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May 20, 2010

David Bragdon, Council President
Metro Council
600 NE Grand Ave.
Portland, OR 97232

Re: Ordinance No. 10-1238: Urban and Rural Reserves

Dear President Bragdon and Metro Council Members:

1000 Friends of Oregon is a statewide, nonprofit land use organization with over 3000 members in the metropolitan area. We have participated in the Reserves process from its inception as an idea that resulted in SB 1011, and through the rule-making and Reserves Steering Committee.

We supported most of the Metro Chief Operating Officer's recommendation of September 2009, and we support most of the urban and rural reserves proposed for Multnomah and Clackamas counties, as reflected in the Intergovernmental Agreements (IGAs) between Metro and each of those counties.

However, the regional proposal for 28,165 acres of urban reserves, and in particular the portion within Washington County, fails to meet the legal requirements for the Urban and Rural Reserves statute (ORS 195.137-.145) and administrative rule (OAR chapter 66, division 27). The late proposed Washington County additions of the 129-acre Peterkort property and over 200 acres converting rural roads to urban roads add to this failure to meet state law.

The Reserves statute describes the Legislature's purpose in authorizing the establishment of urban and rural reserves. Rural reserves are to be selected and protected to:

“[O]ffer greater certainty for * * * [t]he agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability.” ORS 195.139(1)

The statute goes on to describe those “characteristics” of viability for selecting rural reserves, including whether the land is subject to urbanization pressure; whether the land has suitable soils and water if needed for agriculture; whether it is capable of and suitable for sustaining long-term agricultural operations, taking into account existing agricultural land use patterns, adjacent uses, the location of the land relative to other farm uses; and the sufficiency of agricultural infrastructure in the area. ORS 195.141(3)

Urban reserves are to be selected to provide long range certainty for “commerce, other industries, other private landowners and provides of public services, by determining the more and less likely locations of future expansion of urban growth boundaries.” ORS 195.139(1)(b).



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The administrative rule expands upon this legislative direction (OAR 660-027-0005, emphasis added):

“(2) Urban reserves designated under this division 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 private landowners and to public and private service providers, about the locations of future expansion of the Metro Urban Growth Boundary. Rural reserves under this division 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. 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.”

The rule describes the criteria that must be met in designating rural reserves, and in designating urban reserves. The Washington County urban reserves – and in particular, the area north of Council Creek in the Cornelius/Forest Grove area, the Evergreen area, and the undesignated lands along Highway 26 – fail to reach a balance regionally, do not meet the criteria, and are based on a faulty land need assumption. The late additions of the Peterkort property and the conversion of roads from rural to urban also fail on these criteria.

The proposal before you designates 28,165 acres as urban reserves, allegedly for a 50-year time period (not including the recent proposals from Washington and Clackamas counties). The amount of acres proposed for urban reserves exceeds the statutory 50-year limit on urban reserves, by underestimating the capacity for the current UGB, which represents the starting period capacity for the urban reserves period, in at least three ways.

First, Metro assumes that the existing urban zoning, adopted and acknowledged by each city and county, will not be realized within the 20-year time period of the UGB, at least absent a demonstration that public investments are in place or underway to cause the zoned level of urban development to happen. Assuming that existing planning and zoning will not be met and the investments not made over the 20-year UGB planning period is unrealistic, does not meet the requirements of ORS 197.296 and Goal 14, and is contrary to the methodology used by the Department of Land Conservation and Development in evaluating all other UGBs.

In addition, to assume those densities will not be met over a 40-50 year time period is not only legally improper and unlikely, it is a statement that the Metro Council does not believe or support the acknowledged land use, transportation, and public facility plans of its partner jurisdictions. Surely, at least those 20-year zoned densities will be met over the 40-50 year time period; if Metro believes otherwise, it seems the burden of proof is on Metro to show that the city plans are inaccurate, not only in this decision but by objecting to the periodic review of its partner cities.

Second, and related to the first, Metro assumes that cities will meet their current zoning only if certain investments are made – such as in infrastructure, urban renewal, various subsidies or waivers - and Metro requires a level of certainty about those investments before relying on them to assume that higher densities are achieved in any city. However, those cities all have acknowledged

public facilities plans that “describe[] the water, sewer and transportation facilities which are to support the land uses designated in the appropriate acknowledged comprehensive plans....” for the 20-year planning period. (OAR 660-011-0005(1), (4) Public facilities plans also include cost estimates, an estimate of when each facility project will be needed, and a discussion of funding mechanisms. Therefore, it should be assumed that at least these public investments will be made.

Third, Metro’s capacity estimate for the UGB assumes there will be no upzoning over the 20-year or 50-year period over current zoning. There is no basis in fact for that assumption, and it is contrary to law. In analyzing the capacity of its UGB, Metro must examine the housing density, mix, and trends over at least the past five years, or since the last periodic review, and use that in its assessment of future land needs and trends. Although Metro is not - yet - conducting a UGB analysis, in its reserves analysis, Metro must still have a factual basis for its assumption of no upzoning. The statute provides one methodology for looking at housing trends; if Metro were to look at the past 20-50 years, or even 5 years, the region as a whole has experienced significant upzoning in all land use categories.

Looking on the ground, one can see how unrealistic the assumption of no upzoning is as a practical matter. Metro relies upon its Corridors and Centers strategy to accommodate much of the expected population and employment growth in the region. The July 2004 ECONorthwest Report on Corridors, prepared for Metro, reviewed the planning and zoning for nine corridors and concluded: “Corridors tend to be lower-density and more auto-oriented.”¹ The Report shows that in 2004, the region had 41,907 gross acres of “Corridors,” of which 13,296 acres were zoned for single family and more than 5,400 acres were zoned either “rural,” “agriculture,” or “forest.”² We have not seen anything to show that these Corridors have been upzoned, or that Metro assumes they will be. However, to meet the Region 2040 requirements and market demands over the 20-year UGB period and the Reserves period, these corridors will be re-zoned to higher density and mixed uses.

Because Metro has underestimated the capacity of the UGB for both the 20-year UGB period and the 40-50 year Reserves period, the 28,165 acres proposed or urban reserves far exceeds the 50-year time limit. The urban reserves should be reduced in size to meet the allowed time period.

The reserves decision does not achieve “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.”

Of the 28,000+ acres of urban reserves, approximately 11,000 acres are on “Foundation” farm land, almost all of that in Washington County. And of those Washington County Foundation farm lands, almost all were also demonstrated to be “subject to urbanization.” In fact, Washington County found the areas north of Council Creek, in the Evergreen area, and in Helvetia to be “highly” subject to urbanization.³ In addition, all the acres that Washington County deemed

¹ ECONorthwest July 2004, p. 2-4

² Id. at p. 5-3, Table 5-1.

³ Washington County RCC Urban & Rural Reserves Recommendations, September 23, 2009, Map 16, *Subject to Urbanization*. [Map 16 Subject to Urbanization](#)

“undesigned” are Foundation farm land and “highly” subject to urbanization. Foundation farm land subject to urbanization meets all the criteria for protection as rural reserves, not urban.

The result is that the land most threatened by urbanization in Washington County is now proposed as urban reserves, while many acres not under threat of urbanization in the planning period are designated as rural reserves, turning the law on its head.

In contrast, Clackamas County has a similar number of acres designated as urban reserves, but none of it is on Foundation farm land; rather, it is almost entirely on Conflicted farm land, and some Important farm land.

Designating most of the highest risk Foundation farm land in Washington County as urban reserves is not “balanced.”

Specific Areas

Several Washington County areas designated as urban reserves, in particular, violate the reserves statute and rules – the area north of Council Creek in the Cornelius/Forest Grove area, and the Evergreen area. Designation of these areas is also contrary, in whole or in part, to the state agency letter of October 14, 2009.⁴

North of Council Creek

Approximately 800 acres north of Council Creek are proposed as urban reserves. On several legal grounds, this area does not qualify as an urban reserve. It is Foundation agricultural land and meets all rural reserve factors: it is subject to urbanization during the time period, is capable of and does sustain long-term agricultural operations, is primarily Class I, II, and III soils is an intact large block of farm land, and the farm use and ownership patterns demonstrate long-term stability. As a potential candidate for rural reserves, Washington County ranked it as Tier 1 – the most qualifying, based on all the rural reserve factors.⁵

The area north of Council Creek also qualifies as rural reserves because it is a mapped significant natural landscape feature under the rural reserves statute and rule.⁶ 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 evident. Because the area qualifies under both the agricultural land and natural resource categories as a rural reserve, it should be designated as such.

Furthermore, expansion across Council Creek is contrary to the urban reserve factors, and is contrary to the stated local aspirations of Forest Grove and Cornelius, as reflected in their local plans and on-the-ground circumstances. Both want significant transit improvement, including eventually light retail. Urban reserves north of Council Creek would not facilitate compact, mixed-

⁴ http://library.oregonmetro.gov/files/final_consolidated_state_agency_comments.pdf

⁵ Washington County RCC Urban & Rural Reserves Recommendations, September 23, 2009.

⁶ Metro Natural Landscape Features Map; Washington County [Map 5 Natural Landscape Features Inventory - Metro \(February 2008\)](#)

use development in the current town centers of either city, and would be contrary to creating a community that is well-served by transit. The land proposed is not proximate to the high capacity transit line that Cornelius envisions for its community or to the rest of the city; rather, the urban reserves land to which we object is across a wide creek and floodplain, far from the proposed transit line. Urbanizing this area would reinforce auto-oriented development patterns and would be contrary to the state and region's climate change goals.

Cornelius, in particular, has hundreds of acres of vacant land and more that is underutilized today. Metro's analysis shows that Cornelius currently has over 125 acres of vacant, buildable land inside its portion of the region's urban growth boundary. This includes over 50 acres of land that Metro added to Cornelius only a few years ago for industrial use. That land is still being farmed, because no one has offered to purchase it for development. The city has not even annexed it yet. Another 20+ acres of land, which has full urban services and is in an industrial park, has had a "For Sale" sign up for years.

Not urbanizing the land north of Council Creek would still leave Cornelius with approximately 400 urban reserve acres on the south side of Council Creek, more land than the city is likely to use in a 50 year period based on the city's past land absorption rates.

The letter from the 9 state agencies also recommends against including the land north of Council Creek in the urban reserves, concluding it does not qualify under the law.⁷ "The state agencies generally concur with the COO recommendations for this area...Rural reserves for areas here that are a significant distance from the existing UGB don't appear to meet the factors in the rule for designation of rural reserves... and generally there is too much land designated as rural reserves in this area."

Designation of the lands north of Council Creek as urban reserves does not meet the legal test of balance, locally or regionally; nor does it meet the criteria for urban reserves.

Evergreen/North Hillsboro

The proposed Evergreen area fails to meet the requirements for an urban reserve. The proposed urban reserves designation extends as far west as McKay Creek and north to Highway 26. This is entirely Foundation agricultural land and meets every rural reserve factor. It is subject to urbanization during the time period, is capable of and does sustain long-term agricultural operations, is primarily Class I, II, and III soils, is an intact large block of farm land, Sewell Road and the exception area are an excellent manmade buffer and edge that can protect the area from conflicting uses, and the farm use and ownership patterns demonstrate long-term stability.

In addition, the proposed area's proximity to Jackson School Road will be a magnet for future urbanization in this western direction, adversely impacting the farm lands around this area with conflicting uses, speculative land purchases, urban traffic, and more. The current and future transportation system in this area is auto-dependent, which will exacerbate the region's greenhouse gas emissions, and our ability to reduce them, which is already in doubt.

⁷ http://library.oregonmetro.gov/files/final_consolidated_state_agency_comments.pdf

The state agencies recommend a reduced Evergreen urban reserve; we recommend no larger than that, and possibly even smaller. At a minimum, any urban reserve in this area land should be reserved for large lot industrial use, and all transportation should be oriented towards Shute Road, not Jackson School Road.

Helvetia / Highway 26 Area

We concur with the testimony of Save Helvetia and others regarding lands designated as urban reserve, or left undesignated, in the Helvetia area and along highway 26. We would like to highlight one area in particular: the proposed undesignated area south of North Plains, across Highway 26. Several year sago the City of North Plains received approval from the Land Conservation and Development Commission for a UGB expansion north and east of the city, on to prime farm land, because the city argued that to cross Highway 26 would be too expensive for infrastructure, would cut the community in half, and would be contrary to the city's compact, walkable neighborhoods vision. The city pointed out that it is "North" Plains, not "South" Plains. Our organization was persuaded by this argument, and did not object to not crossing Highway 26 with UGB expansion. Others litigated this issue, and the LCDC decision prevailed.

Only a few short years later, this seems to have been completely reversed, and now the city and the County want the land south of Highway 26 undesignated, to leave the possibility open for a future UGB expansion. This undermines the integrity of the city's and county's previous arguments and certainly the willingness of many participants to engage in this type of discussion again. In addition, none or almost none of the farm land added to the north and east of the city has been annexed or developed to date.

Recent Washington County Proposed Additions to Urban Reserves

Washington County proposes to add to urban reserves the 129-acre Peterkort property, and over 200 acres of what are now rural roads. Metro should reject both proposals. There is nothing in either proposal that was not known during the very long period of consideration and debate about reserves. And on the merits, neither makes the case.

The Peterkort land consists of 77 developable acres across the north side of the 52-acre floodplain. Converting this land to an urban reserve will break the natural urban/rural buffer that is currently provided by the roughly 1000' wide Rock Creek floodplain. This is contrary to Metro's stated intent, and the reserves rule and statute, to use natural features as the boundaries for urban reserves.

Washington County tries to justify this addition on grounds of wetland mitigation and a sewer trunk line extension to serve the North Bethany area and other properties. However, neither is a legitimate basis for this addition.

To justify bringing the North Bethany area into the UGB, Metro was required to demonstrate that the area could be served efficiently within the UGB and the North Bethany area. Therefore, Metro has already determined that the Peterkort property is not needed for a sewer line. And, there is no legal need to bring land into an urban reserve to achieve wetland mitigation.

Over 200 acres of new urban reserves are proposed by moving the boundary lines of urban reserves to the rural side of roads, thereby converting rural roads to urban roads – long before any urbanization ever reaches those areas, if, indeed, it ever does. Some of these proposals “jump” major roads, such as Highway 26. This is contrary to the Metro’s objective of using natural and built features as boundaries between urban and rural reserves. It also places the impact of urbanization on the rural lands – by taking those lands out of rural reserves and placing urban roads adjacent to rural reserves. Finally, and most significantly, it opens up the opportunity for a level of “improvements” and expansion to these roads that would not have been permitted if they were left in rural reserves, thus increasing the already well-documented conflicts on what are farm roads between urban drivers and agricultural operations. This is contrary to the rural reserve criteria regarding using hard edges and buffers and minimizing adverse impacts of urbanization on nearby rural reserves.

Thank you for consideration of our comments.

Mary Kyle McCurdy
Policy Director
1000 Friends of Oregon

