,000 acres produce high-value crops and earn their living solely from agriculture activities.

As described above,⁹⁴ the Oregon Department of Agriculture (ODA) presented testimony critical of Washington County's use of an artificial ranking system that the County devised called "Tiers," which is based on an outdated method of soil analysis (Huddleston) and an arbitrary 35 acres to determine parcelization.⁹⁵ Area 8B was ranked as Tier 3 because the surrounding Helvetia area had slightly smaller parcels than other agricultural areas of the county.⁹⁶ Because this conclusion is based on an outdated study and arbitrary definition of "parcelized," no factual basis exists. Even so, to get an accurate representation of the parcelization in Area 8B, one should look at *only* Area 8B, and not the surrounding 7,000 acres that go north into the foothills of the Tualatin Mountains.

Furthermore, Washington County included the Meek Road neighborhood to the *south* of Highway 26 in the same area. There are no farming operations occurring in the Meek Road neighborhood, since it is comprised of many rural residences. This artificially reduces Area 8B's ranking in their artificial and out-of-date "tier" system.⁹⁷

As noted above, the findings apply the Huddleston soil methodology, which is considered antiquated by today's standards, and results in an incorrect rating of Area 8B. Using the modern data bases found in the online Natural Resource Conservation Service, and relying on the expertise of the Oregon Department of Agriculture, shows Area 8B has the highest concentration of Class 1 soil than any other reserve area in Washington County. Given the obligation under OAR 660-0027-0005(2), to protect the quality of the farmland and resilience of farmers in this area, Areas 8B should be first on the list for protection.

Washington County ranked all forest lands within the Wildland Forest designation as Tier 1 based on Oregon Department of Forestry's analysis. The ODA submitted testimony showing the fallacy of doing this - it understates the value of Foundation Agriculture Land. There are no Wildland Forestlands in Area 8B.

Area 8B meets this rural reserve factor.

⁹⁴ Washington County's agricultural lands rating system is also the subject of Objections and Exceptions from 1000 Friends of Oregon and the Washington County Farm Bureau in 2010; those Objections and Exceptions are continued and incorporated herein.

⁹⁵ Among other flaws, the Washington County "method" fails to recognize that many farmers in Washington County lease land, enabling them to successfully farm hundreds of acres.

⁹⁶ Ex. B, p. 165.

⁹⁷ September 2009 staff report Tier map.

(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns.

Metro Findings correctly identify that 16 tax lots are located within Area 8B.⁹⁸ However, not noted is that *3 tax lots comprising 125 acres are in one ownership; 2 tax lots comprising 69 acres are in one ownership; and 4 tax lots are in one ownership.* This illustrates the fallacy of using an artificial 35 acres to determine parcelization. In Area 8B, over 50% of the area is owned by two owners. Area 8B meets this rural reserve factor.

(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.

Metro's findings determined that Area 8B has sufficient agricultural infrastructure.⁹⁹ But it is even greater than stated in the findings. Not noted is the considerable investment in sub-surface drainage farmers have made over the past 100 years. The Washington County Farm Bureau submitted evidence that the cost to install field drainage systems (also known as field "tiling") ranges from \$500 to \$1,000 an acre, not including the cost to maintain it.¹⁰⁰ Area 8B represents an investment of at least \$400,000 in field drainage by the local owners. Area 8B meets this rural reserve factor.

Area 8B also meets every rural reserve factor based on its *natural resource* area characteristics.

"(3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural resource features, a county must consider those areas identified in Metro's February 2007 "Natural Landscape Features Inventory" and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:"

(a) Are situated in an area that is otherwise subject to urbanization during the applicable period described in OAR 660-027-0060(2) or (3);

As stated above, Area 8B is highly subject to urbanization: one property owner has been trying to urbanize it since buying two parcels in 1995 for investment purposes, the state of Oregon tried to site a prison on it, the City of Hillsboro recently asked for it to be included in their UGB expansion for 2011. This factor is met.

(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;

Metro's Findings completely ignore the hazard resulting from the 100-year FEMA floodplains of Waibel Creek (incorrectly termed called "Waibel Gulch" in Metro's Findings) in the eastern portion of Area 8B.¹⁰¹ According to Washington County, 28 acres of Waibel Creek floodplains

⁹⁸ Ex. B, p. 166.

⁹⁹ *Id.*

¹⁰⁰ Wash. Co. Rec. at 10699.

¹⁰¹ Ex. B, p. 167.

are considered constrained and not developable. Prior testimony and photos show these floodplains range as wide as 250 feet, obstructing NW Helvetia Road on multiple occasions, not just at 100-year intervals. Area 8B meets this rural reserve factor.

(c) Are important fish, plant or wildlife habitat;

Metro’s “Inventory of Regionally Significant Habitat” map shows that Area 8B contains high-value, medium value, and lower value Class 1, 2, and 3 Riparian habitat as well as Class 2 and 3 medium and lower value Wildlife habitat.¹⁰² The Oregon white oak tree woodlands contain over 200 native white oaks, some as old as 250 years. No evidence in the record indicates these resources will be protected. There is no evidence in the record that Washington County or the City of Hillsboro has been successful in preserving and enhancing these strategic trees within an urban setting. Washington County has standards for tree removal but not for tree preservation. There is nothing in these findings suggesting that these resource or features are necessary to serve urban-scale development (especially when slated for industrial uses), nor is there any evidence of how Metro will protect these resources. Additionally, there is no comparative analysis of whether other lands that contain fewer significant natural features could not serve the same purpose.

(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;

As noted in Metro Findings, Waibel Creek is a tributary of McKay Creek. Maintaining water quality and quantity in the tributaries to McKay Creek is therefore important to the viability and vitality of wildlife populations using this resource.¹⁰³ Waibel Creek traverses from the east side of Helvetia Road to the west side of Helvetia Road onto Area 8B. It serves as a collector source of water from the uplands, serving as a cache for thousands of acres upland

(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands

The seasons of the year provide a familiar rhythm to the visitors and residents to Area 8B: the stubbled fields in January frost, the tufts of green sprouting in March, the expanse of multi-colored hues of crimson clover, spring wheat, grass seed by May, the busy, dusty harvest in June and July with boxy bales dotting the landscape. This rural landscape of Area 8B and its surrounding farmlands that have seen the passage of 150 years of harvests is a key defining feature for Washington County and for that reason should be preserved.

A primary objective for designating land as rural reserve, as provided by OAR 660-027-0005(2), includes “protection of the important natural landscape features that define the region for its residents.” The overwhelming amount of evidence shows that the agricultural area surrounding historic Helvetia provides a sense of place not only to Helvetia residents but to the County and region as a whole. The properties along NW Helvetia Road serve as the key gateway to the unblemished vistas and rolling hills of Helvetia. The low density rural development in the area

¹⁰² Save Helvetia’s 2010 Objection regarding Area 8B, p. 9.

¹⁰³ Ex. B, p. 168.

allows visitors to walk back in time and behold activities that have sustained Northwestern Oregon for generations. This rural landscape is a key defining feature for Washington County and for that reason should be preserved.

Beyond natural resources, Area 8B serves an important cultural function in defining Washington County. Area 8B, along with the Helvetia area in general, provides the first opportunity for Oregonians to enjoy an unencumbered view of farmland when leaving the urban area westbound on US-26, the most heavily traveled route in Washington County. NW Helvetia Road also provides the first view from US-26 of forested Tualatin Mountains, stately Oregon white oak savannas (some as old as 500 years) and historic, majestic 60-foot tall Swiss Linden trees (dating from 1892) dotting the original Swiss settlers' farms, and historic, active, productive Century Farms.¹⁰⁴

The Washington County Oregon Visitors Association and ODOT have invested in signage and publicity to promote the Helvetia loop as part of its "Vineyard and Valley" Scenic Tour Route. NW Helvetia Road, starting at the US-26 exit, is the beginning of the Helvetia portion of the scenic tour, proceeding north past the Area 8B properties and continuing past the Helvetia Tavern, winding west to Jackson Quarry Road, then to Jackson School Road and across US-26 to the south. In fact, ODOT provided funds as part of its "Discover Oregon Scenic Byways" program.¹⁰⁵ Developing Area 8B would destroy the pastoral vistas of rural farmland that is part of the attraction of Helvetia's countryside and Helvetia's recognized sense of place throughout the Metro region.¹⁰⁶ Metro's findings do not acknowledge how any of these objectives could or would be preserved if Area 8B is designated urban reserves.

Area 8B meets this rural reserve factor.

(f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses, or conflicts between urban uses and natural resource uses;

The key to improving the interface between urban and agricultural lands is providing an adequate buffer between the two uses. Designating Area 8B for urban uses would remove the existing buffer between farm and urban uses in the east/west direction, currently buffered by NW Helvetia Road, by moving the boundary further west to NW Groveland Road, a one-lane rural gravel road only 21 feet wide. With no buffer, farming activities on adjacent farmland will be impacted. Commuter traffic will increase on NW Helvetia Road, NW Groveland Road, and NW West Union Road. As noted above, previously developed rural roadways do not serve as suitable buffers. Additionally, traffic traveling at high speeds on rural roads is a hazard to the slow-moving farm equipment.

Waibel Creek, its associated floodplains, the approximately 220 foot high slope which rises on its westerly edge and which parallels NW Helvetia Road, and NW Helvetia Road together serve as a buffer to the existing agricultural operations of Area 8B and beyond.¹⁰⁷ Replacing Area

¹⁰⁴ Wash. Co. Rec. pp. 6032, 7031, 6158, 6159.

¹⁰⁵ Wash. Co. Rec. pp. 6154, 6155.

¹⁰⁶ Wash. Co. Rec. p. 7141.

¹⁰⁷ Wash. Co. Rec. p. 6170.

8B's agricultural activities with urban uses removes these buffers and exposes the surrounding rural reserves to these urban uses with no buffer. Metro's Findings state that NW West Union Road can function as a buffer as it currently does further east.¹⁰⁸ This is incorrect. NW West Union Road, at only 35 feet wide, is *not* an adequate buffer to farms on the north side of the road. Area farmers submitted testimony that the untended vacant lots located inside the UGB south of NW West Union Road spread noxious weed seeds across NW West Union Road, contaminating their seed crops, reducing the purity of the crops, causing loss of income. Noxious weed seeds can travel long distances and can remain in the soil for up to 20 years.

NW Groveland Road, a one-lane gravel road only 21 feet wide, is no buffer to the undesignated land west of Area 8B. Furthermore, since nothing prohibits new roads from being built in undesignated areas, the 233 acres of undesignated land west of Area 8B is no guarantee of serving as a buffer. Because Metro and Washington County (improperly) use undesignated lands as a "safety valve" for more urban land, there is no guarantee that the 233 acres of undesignated land will stay undesignated for very long.

(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.

Designating Area 8B as urban reserve, with its associated development as an urban industrial center, will create more traffic on NW Helvetia Road and NW West Union Road, key roads used by thousands of bicyclists and runners who use the Helvetia area on a daily basis. NW Helvetia Road is the entry to the "Vineyard and Valley Scenic Tour" promoted by Washington County. Adding thousands of commuter vehicles to the rural county roads of NW Helvetia Road and NW West Union Road will not only diminish the scenic value of the area, but it will destroy the iconic farmland vistas that make this area attractive to visitors to the heart of historic Helvetia. In addition, the inflow of thousands of commuter vehicles, especially with many companies running two and three shifts per day, adds a dangerous element to the roads where farm equipment, sight-seeing visitors, and bicyclists have maintained a tenuous balance for many years. Local farmers submitted testimony on the accidents they have experienced when commuters do not have the patience to wait for bicyclists or slow-moving farm equipment - commuters tend to pull out quickly to pass a bicyclist or farm equipment, but end up causing accidents instead.

Metro's Findings state that a Rural Reserve designation may preclude future infrastructure improvements, such as increased road width.¹⁰⁹ This is not true. As stated above, the reserve rules allow for lane widening and road improvements to existing roads within rural reserves.

Based on the above, Area 8B does not satisfy the factors of OAR 660-027-0050 and should not be designated as urban reserves. Area 8B better satisfies the factors of OAR 660-027-0060 for rural reserve designation.

Remedy: Remand Area 8B for designation as rural reserves.

¹⁰⁸ Ex. B, p. 168.

¹⁰⁹ Ex. B, p. 169.

Area 8- SBR

Objection 7: Metro left area “8-SBR” in Helvetia as “undesigned.” This fails to meet the requirement “to provide long-term protection for large blocks of agricultural land” of OAR 660-027-0005(2), OAR 660-027-0050, and ORS 195.137-.145.

Metro’s Findings do not apply an identifying label to the 233 acres of undesigned land located to the west of Area 8B.¹¹⁰ The Objectors have chosen to refer to it as “Area 8-SBR,” consistent with the 2010 Objections. Area 8-SBR is an integral part of the large swath of rural reserve lands surrounding Area 8B to the north and west. Area 8-SBR is comprised entirely of Foundation Agricultural Land. It is bordered by NW West Union Road on the north, NW Groveland Road on the east, NW Groveland Drive and Highway 26 on the south, and a line of trees on the west. On the other side of the line of trees, the same block of contiguous Foundation Agricultural Land continues west to NW Jackson School Road.

Area 8-SBR is primarily composed of productive farming operations containing some of the most fertile, well-drained soils in the Metro area. Metro sandwiches this area between an urban reserve and a rural reserve area to serve as a buffer. In fact, the division between the western boundary of the non-designated area and the concurrent eastern boundary of the rural reserves designated area directly west appears to follow property lines. Property lines, or worse, arbitrary lines drawn on maps, make extremely poor boundaries between urban, rural, and undesigned lands. It is impossible to make the case that the eastern portion of this arbitrary line qualifies as undesigned or urban reserve and the western portion of the line qualifies for a rural designation when there are *no physical or logical boundaries between the areas*. For a boundary to exist, it must provide a rational basis for imposing a dividing line based on the factors contained in OAR 660-027-0005. These are Foundation Lands and no physical or natural topographic exists in the area north of U.S. 26 and west of NW Helvetia Road that could provide the same rational, hard boundary currently provided by U.S. 26, a four-lane highway, and NW Helvetia Road.

With no buffer, farming activities in and around Area 8-SBR will be impacted. Fields bought by speculators often lay fallow, allowing weed seeds to contaminate the purity of the grass seed crops on adjoining farmlands.¹¹¹ Employees in the adjacent urban area to the east will object to the dust and noise from discing, plowing and tilling, and chemical spraying, limiting the activities of the adjacent farms.

Leaving this large block of Foundation Agricultural Land “Undesignated” will have an adverse impact on farming activities in that block of land. Under the undesigned status, this land is next in line to be included in the UGB, causing speculation and driving land prices higher. Farmers will not invest in crops and infrastructure. Landlords will sign farmers to shorter leases,

¹¹⁰ Ex. B, p. 171.

¹¹¹ Metro Rec. p. 6170.

if they lease land at all, in case the land will come into the UGB.¹¹² Farmers need certainty to continue to invest in farming and leaving land “Undesignated” creates uncertainty.¹¹³

Nine Oregon state agencies recognized the importance of a buffer protecting this area and recommended this area for *rural reserves* in their letter: “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...”¹¹⁴ Leaving the area undesignated is arbitrary.

Metro and the four governments have reserved thousands of acres of Important and Conflicted Agricultural Lands as “undesignated” to accommodate future urban reserves. It is not necessary to compromise Area 8-SBR’s Foundation Agricultural Land with uncertainty by reserving it as undesignated land without any analysis of why this land is not suitable for protection as rural reserve.

Finally, Metro would have us believe that the 233 acres of Area 8-SBR can be left undesignated for two purposes: as a buffer for Area 8B *and* as land that is potentially available for urbanization.

In Metro's 2010 findings, Area 8-SBR was determined to meet both urban and rural reserves, but Washington County opted to leave it undesignated for ease of accommodating future potential urbanization. In Metro's 2011 findings, Washington County adds another purpose for Area 8-SBR's undesignated status: As a buffer between Area 8B and the rural reserves to the west of Area 8-SBR. It cannot be both; these are inconsistent purposes. It is disingenuous at best to suggest that Area 8-SBR can serve as a buffer, which should connote some sense of permanence between urban and rural reserves, when we saw how quickly Washington County took 352 acres of Area 8-SBR that was undesignated just *last* year and converted it to urban reserves *this* year to “replace” land “lost” north of Cornelius. The undesignated status of 352 acres inside Area 8-SBR lasted less than 6 months before being converted to urban reserves as part of an expanded Area 8B. Neither purpose given by Washington County for this undesignated area is found in the statute or rule.¹¹⁵

Remedy: Remand Area 8-SBR to be designated rural reserve.

¹¹² Farmers in the Helvetia area and the Washington County Farm Bureau have testified frequently on the difficulty of farming in areas where urban speculation is occurring, as it will here if the land is left undesignated.

¹¹³ Metro Rec. pp. 7277, 7151, 7152, 7150, 7122-7124.

¹¹⁴ Wash. Co. Rec. p. 7674

¹¹⁵ This also potentially violates Goal 3, which requires the preservation of Agricultural Lands. Rather than explaining how leaving Area 8-SBR undesignated furthers the Goal 3 obligation of protecting farmlands, the County’s 2010 goal findings are unresponsive, concluding only that the designation of urban and rural reserves “does not change or affect comprehensive plan designations.” Although this statement is correct, Goal 3 requires that lands be preserved and maintained for farm use. There is no reasonable basis to assume that Goal 3 does not require the same protections of Foundation Lands that are imposed on other neighboring lands without any further explanation.

Objection 8: Throughout the consideration of Areas 8B and 8-SBR, the decision fails to accurately apply the rural and urban reserve factors “concurrently and in coordination with one another,” as required by OAR 660-027-0040(10).

The Metro decisions fail to satisfy the OAR 660-027-0040(10) requirement to apply the urban and rural reserve factors “concurrently and in coordination with one another.” Therefore, the decision improperly considered lands solely on their urbanization potential without simultaneously considering whether these same lands might be more suitable for rural reserve protection.

Evidence in the record shows that Washington County applied the factors as follows: “the requirement to accommodate urban land need was the deciding element in choosing between an Urban Reserve designation rather than Rural Reserve designation, where the underlying suitability analysis would otherwise support either designation.”¹¹⁶ However, the concurrency obligation requires deciding whether the land more closely satisfies rural objectives over urban and if so, the land must be protected for agricultural purposes consistent with the rural reserve factors. Areas 8B and 8-SBR clearly are far more qualified as rural reserves than as urban reserves.

Remedy: Remand to re-designate Areas 8B and 8-SBR as rural reserves.

C. Rosedale Road Area

Objection 9: Metro improperly converted the Rosedale Road rural area from rural reserve to undesignated, contrary to ORS 195.137-.145 and OAR chapter 660 division 27, and without substantial evidence in the record.

Metro proposes to “make up” for lands removed from urban reserve designation by converting 383 acres located south of Rosedale Road from rural reserve to undesignated. This area *meets* every rural reserve criterion and does *not meet* the criteria for an urban reserve, as evidenced by its original designation by Metro and Washington County as rural reserve. It is Foundation farm land, is in farm production, it contains large blocks of agricultural land, and is part of a larger farming area.

In fact, the current urban reserve area (Hillsboro South, Area 6A), which is north of the new area, already represents an enormous compromise by the agricultural community. The nine state agency letter noted that compromise – the Oregon Department of Agriculture recommended that the urban reserve extend only to Butternut Creek (a natural boundary), but agreed to go along with the other state agencies to use Rosedale Rd. as the *southern* boundary of Area 6A – if needed. This decision enlarges the area potentially subject to urbanization. Previously, the area south of Rosedale Road was used as the buffer and boundary to the Hillsboro South (Area 6A) urban reserve area to the north. Converting these 383 acres removes that edge.

Converting this area is also not responsive to LCDC’s directive. The Commission said the region could, but did not have to, consider whether to add additional urban reserves or

¹¹⁶ Wash. Co. Rec. p. 8247.

undesigned lands after designating the area north of Council Creek as rural reserves. In doing so, several LCDC Commissioners made the following observations:

- The region should look to agricultural lands that are categorized as conflicted to re-designate as undesigned or urban.
- There is a great deal of flexibility in Metro’s projections as to the rate and amount of growth and the time projection; to meet its balancing obligation, Metro could shorten the time frame to something less than 50 years.
- Commissioners expressed surprise regarding the amount of rural reserves designated in Washington County that are far from any urbanization threat; however, the Commission did not express any direction that Foundation farm land actually threatened by urbanization and originally designated as rural reserves should be changed to urban or undesigned by this remand.

Metro has converted the Rosedale area to undesigned to put it in the queue for possible urbanization in a future UGB or urban reserve decision: it is to “replace” previously undesigned lands in Helvetia because those acres were converted to urban reserve (expanded Area 8B).¹¹⁷

Undesigned lands should be those that meet neither the urban or rural reserve criteria; that is how Clackamas County applied the law and thereby, that is how Metro did so in at least part the region. To implement the reserves statute and rule differently in Washington County is inconsistent with both the substantive requirements of the rural reserve factors, and with the balancing requirements of the law. OAR 660-027-0005(2); -0060.

Further, there is nothing in the Commission’s directive or law permitting looking only to lands in Washington County for additional urban reserves or undesigned lands. The “balancing” test required by rule is looking at reserves in their “entirety,” considering the “region.”¹¹⁸ This has not been done.

Converting these 383 acres of Foundation farm land from rural reserves to undesigned is contrary to the reserves state and rule and is not supported by substantial evidence.

Remedy: Remand to designate the 323 acres in the Rosedale area as rural reserves.

III. Conclusion

Remand the decision with direction to Metro to:

- Designate Area 7B North (Forest Grove north of Council Creek) as rural reserves.
- Designate Area 7I South (Cornelius north of Council Creek) as rural reserves.
- Designate all of Area 8B as rural reserves.
- Designate all of Area 8-SBR as rural reserves
- Designate the Rosedale area as rural reserves

¹¹⁷ Ex. B, p. 173; *see also* Ex. B, p. 8.

¹¹⁸ “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 landscape features that define the region for its residents.” OAR 660-027-0005(2)

This could be accomplished in several ways, including by directing Metro to reduce the urban reserve period to 40 years and make these consequent changes in reserve designations. The rationale for going to 40 years has been explained in this Objection, as well as in the Objectors' 2010 Objections regarding Metro's overestimating the "need" for large lots and its underestimating the capacity of the current UGB. We renew our other objections and exceptions, the remedies for which also included removing the Peterkort property from urban reserve, shaving the Evergreen urban reserve area (Area 8A) back to Waibel Creek (consistent with the nine state agency letter), and, where applicable, moving the urban reserve borders back to the urban side of roads.

Thank you for consideration of our comments.

Very truly yours,

Washington County Farm Bureau
Save Helvetia
Friends of Council Creek
1000 Friends of Oregon
Allison Stewart Amabisca
Cherry Amabisca
Robert Bailey
Miki Barnes
Anna Becker
Brian Beinlich
Tom Black
Carol Chesarek
Ethel J. Duyck
Larry Duyck
Philip Duyck
Matthew J. Evans
William Evans
Matt Furrow
Elizabeth Furse
Pamela Gates
DeLoris Grossen
Glenna Grossen
Faun Hosey
Steve Hunker
Theresa Hunker
Karen Jackson
Melissa Jacobsen
Lorretta Krautscheid
Charles F. Kutilek
Greg Mecklem
Amy Moreno

Warren Moreno
Linda Peters
Dave Tonges
Donald Schoen
Joe Strasburg
Dave Vanasche
James C. Young
Bob VanderZanden

The signatures of the above individual Objectors are attached.

A handwritten signature in black ink, appearing to read "Carrie Richter". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Carrie Richter
on behalf of Save Helvetia

A handwritten signature in black ink, appearing to read "Mary Kyle McCurdy". The signature is cursive and somewhat stylized, with the first letters of each name being capitalized and prominent.

Mary Kyle McCurdy
on behalf of the Washington County Farm Bureau, 1000 Friends of Oregon, and Dave
Vanasche

Attachments
Signatures of individual Objectors