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October 9, 2014

Via Email and Hand Delivery  
Casaria Taylor  
Dept. Of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

Re: PETITIONERS BAKERS FIVE, LLC REPLY TO MULTNOMAH  
COUNTY AND METRO in LCDC NO. A152351

Dear Casaria:

Enclosed please find for filing in the above captioned matter an original  
Petitioners Bakers Five, LLC brief responding to the opening briefs of Multnomah  
County and Metro. Thank you for your courtesies.

Very truly yours,



Wendie L. Kellington

WLK:wlk  
Enclosures  
CC: Client  
Matt Lowe  
Jackie Swanson

BEFORE THE LAND CONSERVATION AND DEVELOPMENT COMMISSION OF THE  
STATE OF OREGON

**IN THE MATTER OF THE REVIEW** )  
**OF THE DESIGNATION OF URBAN** )  
**RESERVES BY METRO AND RURAL** ) LCDC No. A152351  
**RESERVES BY CLACKAMAS COUNTY,** )  
**MULTNOMAH COUNTY, AND** )  
**WASHINGTON COUNTY** )

**PETITIONERS BARKERS FIVE, LLC**  
**REPLY TO MULTNOMAH COUNTY AND METRO**

Barkers Five and Sandy Baker (Petitioners) file this supplemental brief responding to the briefs filed by Multnomah County and Metro (collectively referred to as “county”).

**HB 4078 DOES NOT AUTHORIZE LCDC TO AFFIRM THE DECISION**

The court identified two errors: a missing analysis which specifically includes petitioners’ property and a “meaningful explanation” of the yield of that analysis. To invoke the “evidence clearly supports” standard of review, LCDC must find the *only* conclusion from all of the evidence in the record is that the required analysis occurred and that the *only* yield from that analysis is that the Barkers property must be rural reserve as a part of Area 9D. Multnomah County and Metro show neither. This is unsurprising because the court of appeals decided such analyses do not exist, decided that the county improperly applied the reserves factors to make Petitioners’ property rural reserve in Area 9D and the court’s decision was not appealed. The law of the case is that the required analysis has not been performed and Petitioners’ property was unlawfully designated rural reserve.

The county brief evidences a misunderstanding of the remand and LCDC’s scope of review. The county seeks to have *LCDC* designate Petitioners’ property as rural reserve based on *LCDC’s* view of the outcome of the required reserves factors analysis, performed as the court held the county was required to, but did not, do. HB 4078 does not permit

LCDC to weigh and balance the reserves factors. It does not permit LCDC to decide what the reserves factors yield with respect to Petitioners' property. The purpose of the analytical exercise is to enable the *county* and *Metro* to decide whether, under a proper analysis, a result is yielded that all of the land in Area 9D including the Barkers property can be designated rural reserve. Under the "evidence clearly supports" standard of review the questions are whether the evidence clearly supports the required analysis occurred and, after the required analysis, whether the Barkers property *must* be designated rural reserve. However, because both the analysis and decision are inherently discretionary exercises reserved to the local governing body, the "evidence clearly supports" standard does not permit LCDC to undertake that discretionary legal analysis and make the ultimate decision based on LCDC's judgment of the analytical results. Even if LCDC could supplant itself for the county, LCDC would have to decide that the record is without doubt that the Barkers' property can only be designated rural reserves. The record permits nothing remotely close.

First, the missing analytical exercise must be "meaningful." On this, the court of appeals quoted with approval LCDC's articulation of these legal obligations:

"Consequently: \* \* \* "consideration" of the factors requires that Metro and the counties (a) apply and evaluate each factor, (b) weigh and balance the factors as a whole, and (c) *meaningfully explain* why a designation as urban or rural reserves is appropriate. (Emphasis added).  
\* \* \* \* \*

"[I]f Metro and the counties properly consider and apply the factors, the decision whether to designate land as urban reserve or rural reserve or to leave the land undesignated is left to the local government."

The court reinforced the importance of a "meaningful explanation":

"[T]he county was obligated to *meaningfully explain* why its consideration of the factors yielded a rural reserve designation of all of the land in Area 9D. \* \* \* [T]he county must meaningfully explain why, notwithstanding the ostensibly differences, it designated all of the land in that area as it did." (Emphasis supplied.) *Barkers Five*, 261 Or App 346.

LCDC has experience with what the court requires for a “meaningful explanation” and it is evident that the arguments/string cites in the county brief are not the equivalent of showing the missing “meaningful explanation” necessarily occurred. *In 1000 Friends of Oregon v. LCDC*, 260 Or App 444, 455, 458 (2014), the court of appeals remanded to LCDC, for a second time, the Woodburn UGB for a “meaningful” explanation as to “why the steps taken \* \* \* satisfy those legal standards.” In the words of the court appeals, viewed in their best light, the county brief in this case: “while lengthy, [do] not include reasoning. [They] contain[] findings of fact ... and statements of law or policy. [They] also include[] conclusions that the facts in this case satisfy the law. [They do] not include the reasoning that led LCDC from the facts to its conclusion.” *1000 Friends of Oregon*, 260 Or App at 458.

Here, the applicable standards the court found were unlawfully applied here, are so highly discretionary that it is impossible to say that any particular outcome from a proper analysis is required or “obvious.”<sup>1</sup> After weighing and balancing the reserves factors in light of the evidence in the record, the county might decide Barkers should have no designation, an urban reserves designation or a rural reserves designation. (*Compare* Mult Rec 914, 1159 (no designation) 1159e and Exh 2 (urban reserve), MC 1917e (CAC split regarding Area 6). No decision *necessarily* flows from the record.

Contrary to the court’s holding, the county wholly ignores the Barkers’ property and rather points to sweeping generalizations to argue that the north and south parts of Area 9D could potentially be designated rural reserve. They ignore that a lawful “consideration of the factors” means:

*“\* \* \* to the extent that a property owner challenges the inclusion of his or her property within a designated area, the local government is obligated to have explained why its consideration of the factors yields, as to the totality of the*

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<sup>1</sup> In this regard, contrary to the county brief, the reserves factors are standards. *Barkers*, 261 Or App 341.

*designated land, a result that includes that property.*<sup>2</sup> (Emphasis supplied.)  
261 Or App 343.

The county cites nothing about the characteristics of the Barkers' property and indeed they don't even identify where it is. The only specific information about the Barkers property was provided by Barkers Five and it explains the property is *not* properly designated rural reserve. *See* Exhibit 1. The evidence is, at a minimum, conflicting and conflicting evidence is not evidence that "clearly supports" anything. Certainly, the county's evidence does not lead to a conclusion the Barkers' property or indeed all or any of the land in the southern part of Area 9D must only be designated rural reserves. In fact, as noted, the county recommended it be either rural or urban reserve. Exh 2.

The county ignores the issue is the "propriety of the designation of [Barker] property and not \* \* \* the propriety of composition of the study area of which it was a part." 261 Or App 341. They ignore that the court held that the error is the Barker property "was improperly designated rural reserve solely because of its inclusion within Area 9D". They ignore that the *required but missing* analysis is that the county failed to "consider[r] the reserves factors with regard to the land that it actually designated as rural reserves." *Id.*

The county requests LCDC *remake* the Area 9D reserves decision and designate all of Area 9D rural reserves on a claim that it is "obvious" Area 9D meets the "Farm and Forest Factors" (Mult Br. 13-15). Area 9D was not designated rural reserve on this basis by either

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<sup>2</sup> The court further explained: "The gravamen of those challenges is that Metro and the counties inadequately considered the reserve factors with regard to the land that was actually designated as either urban or rural reserves. Resolution of those challenges requires an examination of the adequacy of the local government's consideration of the factors *as to the 'land' that was ultimately designated under the standards described above.*" (Emphasis supplied.) 261 Or App 305.

the county or Metro governing bodies.<sup>3</sup> *Barkers Five*, 261 Or App 345. To take this action, LCDC must remake the county reserves decision on the idea it is “right for the wrong reason.” However, the “evidence clearly supports” standard of review does not authorize LCDC to remake the county decision; rather it only authorizes LCDC to review the decision before it. *West Coast Media LLC v. City of Gladstone*, 192 Or App 102, 109-110 (2004).

The county further claims evidence in the record “clearly supports” that all of Area 9D must be designated rural reserve on natural resource bases. They claim the record shows the county “acknowledged the dissimilarities” between “the northern and southern halves of Areas 9D” and that generalized, equivocal, fractured and abbreviated conclusions of the CAC are an adequate substitute for the required analysis of all the factors as it pertains to all the land in Area 9D, including Barkers land. Mult Br 11-12. They are wrong. The county’s mere rehash of arguments that were rejected by the court of appeals, is unavailing.

*Compare* Mult Co. Court Op Br. to *Barkers Five*, 261 Or App 338-347.

The court of appeals did not limit its remand for the county to simply show it knew there were dissimilarities in the north and south of Area 9D. The court remanded because of the failure of the county decision meaningfully “explain why its consideration of rural reserves factors yields a rural reserve designation of all land in Area 9D,” which includes the Barker property. 261 Or App 345. Further, the court’s “conjunctive observation” of dissimilar areas was an example that “suffice[d] to explain why that is so.” Nothing suggests the “conjunctive observation” of analytical defects was the only analytical defect.

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<sup>3</sup> There is no claim in any brief that the challenged decision should be wholly remade to apply the “safe harbor” in OAR 660-027-0060(4). Therefore, Barkers do not address such a claim. We note, however, that Barkers Five did preserve the right to challenge any such argument and the court of appeals specifically stated it did not address this issue. To the extent such an issue comes up on remand, Barkers relies on, and incorporates, its appellate opening brief on this topic by this reference.

Further, the evidence the county relies on merely seeks affirmance on the basis the court already rejected: that Barkers property must be designated rural reserves simply because of its location in one of the dissimilar halves of Area 9D. The county admitted as much in its opening brief at the court of appeals “it is highly unlikely that any two separate study areas would appear to be similarly situated after the consideration and application of some 23 reserve factors.” Mult Op Br p 33. The county cites no evidence regarding the characteristics of the Barker property or why it must be designated rural reserve as a part of Area 9D, or a “meaningful explanation” of either. The sum total of the county claim of the required “meaningful analysis” is citation to general evidence (1) that the “northern half” of Area 9D is forested and subject to little risk of urbanization, and (2) the “southern half” is “primarily farm area”, is “mapped ‘important farmland’ with limitations but “good integrity overall”, and “edges compatible to farming”, (3) that the southern half “contains stream features of Abbey Creek mainstream, north fork and headwaters areas that are mapped as important regional resources and that separate urban from rural lands”, (4) the southern half is subject to a risk of urbanization and has “some important upland habitat areas of less value than in the north. Mult Co. Br at 12; *see also* 15-18. These are not responsive to all the reserves factors, the evidence is conflicting on these topics, and are far from a meaningful explanation that a particular result is “obvious.” *Barkers Five*, 261 Or 345-346.

Even if LCDC speculation could supplant the required local analysis, it is not “obvious” that a rural reserve designation is required on farm or forestry bases. The record establishes that the Barkers property and much of the immediate area does not have irrigation and has significant groundwater limitations. ER-19, 5, 1-2, Rec-Item-21 580, 604; MultRec-1732, Rec-Tr-Vol.11, 143-144. The Barkers property is in an area “south of the power line” which the ODA report explains does not have “good integrity” for agriculture. Mult Rec. 46. The

Barkers' property is zoned EFU and a rural reserve designation is not required to protect agriculture or agricultural values on EFU zoned land:

“Undesignated EFU areas continue to be planned and zoned for exclusive farm use, in compliance with Goal 3. There is nothing in Goal 3 that requires Applicable statutory and rule provisions to be interpreted to require rural reserve designation of lands that could qualify under the rural reserve factors.”  
Order 104

The “southern half” is “more parcelized” than the “northern half”. Exh 3, Mult Rec. 46 (“This area is almost completely surrounded by the [UGB] and rural residential exception lands.”) *See also* Mult Rec.349. The evidence is that small parcels were not considered suitable to support long term agricultural operations. Mult Rec.29, 280, 351; *see* 250. There is no “obvious” way to conclude OAR 660-027-0060(2)(b) (c) or (d) are met. Please keep in mind that the court of appeals’ remand was for “further action consistent with the principles expressed in this opinion.” 261 Or App 265. There is nothing “consistent with the principles” expressed in that decision for LCDC to speculate about how the county and Metro would analyze the factors under a correct analysis or what it would decide.

Similarly, it is not obvious that “consideration of the pertinent factors yields a designation of all the land in Area 9D – including Barkers’ property – as rural reserve” on the natural reserves basis either. Much of the “evidence” the county cites is equivocal; various factors have low or medium rural reserves suitability and similarly many urban reserves factors had medium suitability. Further, the Barkers evidence at Exhibit 1 undermines the county’s evidence. Additionally, petitioners’ property is two (2) miles from Forest Park. LCDC Tr-Vol II, 144; MultCo-Vol.1, 289. It is in the foothills and flats, not in the Tualatin Mountains. ER-2; Transcript-Vol II, 144. Its slopes are between 3-20%. ER-7, 19; Rec-Item-21 582, 604. Petitioners’ property is not “steep” as the region used slopes of 25% or less as the benchmark for developable non-industrial lands. JER-878; Rec Vol.1

386, 403, 685; Vol.2, 76, 78, 97, 104, 119; Rec-Vol.14, 8245. Petitioners' property has no buttes, bluffs, islands or extensive wetlands. ER-10, Rec-Item-21-585.

The county's citation to Abbey Cr. or its "riparian" features is also unavailing, Abbey Cr. and its riparian features are already in the UGB and it and its related features have already been relied on by Metro to justify including them in the North Bethany UGB expansion. Rec-Transcript-Vol.II-144; *See* ER-7; Rec-Item-21, 585; ER-10, Rec-Item-21, 585; Mult Rec 2748, 2754 ("The inclusion of all of areas 84-87 allows Abby (sic) Creek and the adjoining riparian zone to form a natural buffer separating the Bethany area from the resource land and existing rural neighborhoods to the north, and it utilizes the power lines and also the Multnomah County line as clear demarcations along the expansion area's eastern border.") There is nothing obvious that the Barker property or any part of Area 9D must be made rural reserve to enable these same features that serve as a UGB buffer, justify rural reserves as a buffer. <sup>4</sup> There is certainly no "meaningful explanation" of why this would be the case. Further, the evidence relied on by the county discusses Metro's February 2007 "Natural Landscape Features Inventory" mapping (the only basis for a natural reserves rural reserves designation in the local decision) and explains "These maps do not include a large patch in the Kaiser Rd. area, nor a smaller patch east of Abbey Creek north fork as important regional habitat." Mult Rec. 2996. Ostensibly this is the area of petitioners' property that the evidence admits is not included on the Metro natural features mapping. The "sense of place" rationale standing alone is was adequate to meaningfully explain why all of Area 9D including the Barker property must be designated rural reserve under *all* the factors. It is impossible to conclude that the *only* outcome the evidence supports is that the Barker property be rural reserve.

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<sup>4</sup> As far as Barkers can tell, the Abbey Cr. Headwaters are nowhere near their property.

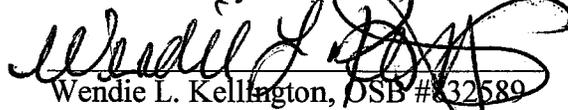
There is no evidence in the record that the county “obviously” “acknowledged the dissimilarities” of Area 9D and no “meaningful explanation” to be necessarily inferred for why all the land in Area D including the Barker property must only be rural reserve. Further, the county’s analysis was not “obviously” limited to the north and south of the Skyline/Cornelius Pass intersection at all. The evidence is undisputed that different areas were analyzed differently and that the court required analytical tie is absent. *See* Exh 4. For example, the county evaluated “800 acres” included the Barkers property as analytically distinct. Mult Rec 1887, 2658. Area 6 (including the Barkers property) was analyzed with Area 7b. Mult Rec 2565. The county used power line corridors in Area 6 and 7 as a break point, but there is confusion in the record about what power corridors were analyzed, the county citing a lack time. Mult Rec. 349; *see* Exh 4. Barkers property is south and east of one power line corridor, south and west of another one and some of the Barkers property is south of Germantown Rd. Mult Rec. ER-24; Rec-MultCo-Vol-1, 699; -697. All of Barkers property was nevertheless erroneously mapped as Area 6b. Mult Rec. 2656 (explaining Area 6 is divided from Area 7 “to the south by a power line corridor” and that Area 7 “*adjacent to N. Bethany*” ranked low under the rural reserves factors). Mult Rec. 2594. The Barkers property is adjacent to N. Bethany. Mult Rec. Accordingly, the Barkers property meets the description of “Area 7” which staff ranked as “low” for natural resource features. Mult Rec. 2594. Yet, Area 9D emerged from Area 6a and 6b, not Area 7. The evidence is that the Barkers property in Area 6b is “west of Abbey Cr.” Mult Rec. 2594 and was given “Medium/Low” suitability for urban reserves. Mult Rec. 2594. It “ranked ‘high’ efficiency for water, and includes area with both high and low efficiency for sewer service.” Mult Rec 2565. As noted in Barkers’ initial LCDC brief, sewers and wells are failing and there are 80 undeveloped lots capable of being developed with a rural residence.

The point is there is no coherent explanation, let alone one that is “obvious,” that the reserves factors were applied to all the land in Area 9D, and certainly not to the Barkers property. There is no meaningful explanation of why, if at all, the Barkers property must be designated “rural reserve”. The county’s evidence does not obviously explain anything.

LCDC may determine that the effect of the errors identified by the court significantly undermine and delay final designation of reserves “in their entirety”. LCDC can order the County to remove the Barkers property from Area 9D, and to leave the Barkers property undesignated. OAR 660-025-0160(7)(c).

LCDC’s may also acknowledge the county’s incorrect analysis affects the Multnomah County reserves “in their entirety” and remand for a new decision based on the proper application of the law. Such would direct the county to decide the reserves designation “on balance best achieves” the particular identified objectives of the reserves rules. OAR 660-027-005(2). The analysis required under the second option must consider the change to the regional balance of reserves following HB 4078 to determine what designation of Area 9D on balance best achieves specific reserves’ purposes described in OAR 660-027-005(2). Metro is wrong that HB 4078 repealed the “best achieves” standard. HB 4078 says no such thing. It is a well-established cannon of statutory interpretation that repeal is not to be inferred.

RESPECTFULLY SUBMITTED this 9th day of October, 2014.



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*Attorney for Petitioners Barkers Five*

Metro Land Use Meeting

January 20; Wednesday.

Commissioners

Thank you for hearing my testimony.

I am Sandy Baker...maiden name is Barker. Along with my 4 siblings we are 4<sup>th</sup> generation owners of 62 acres that sits just inside west Multnomah county, abutting Washington County and the current UGB.

The maps I have presented identifies my property and the suggested area.

I am advocating this area, the most southern area in 9D, be reconsidered as Urban Reserve or the very least undesignated.

The reasons are tied to the very FACTORS of SB 1011.

- PROXIMITY... abuts the current UGB. This is not just available land for the future, but a very committed plan designed for up to 15,000 people.
- Obvious Future infrastructure (the north Bethany expansion).
- Buildable
- Connectivity
- It's walkable.. with 2 future schools close to us.
- Can be designed to preserve and enhance natural ecological systems:
- Potential park access...we have 2 creeks on the lower parcel which would provide a valuable parkway and wildlife protection in this area, if urban.
- Transportation issues: Traffic on Kaiser and Germantown roads ...are already an issue

- This area is NOT foundation land.
- This area does not have irrigation rights. Which means we cannot sustain fair farming practices as in Washington co abutting us. We cannot participate in the CSA program. There is also the threat of an aquifer problem in this very area. Residents to the east have made this very clear.
- There is a large development above us along Skyline, future North Bethany south and rural residential to the east.
- There is the devaluation of property.

With this foresight of tremendous growth (north Bethany) bordering this area, you can logically plan a head to avoid problems and utilize the potential parkways, protection of streams and wildlife corridors.

Towards the end of the Mult CAC process there was a change in factor interpretations... we were subjected to the safe harbor factor in 0060 (4) which qualifies using the ODA map as rural reserve without justification. This is wrong. And does not need to be used.

This OGA line dividing important and conflicted land is an arbitrary line. How can half of this residential area be considered important and the other conflicted.

For the most part during this process, this finger of land was considered urban reserve.

Finally, I attended the Multnomah Co CAC meetings beginning in Oct 2008. It was my observation that the process was dominated by a particular CAC member with a hidden agenda that appeared to be, NO URBAN RESERVES in this part of Multnomah co (Westside)... this individual lives just east of my property on a small parcel less than 2 and a half acres on Germantown road. And, along with others, has been campaigning for many years in preparation to lock this area out from any urban consideration.

In response to a public record request, we received email communication which indicates a biased agenda that stained the process. The majority of material presented during this process, especially by this individual, dominated, manipulated, and was prejudice. This contradicts the proposed SB 1011.

This binder is the communication supporting my observations. This was a flawed process.

I am not a developer, I do not have a developer. I am a property owner who wants a fair and logical designation.

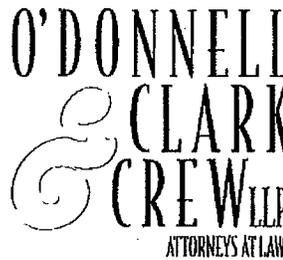
Thank you.

Sandy Baker

Personal note: we were born and raised on this property but were denied the right to build and raise our families due to the continued land use regulations. It has been in the family for 105 and used as pasture land only...our parents owned a bakery to support the family. We were a measure 37 and now a measure 49.



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December 16, 2009

*Via facsimile, electronic mail and US Mail*

Commissioner Tom Brian, Chair  
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Kathryn Harrington  
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Jeff Cogen  
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Dear Commissioners Brian, Lehan and Cogen, and Councilor Harrington:

We represent the Barker family with regards to their real property located within the southern portion of Map Area 6b of the Multnomah County Candidate Area Maps: Potential Urban and Rural Reserve Areas (the "Property") and which is currently being considered for designation as either "Urban Reserve" or "Rural Reserve." See attached map. This letter sets forth our clients' concerns as to the propriety of the Multnomah County Citizen Advisory Committee's ("MCAC") recommendation that the Property be designated as Rural Reserve and explains why the Property is best suited to be designated as Urban Reserve, or to be left with no designation at all. We urge you to consider the issues raised in this letter prior to making your determination.

1. **The Property clearly meets the applicable factors for designation as Urban Reserve set forth in OAR 660-027-0050**

In recommending that the Property be designated as Rural Reserve, the MCAC engaged in an outcome determinative process with the largely unconcealed goal of designating the Property as Rural Reserve. Contrary to this conclusion, the Property is perfectly suited to be designated as Urban Reserve. This determination is supported not only by the Property's characteristics, but also by a casual review of applicable maps which reveal that the entirety of the Property, except for a small area separating the northern portion of Map Area 6b from the southern portion is surrounded either by the edge of the Urban Growth Boundary (specifically the North Bethany expansion to the south), or areas that are currently developed as rural residential or recommended to be Urban Reserve. Given its location, there is no logical reason why the Property should be designated as Rural Reserve. Moreover, as discussed below, the Property clearly meets the

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applicable factors for designation as Urban Reserve set forth in OAR 660-027-0050 which requires that Metro "shall base its decision" on the designation of applicable property on consideration of these factors.

- (1) Can the Property be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments?

**YES** - The North Bethany expansion is located immediately to the south of the Property, which expansion will include substantial infrastructure development, new schools, etc. The Property is fully accessible on several sides as it is unencumbered by power lines, existing structures, and roadways. Additionally, the Property has excellent park access at both its upper and lower portions, and its slopes are suitable for development ranging from 3% to 20%, with a mid-range of 10% to 12% slope.

- (2) Does the Property have sufficient development capacity to support a healthy economy?

**YES** - The answer to (1), above, and several of the answers below support this conclusion. Specifically, the vast majority of the Property has more than sufficient capacity for development and will complement and support the North Bethany expansion.

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

**YES** - The Property abuts the Urban Growth Boundary, including the North Bethany expansion, which will include urban-level facilities and services, as well as at least two public schools which will be built within walking distance from much of the Property.

- (4) Can the Property be designed to be walkable and served with a well-connected systems of streets, bikeways, recreation trails, and public transit by appropriate services providers?

**YES** - Again, the property abuts the North Bethany expansion. Also, it is walkable and will be served both internally (upon development) and externally, via the surrounding neighborhoods, with a well-connected systems of streets,

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bikeways, recreation trails and public transit.

- (5) Can the Property be designed to preserve and enhance natural ecological systems?

**YES** - There are two creeks on the lower portion of the Property owned by our clients which is not only buildable, but would be a tremendous parkway to serve all of the surrounding neighborhoods.

- (6) Does the Property include sufficient land suitable for a range of needed housing types?

**YES** - As noted above, nearly the entire Property is suitable for development and the Property's characteristics are such that it is perfectly suitable for any needed housing type.

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

**YES** - The Property can easily be developed in a way to preserve natural landscape features included in Urban Reserve. It should be noted that the Property is actually better suited for development in this manner than the North Bethany expansion given its characteristics.

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

**YES** - As noted above, the Property is almost entirely surrounded by development and property that will be designated as Urban Reserve. There is no foundation agricultural property abutting, or even nearby, the Property. The Property easily meets this factor.

The answers to each of the questions above, which clearly support an Urban Reserve designation for the Property, have been documented in the public record and presented to the MCAC, which has simply ignored this information. The following section of this letter addresses each of the Rural Reserve factors and shows, equally clearly, that the Property is simply not suited to be designated as Rural Reserve.

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2. **The Property clearly does not meet the applicable factors for designation as Rural Reserve set forth in OAR 660-027-0060**

The factors to be considered for designation of property as Rural Reserve are set forth in OAR 660-027-0060(2) and (3). Inasmuch as the Property plainly is not suitable to "provide long-term protection to the agricultural industry or forest industry" due to its location abutting existing residential development and future large-scale development, the following will address only the factors set forth in OAR 660-027-0060(3)(b) - (h) pertaining to land intended to "protect important natural landscape features."

- (b) Is the Property subject to natural disasters or hazards such as floodplains, steep slopes, and areas subject to landslides?

**NO** - The Property is not subject to natural disasters or hazards (certainly not more than surrounding areas), has no steep slopes and is not subject to landslides. While there is a small floodplain toward the lower portion of the Property, this area is well-suited to serve as a parkway or other undeveloped recreational area in support of surrounding development, including the North Bethany expansion. Moreover, it should be noted that the steepest slope in the area is actually located inside the North Bethany expansion to the south of the Property.

- (c) Is the Property important fish, plant or wildlife habitat?

**NO** - While we are hesitant to consider any property as not being important to fish, plant or wildlife habitat, it simply must be noted that this Property is no different in this respect than the surrounding properties that have been allowed to be developed for residential purposes and that will be developed under the North Bethany expansion. To answer this question in the affirmative is not only unfair, but is completely self-serving to those owners of surrounding properties who have been allowed to develop their own property and want to deny the same right to neighboring property owners such as the owners of the Property.

- (d) Is the Property necessary to protect water quality or water quantity, such as streams, wetlands and riparian area?

**NO** - First, this Property is no different than surrounding properties upon which small creeks flow, including property inside the UGB. Moreover, Sec overlays have been removed from the Property allowing for additional areas to be developed within the Property. In short, the Property is not necessary to protect

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water quality or quantity.

- (e) Does the Property provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands?

**NO** - As noted throughout this letter, the Property is virtually indistinguishable from surrounding property that is within the Urban Growth Boundary, is residentially developed, and that will be designated as Urban Reserve. More specifically, the Property contains no buttes, bluffs, islands or extensive wetlands. In fact, the nearest "butte" is located inside the Urban Growth Boundary in the North Bethany expansion to the south.

- (f) Can the Property 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?

**NO** - As noted above, the nearest butte is located to the south of the Property inside the North Bethany expansion, and nothing located on the Property is suitable to serve as a natural boundary or buffer. In fact, a designation as Rural Reserve will be a completely arbitrary buffer and will in no way serve to reduce conflicts between urban and rural uses given that the Property is almost entirely surrounded by currently developed property, the North Bethany expansion, and property to be designated as Urban Reserve.

- (g) Does the Property provide for separation between cities?

**NO.**

- (h) Does the Property provide easy access to recreational opportunities in rural areas, such as rural trails and parks.

**NO.** In fact, the exact opposite is true. The Property provides easy access to recreational opportunities in urban areas, such as Forest Park and the North Bethany expansion. Arguments to the contrary simply ignore the geographic reality of the area.

As is evident from review of these factors, the Property is simply not suitable to be designated as Rural Reserve. Again, each of these answers can be, and was, fully documented and is in the public record having been presented to the MCAC.

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3. **The MCAC recommendation to designate the Property as Rural Reserve serves the personal interests of MCAC members and is not supported by the evidence in the record.**

The MCAC recommendation to designate the Property as Rural Reserve must not be accepted. As noted above, the Property meets each and every factor that must be considered by Metro to designate the Property as Urban Reserve, and does not meet any factor to be considered by Metro to designate the Property as Rural Reserve. A review of the actual recommendation for the Property by the MCAC, quoted below for your ease of reference, supports these conclusions:

West Hills South – Map Areas 6a and 6b: Designate this area as rural reserve. The area north of Skyline (6a) is important agricultural (forest) land, continues the landscape feature/wildlife corridor from area 5 into Forest Park, and ranks high on the sense of place factor. The area from Skyline Blvd. south to Germantown Rd., is also important agricultural land, and includes landscape features that form urban – rural edges along the south, east, and northwest borders of this area. These are the Abbey Creek drainage, the Powerlines right-of-way, and the Rock Creek drainage. While this area contains approximately 800 acres of land with moderately low suitability for urban use, the area also qualifies for rural reserve designation as important agricultural land within 3 miles of the UGB. The urban deficiencies in this area are important – lack of governance, transportation system costs, etc., indicating that rural reserve is the better designation.

This recommendation is rife with unsupported and subjective conclusory statements. For example, the recommendation states that the Property is of “moderately low suitability for urban use.” As noted above this is simply false, particularly in light of the irrefutable fact that the Property is surrounded nearly entirely by developed property, the Urban Growth Boundary, and property that will be designated as Urban Reserve.

Another example is the statement that the “area qualifies for rural reserve designation as important agricultural land...” Again, as the recommendation relates to the Property, this statement is false. The property immediately adjacent to the Property is not agricultural property.<sup>1</sup> Finally, to state that the Property has “urban deficiencies” ignores the location of the Property next to the North Bethany expansion which will bring substantial improvements to the

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<sup>1</sup>In fact, the property immediately to the west of the Property is recommended to remain un-designated, which recommendation was made by the MCAC and staff in direct opposition to a directive by Nora Curtis, of Washington County Clean Water Services, who indicated that the map upon which the recommendation relied was not to be used for such purposes.

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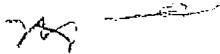
infrastructure, as well as the residential development to the east of the Property.

While we can only speculate as to the specific reasons why the MCAC ignored the volumes of information presented to them, our review of public records produced by the MCAC reveals an outcome driven process led and manipulated by the Chair of the MCAC who owns property immediately to the east of the Property. Simply stated, designating the Property as Rural Reserve will provide the Chair, and her neighbors, with their own personal buffer between the North Bethany expansion and other property to be designated as Urban Reserve, despite the clear evidence contradicting a Rural Reserve designation. The manipulation of this process directly contradicts the direction to, and agreement by, MCAC members to "participate in a way that reflects a broad and balanced range of community interests rather than individual views."

As you prepare to make your recommendation as to which property to designate as Urban Reserve and Rural Reserve, we respectfully request that you consider the contents of this letter as it relates to designation of the Property, and also consider the devastating impact that a Rural Reserve designation will have on all property owners who own such property. As noted above, even a casual glance at the map shows very clearly that the Property is not in any way suited to be designated as Rural Reserve.

In the event that the Property is ultimately designated as Rural Reserve, and in light of the skewed process undertaken by the MCAC and public records reviewed relating to that process, our clients are prepared to consider all legal options and remedies available to them under state and federal law.

Sincerely,



Matthew D. Lowe

/mdl

Enclosure

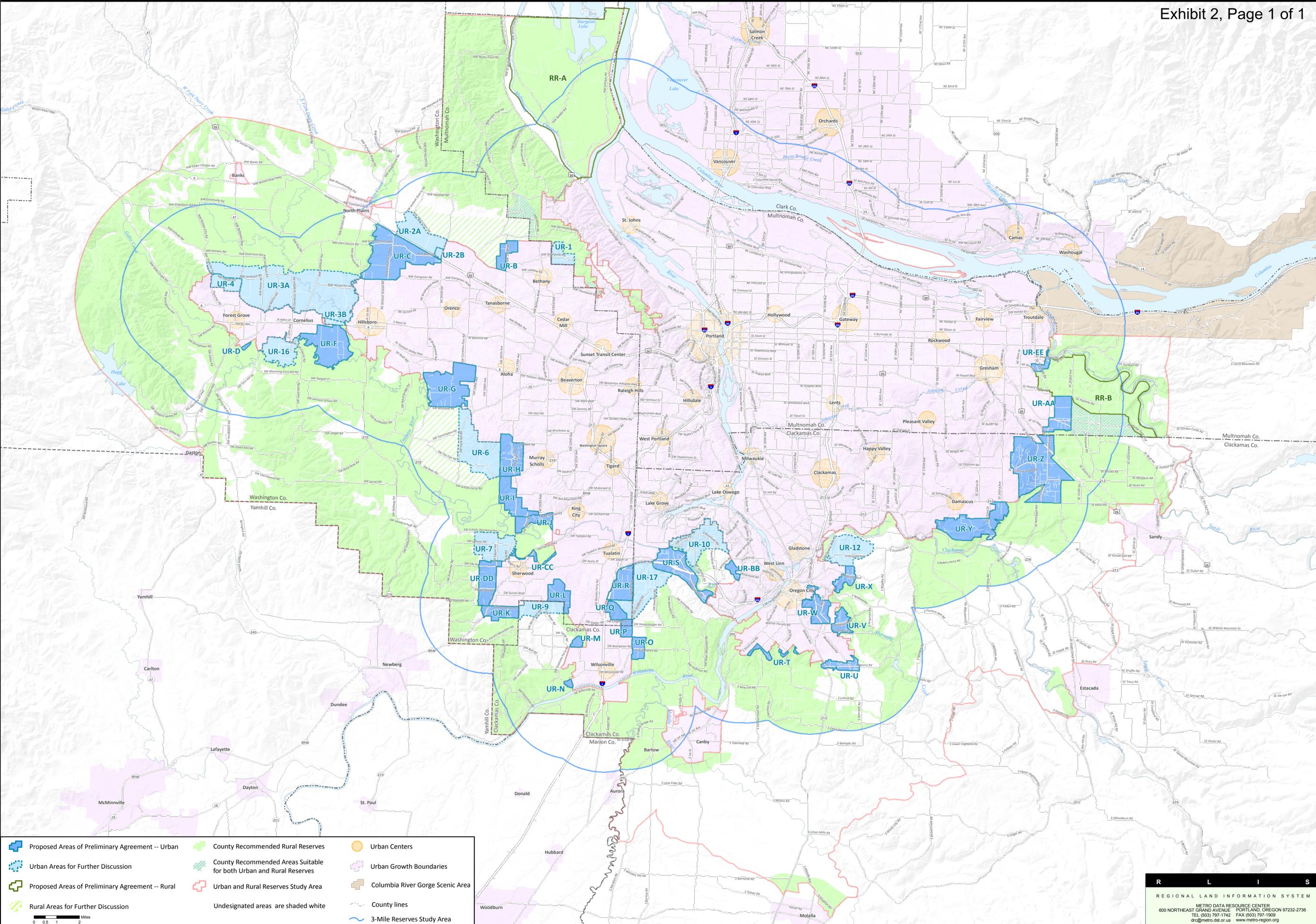
cc: Metro Council (*via electronic transmission*)  
Clients (*via electronic transmission*)



12/03/09

# Core 4 Proposed Areas of Preliminary Agreement and Areas for Further Discussion

Exhibit 2, Page 1 of 1



- |  |   |                                  |
|--|---|----------------------------------|
| Proposed Areas of Preliminary Agreement -- Urban | County Recommended Rural Reserves                                   | Urban Centers                    |
| Urban Areas for Further Discussion               | County Recommended Areas Suitable for both Urban and Rural Reserves | Urban Growth Boundaries          |
| Proposed Areas of Preliminary Agreement -- Rural | Urban and Rural Reserves Study Area                                 | Columbia River Gorge Scenic Area |
| Rural Areas for Further Discussion               | Undesignated areas are shaded white                                 | County lines                     |
|  |   | 3-Mile Reserves Study Area       |

**R L I S**  
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 drg@metro.dst.or.us www.metro-region.org

Legend

- Columbia\_River\_Gorge\_Bdy
- UGB\_3\_mile\_buffer
- study\_area\_boundary
- County\_Line
- UGB
- Taxlots
- MUA20 Zone
- Open Space Acquisitions
- Exception\_Land
- Resource\_Land

0 0.5 1 Miles

