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August 8, 2011

John Van Landingham, Chair, and Commissioners
Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, OR 97301-2540

Re: Metro Urban and Rural Reserves, Ordinance No. 11-1255: Exceptions to Director's July 28, 2011 Report

Dear Chair Van Landingham and Commission Members:

The Washington County Farm Bureau, 1000 Friends of Oregon, Dave Vanasche, Bob VanderZanden, Larry Duyck, and others filed joint valid objections to Metro's decision designating urban and rural reserves, Ordinance No. 11-1255. On July 28, 2011, the Department issued a Director's Report responding to Metro's decision and all objections. This letter constitutes exceptions to that Director's Report on behalf of the Washington County Farm Bureau, 1000 Friends of Oregon, Dave Vanasche, Bob Vanderzanden, and Larry Duyck.¹

Based on our objections and exceptions, and the exceptions filed by Save Helvetia, we recommend that the Commission reject Metro's decision² to: designate approximately 133 acres north of Council Creek in the Forest Grove areas as an urban reserve (Area 7B); leave undesignated approximately 360 acres north of Council Creek in the Cornelius area (Area 7I south); change from rural reserve to undesignated approximately 383 acres in the Rosedale area; designate 352 additional acres, for a total of 440 acres, as an urban reserve north of Highway 26 (Area 8B); and leave undesignated 233 acres north of Highway 26 (Area 8-SBR). We ask the Commission to remand these portions of the reserves decision to Metro. Metro failed to apply correct legal standards; some parts of the decision lack substantial evidence in the record as a whole; and in some cases Metro failed to describe how the facts it found lead to the legal conclusions it draws from those facts.

Finally, Metro has incorrectly treated its reserves decision as the sum of the parts developed independently by each county. This is reflected in many aspects of the decision, including, among others, the inconsistent ways in which each county applied certain urban and rural reserve factors, the use of "undesignated," whether urban reserves are for general urban uses or can be designated for

¹ The objectors incorporate and renew all arguments made by Save Helvetia, 1000 Friends of Oregon, the Washington County Farm Bureau, and the Oregon Department of Agriculture to the original Metro Ordinance No. 10-1238A and Washington County Ordinance No. 733, including all documents and exhibits that are part of the record of those proceedings. We also incorporate by reference the exceptions filed by Save Helvetia to Ordinance No. 11-1255.

² This document will use the term "Metro" to refer to the decisions made by Metro and the three counties, unless otherwise noted.

specific types of urban uses, and more. These are described in more detail in these Exceptions, and in the Objections and Exceptions previously filed by 1000 Friends, the Farm Bureau, and Save Helvetia.

But it is strikingly reflected in how Metro dealt with the remand. Metro looked only to Washington County to “make up” for acres “lost”³ in the remand, for a specific type of urban use. Neither Metro nor the county considered whether the original decision after the remand and before replacement acres were added, met “in its entirety” the “balance” required by the reserves rule. Assuming the pre-remand decision no longer met that balance, Metro did not return to the regional scale to evaluate other lands around the region to determine if they could achieve the balance in a better way, including without designating Foundation farm land as urban reserves. There was no region-wide “re-balancing” analysis after the remand. For this reason as well, the decision should be remanded.

The Director’s report approves this method by stating that because the “total number of acres, and the locations of, urban and rural reserves and undesignated land in Washington County and the region as a whole has not changed significantly” from Metro’s original decision, then the required “balance” has been met.⁴ The extent of the balancing after remand was to compare the number of acres in each category in one county.

Metro and DLCD have the balance question wrong: The legal and practical issue is not what percentage of the lands delineated as urban reserves contain foundation farm land, or EFU land; it is not what that percentage that is of all the EFU or Foundation farm land in the county or region.⁵ The issue is whether, looking at the urban and rural reserves together, the lands designated as rural reserves are the *right* lands (as defined by the factors) to provide for the long-term protection of the agriculture, forestry, and natural landscape features during the period of urban reserves. For agriculture, it means as a practical matter, are the right Foundation farm lands – those that are actually threatened by urbanization during the 30 years of the urban reserves – protected from urbanization such that the long term viability and vitality of the agricultural industry is ensured. Metro has not answered that question.

This testimony includes both general exceptions and exceptions specific to certain geographic areas.

I. General Exceptions

A. Metro Used an Improper Legal Standard for Evaluating and Designating Lands as Urban Reserves

Metro improperly substitutes an urban growth boundary (UGB) expansion analysis for a reserves analysis. The “urban” purpose of the reserves statute and rule is to provide land for generic, possible, future urban use. As the statute states (ORS 195.137):

³ Metro Ord. 11-1255, Ex. B, p. 105

⁴ Director’s report p. 22.

⁵ Metro’s findings go on at some length describing various acreages and percentages, but these *amounts* are not the complete response to the objectives to be achieved under the relevant statute and rules at issue. Ord. No 11-1255, Ex. B, pp. 3-5.

“(2) ‘Urban reserve’ means lands 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 UGB.”

The legislative findings state that urban reserves are to “determin[e] the more and less likely locations of future urban expansion.” (ORS 195.139(1)(b)).

These findings and definitions discuss *general urban* reserves – not industrial land reserves or any other type of specific urban use for a reserve. The urban reserve factors do not alter this. The first factor asks whether a potential urban reserve area “can be developed at *urban* densities in a way that makes efficient use of existing and future public investment and infrastructure.” Urban densities refers to any and all types of urban uses – employment, housing, mixed-use, institutional, etc....The emphasis here, and in the remaining urban factors, is really on two urban form elements:

- Can urban services be efficiently provided over the long-term? (Factors (a), (c), (d))
- If brought into the UGB, would the potential urban reserve reinforce a compact, healthy urban community – healthy economically, socially, and environmentally? (Factors (b), (d), (f))

None of the factors supports choosing a specific area for a specific use, such as large lot industrial, or institutional, or for specific housing types. This is a recognition that the time frame for urban reserves is long – in this case, 30 years beyond the 20-year UGB – and what is needed and desired regionally will change. Terms like “healthy urban economy” and “range of housing types” are purposefully general: a healthy economy does not necessarily mean any type of employment; it might mean an educational institution, a regional park, a recreational facility, an art museum, or some purpose not yet conceived. Or it might mean a multi-modal transportation facility, a high tech campus, or a shopping mall. Less than 30 years ago, Metro and the development industry applied to bring the property previously known as “St. Mary’s” into the UGB for a business industrial park, which at that time was thought to be innovative and needing a special land supply.⁶ That did not happen; that land is now part of the proposed South Hillsboro urban reserve and proposed for residential purposes. The full range of housing types needed over the next 30 years is appropriately wide open to the changing demographics that are already happening in this region, in which less than ¼ of the households will contain parents and children.⁷ That reality means a very different type of housing demand in the next 30 years than the last 30 years, in terms of housing type, location, and other nearby uses.

That no legal basis exists for designating lands as urban reserves based on a “need” for large lots for is reinforced by the statute’s language and context. The reserves law specifically and only says that *agricultural* lands should be protected in “large blocks” in the *rural* reserves, which matches the Legislature's purpose in adopting Senate Bill 100 originally. ORS 215.243(2). The reserves statute does not provide that land should be designated in large blocks for any other use. The Legislature knew how to use reserves to preserve land in large blocks for certain purposes – it chose not to do so here for large lot industrial.

⁶ *Benjfran Development v. Metro Service Dist.*, [95 Or.App. 22](#), 27, [767 P.2d 467](#) (1989). The kind of industrial park requested was one that, as it so happened, only the St. Mary’s property possessed, i.e., an “advance performance standards regional industrial park.”

⁷ Prof. Arthur C. Nelson *Metropolitan Portland Mega Trend 2005-2040*, presentation to Metro Council October 8, 2008.

The Commission’s rules reinforce that urban reserves are set aside for potential, generic, urban uses. Urban reserves are simply “lands outside an urban growth boundary designated to provide for future expansion of the UGB.” OAR 660-027-0010(11). The extent of “planning” for urban reserves prior to their being brought into the UGB is only to protect these areas from conflicting development so as to “maintain opportunities for orderly and efficient development of urban uses...” if and when the UGB expands. OAR 660-027-0070(2). This protection is both crucial for potential future urbanization, but also recognizes that just how any particular urban reserve area will develop is unknown – appropriately – at the time the reserve designation is made.

Metro’s own code reinforces this by not requiring actual “concept planning” until areas are being considered for actual addition to the UGB.⁸ And even then, the required concept planning is not as specific as the lens Metro has used at times in this reserves analysis to chose and discard areas as urban reserves. Metro’s concept planning for already-designated urban reserves that are being evaluated for addition to the UGB requires, for example:

“C. A concept plan shall:

“1. Show the general locations of any residential, commercial, industrial, institutional and public uses proposed for the area

* * *

“3. If the area subject to the concept plan calls for designation of land for industrial use, include an assessment of opportunities to create and protect parcels 50 acres or larger and to cluster uses that benefit from proximity to one another.”

Once land is actually added to the UGB, Metro then requires a more specific level of planning.⁹

Nothing in statute or rule allows Metro to designate as urban reserves lands that qualify as rural reserves, and discount lands that are not Foundation Agricultural Lands, because those lands are contemplated to be used for large-lot industrial, or any other specific urban, use, in some city’s “pre-qualifying concept plan” or any other document.

The Commission itself has already concluded that designation of urban reserves “may not be based on land uses with specific site needs.”¹⁰ In the City of Newberg urban reserve matter, the Department observed that the urban reserve rule at issue in that case (OAR 660-021) “does not authorize a city’s long-term land need to be based on specific siting requirements for particular uses and that (instead) the amount of land in a city’s urban reserve must be based on generalized long-term population and employment forecasts.”¹¹ Although the Newberg matter is based on the “other” way of designating urban reserves, under division 21, the underlying purpose of urban reserves is not different.¹²

⁸ Metro Code Chapter 3.07; Title 11; section 3.07.1110: *Planning for Areas Designated Urban Reserve*

⁹ *Id.*, section 3.07.1120: *Planning for Areas Added to the UGB*

¹⁰ City of Newberg Urban Reserve Remand Order, 010-REMAND-001787.

¹¹ *Id.*

¹² In fact, in the case of Division 21, the time period for urban reserves can be as little as 10 years, which might justify more specific concept planning than the Division 27 method in use here

Following its October 2010 hearing, the Commission sent back the original Metro reserves decision (Ord. No. 10-1238A) with certain directions; this included removing the urban reserve designation from the lands north of Cornelius and re-evaluating the urban reserve area north of Forest Grove. This Director's report correctly states that "the Commission did *not* direct the county to reduce the amount of rural reserve or increase the amount of undesignated land" on remand.¹³ Although LCDC did not produce a final order, it did interpret the urban reserve legislation and administrative rules, albeit in a negative fashion, to determine what did *not* meet the objectives of the authorization to create urban and rural reserves. It is incumbent on the Commission to reconcile that decision with the instant decision in terms of these standards and explain its reasoning in its final order.

In this case, following the remand Metro and Washington County chose some lands as urban reserves, and dismissed others, because of the chosen land's future use for industrial use – in fact, for its future use for a very *specific type* of industrial use: large lot. As described herein, in the Save Helvetia exceptions, and in our joint Objections, Metro and Washington County have done this by:

- Mis-characterizing its charge on remand, and adopting as a "Principle" for so doing, replacing the lands north of Cornelius that this Commission found did not qualify as urban reserves "on an acre-for-acre basis."¹⁴
- Mis-characterizing its charge on remand as replacing those acres with lands "suitable" for similar "industrial/employment uses."¹⁵
- Designating the northern portion of 7B (Forest Grove) as an urban reserve for "employment expansion, particularly industrial."¹⁶
- Designating Area 8B (Helvetia) as an urban reserve.¹⁷
- Failing to evaluate other areas, in Washington County and region wide, for urban reserve designation if Metro demonstrated that additional urban reserves were needed after the remand. This includes Conflicted and Important agricultural lands and exceptions areas, all of which were in Metro's reserve study area. As described in the previous exceptions and objections of 1000 Friends, et al, Save Helvetia, and the Oregon Department of Agriculture, these include but are not limited to:

Clackamas Heights
East Wilsonville
West Wilsonville
Southeast of Oregon City
Southwest of Borland Road
Between Wilsonville and Sherwood

¹³ Director's report, p. 21 (emphasis added).

¹⁴ Metro Ord. 11-1255, Ex. B, p. 105.

¹⁵ *Id.*, p. 106.

¹⁶ *Id.*, pp. 134-35.

¹⁷ In expanding and designating Area 8B for urban reserve, Metro clearly stated that it did so for industrial use; for example:

- "...Area 8B is uniquely suitable for industrial development..." (Ord. 11-1255, p. 156)
- "The addition of Area 8B to the Urban Reserves will provide for an additional 340 buildable acres of large, seismically stable, vacant sites for industrial uses...." (Ord. 11-1255, p. 159)
- "Area 8B would be targeted for industrial uses" (Ord. 11-1255, p. 160)

Contrary to the staff report’s statement that “[w]hether Metro and Washington County were attempting to ‘make up’ for ‘lost’ acres of urban reserves is immaterial to the factors and criteria the Commission must consider,”¹⁸ it *is* material when it leads to the inaccurate application of the law. Metro and Washington County looked to make up for what they characterized as “lost”¹⁹ acres of industrial lands, which was the first legal error, and in doing so they disregarded even evaluating, much less designating, lands that are not Foundation farm lands, both in Washington County and region-wide, which was the next legal error.

In addition, Metro has inconsistently applied this “specific use” lens when evaluating and designating lands as urban reserves in several respects, which the Director’s report endorses. For example, as also described further in the record and in these Exceptions and joint Objections, Metro did not evaluate any of the South Hillsboro area for its potential to replace the “lost” industrial acres in Cornelius, although over 400 acres of the former “St. Mary’s” site is a superior site for industrial use under *any* criteria than the Cornelius site, and is at least as good as the Helvetia area, and in many ways is better. And most importantly, the South Hillsboro area is *Conflicted* farm land, not Foundation, unlike the Cornelius and Helvetia areas.

In designating urban and rural reserves, Metro has misinterpreted and incorrectly applied ORS 195.137-.145 and OAR chapter 660, division 27. The decision should be remanded.

B. Metro Improperly Interpreted and Applied the Reserve Factors

The reserves statute and rule requires use of certain urban and rural reserve factors in evaluating and designating lands for either category. The Department proposes a definition for how these “factors” are to be applied. For urban reserves, the Director’s report states:

“[T]he OAR 660-027-0050 urban reserve factors are *not criteria* in the sense that Metro has to show each area complies with each factor. Rather, these are each *considerations*, which Metro must take into account when deciding whether to designate an area as an urban reserve.”

“Thus, in reviewing this objection as presented, the inquiry is neither whether Metro considered the urban reserve factors in deciding to include [a specific] Area, nor whether Metro explained why [that] Area should be urban reserve using the OAR 660-027-0050 factors; the inquiry is whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did.”²⁰

Presumably the department would pose a similar standard for the rural factors. Leaving aside for a moment the meaning of “considered,” this “standard” would result in a nonsensical review role for the Commission. This statement says that LCDC cannot examine whether Metro considered the urban reserve factors, and Metro has no obligation to explain why an area should be an urban reserve. Yet LCDC must determine whether there is evidence in the record to support the urban reserve designation. If there are no findings, and LCDC cannot examine what Metro actually did, then how is it that LCDC must look into the record as a whole to see for itself if there is sufficient evidence? Metro’s role is to explain how the decision meets the statutory objectives and the Goals.

¹⁸ Director’s report, p. 22.

¹⁹ Metro Ord. 11-1255, Ex. B, p. 105.

²⁰ Director’s report, p. 28 (emphasis in original).

As the Court of Appeals stated in one case and recently re-affirmed in another:

“LCDC must ‘demonstrate in [its] opinion the *reasoning* that leads the agency from the *facts* that it has found to the *conclusions* that it draws from those facts’.”²¹

LCDC cannot do this if Metro has not done so. LCDC must be able to determine if Metro has appropriately considered each factor: if there is evidence in the record as a whole to demonstrate that the decision meets the substantive standards in the reserve statute and rule in evaluating and designating each urban and rural reserves area and in the collective designation.

The department’s description that the reserve factors are not “criteria” but rather merely “considerations,” about which Metro is not required to explain anything, incorrectly interprets the statute and rule, in part by painting the binary choice between two extremes. The correct interpretation is neither of these. Rather, Metro must demonstrate that each area designated as a reserve meets the factors sufficiently to meet the substantive rural or urban reserve definition,²² and that the reserves as a whole meet the overall purpose and objective of establishing urban and rural reserves. Metro must set out findings showing this is satisfied with substantial evidence in the record as a whole. Otherwise, LCDC cannot do its job. The reasoning (not the “considerations” that satisfy the standard if they pass through the minds of the decision-makers for a moment) must precede the substantial evidence analysis, not the other way around.

The statute and rule set out substantive definitions for what land qualifies as an urban reserve and as a rural reserve. A rural reserve must “provide long-term protection for agriculture, forestry or important natural landscape features.” ORS 195.137(1) Urban reserves must provide for “future [urban] expansion over a long-term” and for “cost-effective provision of public facilities and services.” ORS 195.137(2). The legislative findings reinforce these definitions. ORS 195.139.

The Commission’s rule amplifies on this by explaining that (OAR 660-027-0005(2):

“Rural reserves...are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization.”

Under the rule, urban reserves are also supposed to further the objective of *rural* reserves, in addition to urban purposes:

“Urban reserves ... are intended to facilitate long-term planning for urbanization in the Portland metropolitan area and to provide greater certainty to the agricultural and forest industries, to other industries and commerce, to provide landowners and to public and private service providers, about the locations of future expansion of the Metro Urban Growth Boundary.”

The Commission’s rule explains that the “objective” of the rule is “a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the

²¹ *1000 Friends of Oregon v. LCDC (McMinnville)*, ___ Or App ___, slip op p. 34, July 13, 2011 (quoting *1000 Friends of Oregon v. LCDC*, 237 Or App 213, 224 (2010) (*Woodburn*))

²² The statute applies when designating “a” rural reserve, to evaluate “whether land proposed for designation as a rural reserve ... is situated..... is capable..., has suitable soils....;” and so on. ORS 195.131(3) (emphasis added).

viability and vitality of the agricultural and forest industries and protection of important natural landscape features that define and edit the region for its residents.” OAR 660-027-0005(2).

It is discretionary whether Metro and the three counties designate urban and rural reserves using this process. But once that choice to designate is undertaken, , the statute provides that “when designating a rural reserve,” Metro is doing so “to provide long-term protection to the agricultural industry.” ORS 195.141(3). When designating an urban reserve, Metro must do so “[t]o ensure that the supply of land available for urbanization is maintained.” ORS 195.145 (1). Metro “*shall* base the designation on consideration” of the rural or urban factors. OAR 195,141(3), 195.145(5).

The statute and rule each set out similar rural reserve factors and urban reserve factors. But rather than these being merely “considerations” that do not have to be met or explained, the rule states clearly that:

“This division also *prescribes criteria and factors* that a county and Metro *must apply* when choosing lands for designation as urban or rural reserves.”

OAR 660-027-0005(2) (emphasis added).²³

Rural reserves – as expressed in the factors - are based on the qualities of the land, including soil and water (water if necessary), its relationship to other farm and forest lands and agricultural infrastructure, and the existence of physical buffers between rural reserves and non-farm uses. These are qualitative, placed-based criteria. ORS 195.141, OAR 660-027-0060(1), (2).

The factors are prescribed, not discretionary. They must be applied, not merely considered. The factors are not mere ideas to consider in a vacuum – they are *how* Metro actually demonstrates that each area individually and collectively meets the purpose and objective of the reserves law, and the basis on which Metro determines which areas to do not qualify for designation.

Metro must explain whether and how the factors are met for each reserve area and how the purpose and objective are met for the collective designation. As explained herein under the specific area exceptions, and in the exceptions of Save Helvetia, Metro did not explain its actions and thus did not apply the law correctly and the record as a whole lacks substantial evidence to demonstrate that the reserve statute and rule have been met. Therefore, the decision must be remanded.

C. Certain Areas Must be Designated as Rural Reserves and Cannot Be Left “Undesignated”

The region could have chosen not to adopt rural reserves and urban reserves at all, or it could have adopted only rural reserves. But it chose to adopt URs, and so it is obligated to also adopt rural reserves. OAR 195.143(3); OAR 660-027-0020(3). In doing so, OAR 660-027-0060(2)(a) requires that a county "select[] lands for designation as rural reserves intended to provide long-term protection to the agricultural industry...based[d] ...on... whether the lands * * * are situated in an area otherwise potentially subject to urbanization *during the applicable time period* described in OAR 660-027-0040(2) or (3)....” The statute has the same provision. ORS 195.141(3)(a) (emphasis added).

²³ The “shall apply the factors” is repeated in OAR 660-027-0040(8), (9).

The “applicable time period” is that period for which Metro has designated urban reserves, which in this case is 30 years. ORS 195.141(3)(a); OAR 660-027-0040(2) or (3). Therefore, if there is evidence in the record that an area qualifies as a rural reserve, including that it is subject to urbanization during the 30 years, then Metro must designate the area as a rural reserve; it cannot be left “undesigned.” This balance between urban and rural reserves is explicitly made in the reserve statute and rule.

Therefore, several areas that Metro left undesigned in the decision must be re-designated as rural reserves, including the area south of Area 71 (Cornelius), the Rosedale Road area, and area 8-SBR in Helvetia. The joint Objections, these exceptions, and the Save Helvetia exceptions describe these areas in more detail.

D. Buffers and Edges

Metro fails to use buffers properly to divide rural reserves from urban areas, urban reserves, and nonfarm uses, and the Department’s report continues this misapplication of the law.

As described above, the purpose of rural reserves includes providing long-term protection of agricultural land and, in particular, for large blocks of agricultural land, as well as to protect important natural landscape features. In considering whether a potential area is suitable for sustaining long-term agricultural operations, Metro must “tak[e] into account * * * the existence of buffers between agricultural operations and nonfarm uses.” ORS 195.141(3)(d)(B); OAR 660-027-0060(2)(d)(B). And this reference to “buffers” is to whether they *currently* exist – not whether they might in the future.

The rule goes on to describe what should provide these buffers – important natural landscape features. When designating an area as a rural reserve “to protect important natural landscape features,” Metro must base its decision in several factors, including whether the area “[c]an serve as a boundary or buffer, such a rivers, cliffs and floodplains, to reduce conflicts between urban uses and rural uses or conflicts between urban uses and natural resource uses,” and whether it can “provide a sense of place for the region.” OAR 660-027-0060(3)(e), (f). Natural landscape features are to be used to “limit urban development” and “define the natural boundaries of urbanization.” OAR 660-027-0005(2).

As described below and in the exceptions from Save Helvetia, Metro failed to use landscape features that are on Metro’s *Natural Landscape Features Inventory* map to create a buffer between rural reserves and urban uses or other non-farm uses, and to limit urban development. This includes in the Cornelius area, where lots lines are used as a boundary rather than Council Creek and its floodplain; the Forest Grove area (7B); where a narrow road is used rather than Council Creek and its floodplain, in the Helvetia area (8B), where a narrow gravel road is used rather than Waibel Creek and its floodplain; in the Evergreen Area (8A), where lot lines are used rather than Waibel Creek and its floodplain; and on the Peterkort property (8C) where property lines and roads are used instead of Rock Creek and its expansive floodplains.

Lot lines and narrow roads do not limit urban development, as evidenced by this very decision and Metro’s previous UGB decisions. This decision should be remanded with instructions to properly incorporate significant natural landscape features as buffers between rural reserves and other uses, and to “limit urban development.”

E. Improper Reliance on Washington County’s Own Agricultural Lands Analysis

Metro “shall base” its evaluation and designation of rural reserves on the rural reserve factors described in the statute and rule. ORS 195.141(3) These factors are the way by which Metro demonstrates that it is meeting the substantive policy outcomes described in the statute and rule, as explained above. The statute recognizes only one authority with which DLCD must consult in developing the administrative rule to implement the urban and rural reserve statute: the Oregon Department of Agriculture. ORS 195.141(4). The statute does not provide for use of any other evidentiary source that would undermine the rural reserve factors.

The Commission’s rule also states that Metro “shall base” its evaluation and designation of rural reserves on the rural reserve factors described in the statute and rule. OAR 660-027-0040(9), 660-027-0060(2), (3). As the legislative and administrative records demonstrate, these factors are derived from the Oregon Department of Agriculture’s report titled “Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands.”

The rule specially describes this document as identifying those lands – the Foundation Agricultural Land – that are the “most important for the viability and vitality of the agricultural industry.” In other words, Foundation lands are those that meet the purpose of the overall statute and rule for rural reserves designation. In fact, the rule recognizes the role of this technical assessment in two ways:

- If Metro designates Foundation Agricultural Land as urban reserves, it must explain, in findings and a statement of reasons and using the factors, why it did so rather than designating other land. OAR 660-027-0040(11).
- A county may “deem” Foundation or Important Agricultural Lands within 3 miles of a UGB as qualifying for rural reserves without further findings. OAR 660-027-0060(4).

The Commission’s rule recognizes only one other evidentiary source for evaluation and designation of rural reserves: Metro’s *Natural Landscape Features Inventory* map. OAR 660-027-0060(3).

This describes the evidence on which Metro’s rural reserve designation must be based. Use of any other source cannot undermine the statute and rule to come to a different outcome. However, Metro and Washington County did use other sources, which did result in different outcomes for whether lands were designated as rural reserves. And, those different sources and interpretations are inconsistent with what Clackamas and Multnomah counties did.

In evaluating and designating areas as rural reserves, Washington County, and thus Metro in its decision, relied upon several other sources, including a report titled *Agricultural Productivity Ratings for Soils of the Willamette Valley*, J. Herbert Huddleston, and the county’s own staff method. Metro’s reliance on these in a way that undermines the application of the rural reserve factors is contrary to law and fails to provide evidence on which a reasonable person would rely. Following are at least three ways in which Washington County’s rural reserve analysis came to a different conclusion than allowed by the statute and rule.

1. As described in the Oregon Department of Agriculture’s Objections, the report titled *Agricultural Productivity Ratings for Soils of the Willamette Valley*, J. Herbert Huddleston is outdated. While undated, it and the data in it appear to be from approximately 1976. However, the soil surveys, crop diversity information, and agricultural capability data has

been updated repeatedly since then by the technical agency charged with so doing: the USDA Natural Resources Service. It is unreasonable for any governmental jurisdiction to rely on the “Huddleston” report as providing any evidentiary basis for this decision. For this reason alone, the decision should be remanded to Metro for a re-assessment of the rural reserves in Washington County.

2. Washington County conducted its own assessments of the agricultural capability of various rural lands and used those to both designate and discard various potential rural reserve areas. As described in the 9-state agency letter, to which this agency is a signatory,²⁴ and as described in our Objections and Exceptions to the 2010 decision, the applications of those assessments, rather than supplementing the rural reserve factors, resulted in findings contrary to the factors. For example:
 - Improper use of irrigation information (State Agency letter, pp. 13-14; 1000 Friends and Farm Bureau 2010 Objections, p. 11)
 - Improper use of Wildland Forest Inventory (State Agency letter, pp. 13-14)
 - Improper use of viticulture land information (State Agency letter, p. 14)
 - Legally incorrect and factually inconsistent assessment of “large blocks of agricultural lands” and use of parcels and tax lots (State Agency letter, p. 14; 1000 Friends and Farm Bureau 2010 Objections, pp. 11-12)
 - Inconsistent use of Significant Natural Landscape Features as boundary between rural reserves and other uses (State Agency letter, pp. 10-11; Department of Agriculture Objections)

As described in our previous Objections and those of the Department of Agriculture, the incorrect application of the rural reserve factors addressing threat of urbanization (factor a), whether water is available (factor (c)); discounting non-irrigated high-value farmland (factor (c)); assessment of “large block,” (factor (d)(A)); and parcelization (factor (d)(A)), in particular, resulted in discarding lands that would otherwise qualify as rural reserves – including areas north of Council Creek, north and west of Hillsboro, south of the former St. Mary’s land, and north of Highway 26 in the Helvetia area.²⁵

3. Washington County’s farmland analysis used too broad a brush to analyze potential rural reserve areas, much broader than did the Oregon Department of Agriculture, and thus the county came to different results. The County divided the entire reserve study area into 41 subareas. Using various analyses, including the county’s incorrect application of the factors, described above, the county classified the potential rural reserves into one of four tiers. Under the county’s system, only Tier 1 candidate areas were considered suitable for Rural Reserves.²⁶ As explained by the Department of Agriculture, this resulted in lumping together lands that are not alike and not related to one another from an agricultural perspective.

For example, Area 8B is included in Washington County analysis Sub-Area 14. That subarea includes approximately 7,000 acres. It includes not only the highly productive Class I and II soils in Helvetia, but also the unrelated and highly parcelized Bendemeer and Meek Road

²⁴ In the 2010 LCDC hearings on Metro’s first reserves decision, the state agencies re-affirmed their position in the 2009 letter.

²⁵ 1000 Friends Objections, July 12, 2010, pp. 10-12.

²⁶ Ordinance No. 11-1255, Ex. B, p. 123.

subdivisions, as well as the West Hills near the eastern part of the county line. Sub-Area 14 extends east to the Multnomah County line and south of Highway 26, north to Helvetia Road and west to Jackson Quarry Road.²⁷ As a consequence of the size and the inclusion of unrelated subdivisions in the much larger Sub-Area 14, the much smaller Helvetia Area 8B (440 acres) was considered too parcelized and rated Tier 3, even though the description of Sub-Area 14 as having a “high dwelling density and slightly smaller parcels than other agricultural areas of the county” does not apply to Area 8B.²⁸

Metro approved the use of different methods in Washington County than in Multnomah and Clackamas counties to assess several of the rural reserve factors, resulting in differing substantive results, and thus it is legally flawed. The State Agency letter points this out as well.²⁹ For example, Clackamas County evaluated lands around the UGB, generally within three miles of it, and if they qualified as rural or urban, designated them as such. Where lands qualified as both, Clackamas County used the reserves law to determine which way to designate those lands. Unlike Washington County, lands were left undesignated only if they did not qualify as either. And, also unlike Washington County, Clackamas County properly applied the rural reserve factor of “subject to urbanization” (factor (2)(a)) to protect close-in Foundation farm lands. The counties also applied the factor of “available water if needed” (factor (2)(c)) differently, as described above. Neither Multnomah nor Clackamas County conducted a broad-brush analysis of large areas of potential rural reserves, as Washington County did.

Metro’s and Washington County’s application of the rural reserve factors reflects in many respects a lack of understanding of the agricultural industry. This application is not based on evidence on which a reasonable person would rely and thus any findings and the decision lack substantial evidence. Metro’s and Washington County’s interpretation of some of the factors, as described above, is legally flawed and the decision should be remanded.

II. Specific Area Exceptions

A. Area 7B – Forest Grove

Metro originally designated approximately 400 gross acres of land north of Forest Grove as urban reserves. This land, the original Area 7B, 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. There are two other stream tributaries running more north-south in the area.

The Department and Metro conclude that this entire area qualifies as a rural reserve.³⁰ The Department previously advised the Commission that the findings and evidence for designating all of the area as an urban reserve were weak.³¹ The Objectors have consistently argued that the northern portion of Area 7B, north of the east-west tributary of Council creek, should be a rural reserve. While the entire area qualifies as a rural reserve, dividing the area basically in half by using the creek and its adjacent riparian area as a natural buffer satisfies both the rural and urban factors and objectives.

²⁷ Wash. Co. Rec., p. 3023.

²⁸ Ordinance No. 11-1255, Ex. B, p.165.

²⁹ State Agency letter, pp. 12-13

³⁰ Director’s report, p. 24.

³¹ Audio of October 29, 2010 LCDC hearing.

LCDC directed the region to re-examine area 7B North. The Commission's discussion focused on the portion *north* of the east/west branch of Council Creek.³² Individual Commissioners observed that just as Council Creek provided both the practical and legal boundary north of Cornelius, it did north of Forest Grove as well. 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.³³

Metro's decision and the supplemental findings are unresponsive to this direction, and inconsistent in the area evaluated. Washington County's supplemental findings address the wrong tributary of Council Creek; they discuss a smaller north-south tributary that does not bisect the proposed reserve but rather runs in the northeast corner of it.³⁴ The County and Metro, on remand, chose to use this smaller tributary to separate 28 acres off the corner of the larger proposed urban reserve and leave that corner undesignated.³⁵ Metro's decision and the Director's report refer inconsistently to the area being re-examined for possible rural reserve designation. Metro proposes to keep the urban reserve designation on all but 28 acres of Area 7B; those remaining acres are to be undesignated.

Metro's designation and the Director's report are flawed for several reasons. These are explained in the joint Objections so we will focus on a few issues here:

- **Buffer.** Metro and the Director's report refer to the decision as to where to divide Area 7B as that of choosing "a road or ditch" for the buffer between urban and rural uses, a reference to Purdin Road or a "drainageway."³⁶ The Director's report states that Metro is not charged with selecting the "best" buffer when designating urban reserves.

Metro and the department are incorrect. Purdin Road is not even a buffer, and the department mis-characterizes Council Creek. The east-west tributary is on Metro's *Natural Landscape Features* map. The creek and its riparian area are at least 69 feet wide, forming a natural buffer to dust, noise, and other conflicts between urban and rural uses. Purdin Road is only 22 feet wide, and does not provide any of those separation functions. As described in the joint Objections, widening Purdin Road to create a wider buffer is nonsensical and counterproductive: to do so requires taking farm land out of production and would be done to increase the road's capacity for urban use, thereby increasing the urban/rural conflicts.

For the legal reasons described above and on the joint Objections, the appropriate buffer is the east-west Council Creek tributary.

- **Specific Urban Use.** The northern portion of Area 7B has been selected because it is intended to be used for industrial purposes, and in particular, for large lot industrial.³⁷ The department notes that the urban reserve findings "are largely...based on an assumption that the area will

³² 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 is north of Council Creek.

³³ Audio of October 29, 2010 LCDC hearing.

³⁴ Wash. Co. supplemental findings pp. 12728-12729.

³⁵ *Id.*

³⁶ Director's report, p. 25.

³⁷ Metro Ord. 11-1255, Ex. B, pp. 142-144; Director's report p. 24.

be developed with employment uses.”³⁸ In fact, the Washington County findings are precisely what would be expected for a UGB expansion:

“ The City’s Economic Opportunities Analysis (EOA) report provided a justification for the amount of land need beyond current supply in the community for office, industrial, retail and other employment sectors. When taking into account current vacant land supply in the community, there is still a need for 284 to 1,520 acres of additional industrial land in order to meet the City’s industrial need * * * The City’s EOA report also addressed the community’s 20 year need by parcel size. The report indicates there is a need for at least one large lot industrial site (50 to 100 acres in size) sometime during the next 20 years. * * * Currently, no such site exists in the community.”³⁹

This analysis is contrary to the purpose of the reserves for a general supply of land for long-term urban uses. If Metro is going to rely on one city’s specific industrial land need projection, then it will need to look at every city’s projection and coordinate them, much like counties are required to do now, and then build all of those projections into its urban reserve decision. Metro has not done so, but by approving this, is it implicitly approving Forest Grove’s industrial land need projection? To be consistent, must Metro now obtain projections from all cities in the region? The Objectors do not believe that is a place that Metro wants to or intends to be, yet that is exactly where they put themselves by relying on this.

As described above, in the joint Objections, and Save Helvetia’s Exceptions, this is not a legal consideration in designating urban reserves. That is a consideration for a UGB expansion.

- **Rural Reserve Factor (2)(d)(D), agricultural infrastructure.** Rural reserve factor (2)(d)(D) requires consideration of the sufficiency of the agricultural infrastructure in the area. The Washington County Farm Bureau presented extensive testimony about the agricultural infrastructure both in the proposed urban reserve and nearby, which is interdependent with farming activities both in the reserve area and in the larger Tualatin Valley. Metro did not address this, it merely noted that the area is served by the Tualatin Valley Irrigation District.⁴⁰ This is not responsive to the requirements, and in fact is an excellent example of the flaw in Metro’s and the Director’s report for how the factors are to be “considered.” If compliance with factor (2)(d)(D) means merely noting the existence of an expensive and extensive, region-wide irrigation system, without any analysis of what impact that has on the rural reserve factors and meeting the purpose of the statute and rule, then going through all of this seems rather like an unnecessary exercise. In addition, the Farm Bureau described at length the other infrastructure in the area: farm-related businesses that support and depend upon local agricultural production. This aspect was not addressed at all in Metro’s decision.

LCDC should remand the decision with the direction to remove the urban reserve designation on the lands north of the east-west Council Creek tributary, and to designate the area as rural reserve.

B. Cornelius Undesignated Area

³⁸ Director’s report p. 24.

³⁹ Washington County supplemental findings p. 12696.

⁴⁰ Ord. 11-1255, Ex. B, p. 150.

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 undesignated (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 southern portion of this area undesignated fails to meet the reserves statute and rule, which the Objectors addressed in the joint Objections. These exceptions focus on a few issues.

- **Area does not qualify as “Undesignated.”** Metro and the Director’s report conclude that Area 7I South qualifies as a rural reserve. This includes that it is threatened by urbanization during the operative time period. As described above, the area must therefore be designated as a rural reserve. Failure to do so is inconsistent with the purpose and objective of the reserves rule and statute, it is contrary to the express language of the rule and statute, and it fails to demonstrate balance between rural and urban reserves.
- **Buffer.** The only thing separating the rural reserves in Area 7I from the undesignated area of 7I South is a series of lot lines. They exist on a map, not in a physical reality. Photos presented to the Commission in the October 2010 hearings demonstrate that this is one unbroken agricultural area. Washington County and Metro have stated that the purpose of undesignated lands in Washington County is to maintain flexibility for their future possible urbanization. That would put urban uses directly adjacent to rural reserves, with no buffer whatsoever. The Commission was very clear in its comments that the appropriate buffer to protect the rural reserves is Council Creek.
- **Natural Landscape Feature.** Council Creek is designated by Metro as a *Significant Natural Landscape Feature* and is mapped as such. This landscape feature is located in the undesignated portion of Area 7I South, yet it qualifies as a rural reserve on its own. All of Area 7B qualifies as a rural reserve for two reasons recognized by the law: agricultural and landscape features. Council Creek is the appropriate buffer between urban and rural reserves; it is the *only* buffer in this area.

Leaving the southern portion of Area 7B undesignated fails to meet the reserves statute and rule. The Commission should remand the decision with directions to designate all of Area 7B as a rural reserve, or should do so itself.

C. **Rosedale Road Undesignated Area**

The area south of Rosedale Road is Foundation farm land previously designated as a rural reserve. Metro and Washington County decided to “make up” for lands removed from urban reserve designation by converting 383 acres in this from rural reserve to undesignated. This puts it in the queue for possible urbanization in a future UGB or urban reserve decision: it is to “replace” previously undesignated lands in Helvetia because those acres were converted to urban reserve (expanded Area 8B).

Metro’s redesignation of Rosedale Road from Rural reserve to undesignated is legally flawed for at least three reasons.

No provision for “replacement.” How Metro and Washington County arrived at “undesignating” this area illustrates the absurdity and illegality of the “acre-for-acre” replacement. Washington County’s findings simply (and incorrectly) state that it is under no obligation to designate any particular lands as rural reserves – that the only requirement is “that *some* Rural Reserves must be designated if Urban Reserves are designated.”⁴¹ However, Metro and Washington County apparently do find an obligation to replace urban reserves “lost” as a result of the remand, leading them to the Rosedale Road area.

Metro’s decision contains no description of the Rosedale Road area, and no analysis of why it should now be undesignedated, it simply references the Washington County findings.⁴² These findings briefly describe the acreage and conclude:

“Metro and Washington County ultimately identified an additional 383 acres south of Rosedale Road as Undesignated lands. * * * This adjustment partially represents an opportunity to replace previous Undesignated lands north of Highway 26 which were redesignated Urban Reserves....”⁴³

Even if Metro was under an obligation to replace the “lost” acres or has the discretion to do so, the reserves law does not allow Metro to limit its search for replacement lands to Washington County. Metro views undesignedated lands as those available for possible future urbanization. Therefore, to be consistent, it must look region-wide for “replacement” lands, including Conflicted and Important lands.

Rosedale Road Area does not qualify as “Undesignated.” The Rosedale Road lands qualify as a rural reserves, as evidenced by being designated as such. This means it is subject to urbanization during the urban reserve time period. There is no evidence that the area qualifies for an urban reserve. Therefore, as described above, it must be designated as a rural reserve.

Failure to re-evaluate reserves decision. Metro’s decision to remove these 383 acres from rural reserves requires a new analysis of whether the overall urban and rural reserves decision still meets the objective and purpose of the reserve law. Metro did not do this. A simple mathematical acreage swap is not a qualitative, region-wide analysis.

Conclusion

The Commission should remand Ordinance No. 11-1255 with directions 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.

⁴¹ Washington County supplemental findings, p. 12726.

⁴² Ordinance 11-1255, Ex. B, p. 33.

⁴³ Washington County supplemental findings, p. 12730.

Respectfully submitted,

A handwritten signature in black ink that reads "Mary Kyle McCurdy". The signature is written in a cursive, flowing style.

Mary Kyle McCurdy

On behalf of Washington County Farm Bureau, 1000 Friends of Oregon, Dave Vanasche, Larry
Duyck, and Bob VanderZanden