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October 8, 2010

LAND CONSERVATION
AND DEVELOPMENT

4:30 Smith

To: Land Conservation and Development Commission, John Van Landingham, Chair
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: Portland Metro Area Urban and Rural Reserves Designations: Exceptions to the
Director's Report

Chair VanLandingham and Members of the Commission,

We filed valid objections to the Portland Metro Area Urban and Rural Reserves Designations. The Department issued their Report, including responses to objections, on September 28, 2010.

Pursuant to OAR 660-025-0160(4), we have the following exceptions to the Report. In addition to the issues noted herein, we also hereby renew all issues and points raised in our original objections.

Because the findings in Metro Ordinance No. 10-1238A and Washington County Ordinance 733 are almost identical, we will refer to the Metro decisions, where applicable. References to "the County" or "County" mean Washington County.

The region has designated enough urban reserves to put us at the very tip top of the middle third of the 50 year projected need (assuming you accept Metro's projections). This, in a process where everyone involved felt strongly that we should stay with a 40 year supply of urban reserves due to the high level of uncertainty about our ability to forecast so far into the future. If you decide to remand some urban reserves and recommend either rural reserves or leaving areas undesignated, I suspect we would still be comfortably in the middle third of the 50 year projected regional need. So I hope you will feel free to remand some urban reserves if you are persuaded that some decisions need deeper consideration.

We hope that the Commission will address several important issues in its review of the Urban and Rural Reserves Designations:

- To credibly analyze urban reserves, the following elements should be evaluated and weighed when analyzing the urban reserve factors:
 - Urban reserve edges are a critical consideration
 - Size, shape, and location
 - Adjacent and nearby farm and forest lands and natural features
 - Existing road network
 - Potential demand for new roads
 - Types of wildlife documented in natural features, and their compatibility with urban development. A frog that is unlikely to stray from a pond, for example, is less likely to be harmed by nearby urban development.
- Your decisions will establish standards for future urban and rural reserves designations in the Metro region and possibly elsewhere in the state. We hope that you will require these decisions to meet a higher standard than the Department's Report does. Many elements of the decision that were not supported by adequate credible evidence in the findings were supported by the Department, even when they were challenged in Objections.
 - We hope you will hold the region to the high standards set by the work of Clackamas and Multnomah Counties, where urban reserve candidate areas were carefully and thoroughly evaluated, and the factors have been analyzed for specific areas with specific edges. We think the Washington County analysis of some urban reserves had significant flaws that need to be addressed and corrected.

The Multnomah County Reserves Citizen Advisory Committee (all members were citizens, Carol Chesarek served on that committee) reviewed and rated all factors for all of our reserve candidate areas. The only change that the Multnomah County Board of Commissioners made to our urban reserve recommendations was to shift one edge of the East of Gresham urban reserve from the edge of the Johnson Creek watershed to the edge of the Johnson Creek floodplain. Along the other edges no natural features were available, so the CAC debated whether to use property lines or roads for the other two rural edges, settling on roads. During our discussions about the East of Gresham urban reserve candidate, members of the committee discussed and carefully considered where the urban reserve edges should be located, examined the existing road network (which offers a pretty good grid), the value of adjacent and nearby farmland, and potential for high capacity transit service, among other things.

Clackamas County also performed a very detailed and thoughtful analysis of all their reserve candidate areas, and their advisory committee included a significant number (about 6) of citizens. We think their reserves decisions were solid.

General comments about the Department's Report.

Scale of Review and its applicability to Washington County urban reserves

The Department's Report draws contradictory conclusions about whether analysis of the urban reserve factors requires specific urban reserves with specific edges, or not.

The Department has correctly concluded that the urban reserve factors are "dependent on natural and economic geography, just as the rural reserve factors are,"¹ and that "locating urban reserve boundaries requires a higher level of precision than does locating rural reserve boundaries."²

But in other places the report argues for a different conclusion:

"A second general question is the appropriate scale of analysis for Metro to employ in deciding what lands to designate as urban reserves. OAR 660-027-0050, the factors for urban reserves, and OAR 660-027-0060 for rural reserves refer to identification and selection of "land," and some of the individual factors in these rules mention characteristics of "the area." None of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions."³

We support the Departments conclusions that urban reserve factors are location dependent and that defining urban reserve boundaries requires a high level of precision. We disagree with any argument that the urban reserve factors do not need to be analyzed for specific urban reserve edges.

While the text of the factors does not explicitly require a parcel-specific analysis, a thoughtful and thorough analysis of some urban reserve factors does require parcel specific analysis for reserve boundary location decisions. The Department's argument that none of the urban reserve factors requires a detailed analysis of reserve boundaries would render those factors meaningless.

We are not suggesting that a parcel-by-parcel analysis of the factors is required for all parcels in the candidate urban reserve, rather that the factors must be analyzed for specific areas with specific edges, and that decisions about where to locate those edges must be made with the urban reserve factors in mind.

¹ "Urban reserves also are to reflect place-based needs of the region in terms of future livability and efficiency of public facilities and services. These characteristics are reflected both in the Commission's rules defining the terms "urban reserves" and "livable communities" and in the legislature's establishment of the factors that Metro must consider for urban reserves, which include the "efficient use of *existing* infrastructure * * *," lands that can be provided with cost-effective public facilities and services, lands that can be designed to be walkable and served by well-connected streets, and lands where development can be designed to preserve and enhance natural ecological systems. ORS 195.145(5). These are all factors that are dependent on natural and economic geography, just as the rural reserve factors are." Department's Report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 52.

² Department's report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 19.

³ Department's report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. p. 19; Subsection V.B.2

A credible analysis of Factor 660-027-0050(8),⁴ for example, requires considering:

- the road network around the urban reserve candidate area,
- whether existing roads through farm, forest, and natural features areas are likely to experience a significant increase in urban traffic,
- whether new roads through nearby rural areas are likely to be needed,
- whether there is a natural feature along an edge that can serve as a buffers between urban and rural uses, and
- other location specific information.

A credible evaluation of this factor for an urban reserve candidate area requires accurate definition of the candidate area's edges.

Other factors, such as OAR 660-027-0050 (1), (3), (4), (5), (7)⁵ also need to be evaluated relative to specific locations and geography. Analysis of these factors should consider, at a minimum, the surrounding road network (factor 4), and natural features inside and outside the urban reserve candidate area (factors 5, 7, and 8).

The types of natural features (for example wide rivers, tall cliffs, or floodplains) should be considered if those features might limit provision of infrastructure (factor 1) or emergency services (factor 3), or if they limit connectivity (factor 4). The shape and location of an urban reserve may also affect the efficiency of infrastructure provision (factor (1)).

The Oregon Department of Agriculture (ODA) report assessing metro area farmlands emphasizes the importance of considering the shape of prospective urban expansion areas:

"Expansions of UGBs need to better take into account the impact of the planned development, including the configuration (footprint) of the expansion, on area agriculture. For example, UGB expansions should not create protrusions or fingers of urban land into agricultural lands."⁶

The report also makes it clear that both buffers (positive) and urban traffic (negative) have important effects on agricultural practices.⁷ Buffers and urban traffic are also location specific considerations and must be evaluated for specific sites and their particular edges.

⁴ OAR 660-027-0050 (8): "Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves."

⁵ OAR 660-027-0050 (1) Can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments;

(4) Can be designed to be walkable and served with a well-connected system of streets, bikeways, recreation trails and public transit by appropriate service providers;

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

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

⁶ Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, ODA, January 2007. page 63

⁷ "In the analysis section of this report a good deal of discussion focuses on edges and buffers between agricultural lands and urban lands. Where good edges currently exist, strong consideration

The ODA report also expresses concern that these issues are often ignored or obscured when evaluating compliance with Goal 14:

“One of the factors that Goal 14 and the implementing rules call for when considering changes to an UGB is the compatibility of the proposed urban uses with nearby agricultural (and forest) activities occurring on farm and forest land located outside the UGB. The Goal is one of four factors to be “balanced” in the process. This balancing has tended to obscure or ignore the compatibility factor.”⁸

The Great Communities report suggests asking “What natural features create barriers or logical boundaries?”⁹ It calls floodplains a “natural ordering element.”¹⁰

Further, the Department’s argument that “None of the factors for selecting urban or rural reserves, or any other provision of the applicable statutes or rules, require a parcel-specific analysis for reserve-boundary location decisions”¹¹ fails to consider that some individual parcels may be quite large (over 100 acres), and that inclusion or exclusion of a large parcel could significantly affect the characteristics of an urban reserve candidate area (especially if it is located along an edge) and thus alter the analysis of the urban reserve factors for that area.

So the Department has correctly concluded that the urban reserve factors are “dependent on natural and economic geography, just as the rural reserve factors are,”¹² and that “locating

needs to be given to making them permanent.” Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, ODA, January 2007. page 61

“Good agricultural buffers provide situations that protect or moderate adverse impacts between agriculture and other land uses not considered to be generally compatible with agricultural operations and practices.” Ibid. page 61

The department is concerned about the impacts of urban commuter traffic on roads cutting through metro core agricultural areas. Many times it is difficult at best to move farm machinery between fields or to move agricultural products from the farm to the market.” Ibid. page 49

“There are problems with movement of farm equipment between fields due to both area and cut-through urban traffic.” Ibid. page 49 (Bethany/West Multnomah subregion)

“Recreational use and its associated traffic can pose problems to agricultural operations but it is not considered a fatal limiting factor.” Ibid. page 56 (Sauvie Island subregion)

⁸ Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, ODA, January 2007. page 63

⁹ Great Communities Final Report, Cogan Owens Cogan and others, December 2006. Page 12.

¹⁰ Ibid.

¹¹ Department’s report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. p. 19; Subsection V.B.2

¹² “Urban reserves also are to reflect place-based needs of the region in terms of future livability and efficiency of public facilities and services. These characteristics are reflected both in the Commission’s rules defining the terms “urban reserves” and “livable communities” and in the legislature’s establishment of the factors that Metro must consider for urban reserves, which include the “efficient use of *existing* infrastructure * * *,” lands that can be provided with cost-effective public facilities and services, lands that can be designed to be walkable and served by well-connected streets, and lands

urban reserve boundaries requires a higher level of precision than does locating rural reserve boundaries.”¹³

Why does this matter?

The Pre-Qualifying Concept Plans (PWCPs) created for Washington County analyzed the urban reserve factors for urban reserve candidate areas that were often much, much larger than the resulting urban reserves (see attached maps that compare these areas).

Because a thorough analysis of these urban reserve factors requires consideration of these location specific and geography specific elements, a candidate area’s size, shape, location, and especially the edges must all be known. It is not acceptable to evaluate the urban reserve factors for a PQCP reserve candidate area edge that is more than a mile away from the designated urban reserve’s actual edge.

So these Pre-Qualified Concept Plan analyses are not a valid for many urban reserves in Washington County, including the urban reserves 7B¹⁴ (Forest Grove North), 7I¹⁵ (Cornelius North), 8B¹⁶ (Shute Road Interchange), and 8C¹⁷ (Bethany West). These four urban reserve designations also relied heavily on these PQCP analyses, so they should be remanded for further analysis and consideration for re-designation as rural reserves.

We also urge you to note that Clackamas and Multnomah Counties both considered and analyzed potential reserve candidate areas that were generally smaller than those analyzed by Washington County’s Pre-Qualified Concept Plans, and that those two counties carefully considered, on a parcel-by-parcel basis, where the edges of their urban reserves should be located. This level of analysis is not only possible, it is what a reasonable person would require.

where development can be designed to preserve and enhance natural ecological systems. ORS 195.145(5). These are all factors that are dependent on natural and economic geography, just as the rural reserve factors are.” Department’s Report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 52.

¹³ Department’s report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 19.

¹⁴ Forest Grove PQCP, WashCo Rec. 3089-3098

¹⁵ Cornelius PQCP, WashCo Rec. 3071-3075

¹⁶ Hillsboro North PQCP, WashCo Rec. 3113-3137

¹⁷ Beaverton North PQCP, WashCo Rec. at 3062

Washington County GIS analysis

Mark Twain said there are “Lies, damned lies, and statistics.”

Washington County’s urban reserve decisions were also based, in part, on a complicated GIS analysis that weighted different criteria to generate color coded reserves suitability maps.

	<u>Weight¹⁸</u>
Distance to the UGB	25%
Distance to a city	25%
Slope	15%
Transportation (various)	25%
Mineral & Aggregate area	10%

So it appears that land with less than 7% slope within ¼ mile of a city would receive least a 75% suitability score even if it was separated from the city by a 500’ cliff. The result was a ring of deep blue color (indicating high urban reserve suitability) around virtually all of the UGB in Washington County. This analysis appeared to be designed so that the county could use the results to justify an urban reserve designation anywhere near the existing UGB.

Working through relatively the urban reserve factors by hand, using maps, infrastructure suitability ratings, and aerial photos, the way Clackamas and Multnomah County’s advisory committees did, yields a much more holistic analysis of the urban reserve factors.

Peterkort Objections

We objected to Metro’s decision to add Tax Lot 1 N1 18, Lot 100 (hereafter known as “the Peterkort property”) to urban reserve Area 8C (Bethany West/PCC Rock Creek).¹⁹

Our proposed remedy is for the Commission to remand the urban reserve designation of the subject property to Metro and Washington County, and to direct the county to apply a rural reserve designation instead.

“c. Department Analysis and Recommendations. The Department recommends the Commission deny these objections. When identifying and selecting lands for designation as urban reserves under OAR 660-027-0050, Metro must base its decision on consideration of whether land proposed for designation as urban reserve, alone or in conjunction with land inside the UGB, addresses eight different factors. The record indicates that these factors have been considered by Metro. The PQCP analysis included a detailed review of the initial planning area and provided findings

¹⁸ Urban and Rural Reserves Planning in Washington County, County staff, February 9, 2009. page 5

¹⁹ Chesarek and Amabisca Objection, July 14, 2010, page 2

demonstrating conformance with the "Factors for Designation of Lands as Urban Reserves". WC Rec. at p. 3062.²⁰

Response:

The Department's Report simply asserts that the factors have been analyzed in the Beaverton PQCP and considered by Metro, and that all of our concerns and the urban reserve factors have been addressed in the findings, without addressing the substantive evidence to the contrary in our Objection and in the record.

Our Objection 2 analyzes to each Urban Reserve factor, identifying numerous flaws in Metro's logic and identifies deficiencies in the evidence in the record.²¹ Rather than repeating all of those flaws and all of our arguments here, we will focus on just a few examples.

Metro's analysis of the Peterkort property for OAR 660-027-0050(1) says "Future development of this site would ... ultimately aid in funding long-term infrastructure construction and maintenance."²² But there is no substantive evidence in the record to support this claim. The only evidence provided by Washington County and Metro that we can find related to this assertion says: "A final financing plan for North Bethany did not include funding projections from the lands within Urban Reserve Area C; however, a new neighborhood could provide an opportunity for additional funding to support the provision of infrastructure such as Road A."²³ But this statement that the new neighborhood "could provide an opportunity" is clearly speculative and not conclusive, and there are no further details supplied.

Urban development of the Peterkort property appears likely trigger a need for substantial upgrades to nearby rural roads and intersections – expensive upgrades which could quickly overwhelm the funding capacity of a developable area of only 77 acres. Testimony submitted to Washington County²⁴ explains that the North Bethany Transportation funding plan assumes that development of the Peterkort property is expected to pay for ½ of the "Road A bridge" across Rock Creek. Half of the bridge cost is \$9,793,500²⁵. If we assume residential development of 15 du/acre, and that the property will net about 50 of the developable acres and 750 homes, then we can calculate that 750 homes would each need to pay \$13,058 towards just the cost of this bridge.

A reasonable person would not conclude that "future development of this site would ... ultimately aid in funding long-term infrastructure construction and maintenance" based solely on the limited credible evidence in the record, they would require the county to do further analysis to demonstrate an overall net cost benefit from the Peterkort development.

²⁰ Department's Report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 96.

²¹ Chesarek and Amabisca Objection, July 14, 2010, page 10

²² Metro Rec. at 69

²³ Metro record page 80

²⁴ Carol Chesarek letter to Washington County Board of Commissioners, May 11, 2010

²⁵ Carol Chesarek letter to Washington County Board of Commissioners, May 11, 2010

For our second example, the analysis for OAR 660-027-0050(5) asserts that "limited opportunities for wetlands mitigation are available in this area of the county."²⁶ There is no evidence offered to support this claim. Maps submitted into the record²⁷ show extensive floodplains and riparian areas in the immediate vicinity, providing substantial contradictory evidence to Metro's claim.

Metro's summary findings provide an analysis of Urban Reserve Factors 5 through 8 that says:

"The natural ecological systems within the segments of Rock Creek and associated floodplain on this site will be protected and potentially enhanced under the existing regulatory framework in Washington County, as well as through the application of Special Concept Plan Area requirements. These requirements state that future concept and community planning of the area must take into account Metro's "Integrating Habitats" program to ensure that future development protects natural features."²⁸

We still find no evidence provided by Washington County in the record to explain what the "Integrating Habitats" approach to planning and development is, or that defines its requirements, or that demonstrates any benefits of the "approach". It is not our responsibility to demonstrate that this "approach" is inadequate, it is Metro's responsibility to demonstrate that application of this "approach" will add value and "protect natural features." We have submitted evidence²⁹ showing that "Integrating Habitats" was a design competition that used Metro's Title 13 as its standard for environmental protections. Washington County is already required to comply with Title 13, so the proposed planning and development "approach" does not add any value (except perhaps to enable wishful thinking).

Many of the other "benefits" of developing the Peterkort property (such as "a major opportunity to link trails,"³⁰ and "siting a gravity flow sewer line"³¹) that are suggested in Metro's findings for the urban reserve factors do not depend on an Urban Reserve designation, they can be provided in a Rural Reserve. Therefore these "benefits" that do not depend on an urban reserve designation do not support the urban reserve designation, further reducing the credible evidence that supports the decision.

Our Objection documents many elements in Metro's analysis of the urban reserve factors allege benefits that do not depend on an urban reserve designation. A reasonable person would not conclude, based on evidence in the record, that these elements of the analysis support an urban reserve designation. Because these findings are substantially flawed, the findings do not support Metro's urban reserve designation.

Thus, the Department's assertion that "the county and Metro made additional findings specific to this property addressing each of the objectors' concerns and all the urban reserve factors in OAR 660-027-0050. Metro Rec. at 68" is not supported by substantial evidence in the record and fails to consider contradictory evidence offered in our Objection. Thus the

²⁶ Metro record page 70

²⁷ Chesarek and Amabisca Objection, July 14, 2010. Exhibit 3

²⁸ Metro record page 93

²⁹ WashCo Rec. 9442

³⁰ Metro record page 70

³¹ Metro record page 69

Department's recommendation to reject our Objection is wrong, and the Commission should sustain our Objections.

Further, the Bethany West urban reserve is a small portion of the PQCP analyzed by the City of Beaverton.³² As noted above³³, we agree with the Department that the urban reserve factors are "dependent on natural and economic geography, just as the rural reserve factors are,"³⁴ and that "locating urban reserve boundaries requires a higher level of precision than does locating rural reserve boundaries."³⁵

Because the urban reserve factors are location dependent, they need to be analyzed for specific urban reserve areas and specific urban reserve edges. Conclusions reached about the large Beaverton North PQCP area cannot be assumed to apply to the much smaller designated urban reserve because the original edges that were analyzed are a significant distance from the designated ones, so the analysis of the urban reserve factors in the Beaverton North PQCP is not a valid basis for the decision.

The PQCP analysis is not directly applicable to this urban reserve candidate area; so the findings cited are not in substantially in conformance with OAR 660-027-0050, and do not form a valid basis for an urban reserve designation.

Our Objection also demonstrates that the Peterkort portion of the designated urban reserve would provides a very small number of developable acres (77) on the north side of a broad floodplain that would lead to a small urban island with limited connectivity to nearby urban areas. This urban reserve decision is likely to spoil the excellent buffer provided by the broad Rock Creek floodplain, and leaves no buffer at all between the Peterkort property and the prime farmland on its north side.³⁶

Because the decision was substantially based on faulty analysis, it should be remanded.

Objection 1: Designating the Peterkort property Urban Reserves Misapplies Urban Reserve Factors of OAR 660-027-0050, Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

³² Beaverton North PQCP, WashCo Rec. at 3062

³³ Ref. page 3 of this Exception.

³⁴ "Urban reserves also are to reflect place-based needs of the region in terms of future livability and efficiency of public facilities and services. These characteristics are reflected both in the Commission's rules defining the terms "urban reserves" and "livable communities" and in the legislature's establishment of the factors that Metro must consider for urban reserves, which include the "efficient use of *existing* infrastructure * * *," lands that can be provided with cost-effective public facilities and services, lands that can be designed to be walkable and served by well-connected streets, and lands where development can be designed to preserve and enhance natural ecological systems. ORS 195.145(5). These are all factors that are dependent on natural and economic geography, just as the rural reserve factors are." Department's Report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCDC, September 28, 2010. page 52.

³⁵ Department's report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCDC, September 28, 2010. page 19.

³⁶ Chesarek and Amabisca Objection, July 14, 2010.

“Regarding the first objection, OAR 660-027-0050 does not require that Metro compare the cost of installing facilities for both urban and rural designations, or that Metro demonstrate how local governments will finance future road and infrastructure improvements. Nor do the rules require that Metro determine which designation is more compatible for wetland mitigation and which designation provides better protection of wildlife.” Page 96

Response:

We do not allege that OAR 660-027-0050 requires Metro to perform the comparative analysis quoted here from the Department’s Report.

Rather, we assert that Metro’s decision to include the Peterkort property in the Bethany West urban reserve relies on statements which a reasonable person would not accept at face value. A reasonable person would ask for the added analysis of infrastructure financing, wetland mitigation options, etc. that are suggested in our Objection and examine the results before concluding that there is substantial credible evidence in the record to support Metro’s decision.

Metro’s decision says “The following key points support inclusion of the Peterkort site within Urban Reserves:

1. **Transportation:** Provides urban land for public ROW and supports the development of a key transportation system link serving the future development of the North Bethany Community.
2. **Sewer system connectivity:** The optimal alignment for a primary gravity flow sewer trunk line to serve North Bethany crosses the Peterkort property. **NOTE: construction of a pump station-based option could delay construction of sanitary sewer services to the North Bethany area by at least three years.**
3. **Wetlands mitigation:** The sewer plan identifies roughly 46 acres of valuable opportunities on the Peterkort property which can be used to mitigate wetland impacts caused by public infrastructure development in North Bethany.
4. **Enhancement of Natural Areas Program Target Area:** Lands on the Peterkort site will support connections to important regional natural areas. WashCo Rec. 8533-8554.”³⁷

The findings do not explain how these “key points” relate to the urban reserve factors OAR 660-027-0050, so they cannot be used to support the urban reserve decision.

Further, our Objection analyzes each of these 4 key points³⁸ and points out substantive shortcomings in both the evidence in the record and in the logic relied upon to reach the conclusions in Metro’s findings.

³⁷ Metro Record page 68-69

³⁸ Chesarek and Amabisca Objection, July 14, 2010. Exhibit 3

To logically conclude that the Metro decision is sound, a reasonable person would require Metro to perform the comparative analysis suggested in our Objection. There is inadequate credible evidence in the record to show that Metro explored these options, therefore we conclude that "key points" that the urban reserve designation was based on was unsound, and the decision itself was substantially flawed.

Metro's analysis of OAR 660-027-0050(5) "Can be designed to preserve and enhance natural ecological systems" says:

"... The entirety of Urban Reserve Area 8C would be subject to certain requirements identified in the county's Rural/Natural Resource Plan Policy 29. This area, called out as Special Concept Plan Area C, would require the implementation of Metro's "Integrating Habitats" program in the concept and community planning of the reserve area. The "Integrating Habitats" program utilizes design principles to improve water quality and provide wildlife habitat."³⁹

The Metro analysis of the urban reserve factors also fails to consider and address the the Core 4 Technical Team's finding that most of the Peterkort property was found to be unsuitable for an urban transportation system.⁴⁰ This can be seen in the transportation suitability maps provided.

We also want to remind you of that ODFW opposed⁴¹ the North Bethany sewer trunk line through the Peterkort property due to adverse impacts on "sensitive priority habitat," including wildlife habitat fragmentation and harm due to additional human intrusion into the area. Development of the Peterkort property would greatly increase the human intrusion into this sensitive habitat area, far beyond intrusions due to a sewer trunk line.

ODFW also documented⁴² the presence of Northern Red Legged Frogs in this area. These frogs use extensive upland areas, up to 300 yards from ponds when they are not breeding. According to the City of Portland's Forest Park Natural Resources Management Plan⁴³, these frogs are killed by vehicle traffic on roads, and amphibians can be killed by foot and bicycle traffic on trails as well. These frogs are highly terrestrial, using areas up to 300 yards from standing water during non-breeding season. These frogs are declining seriously in the Willamette Valley, and are no longer found in areas where they were once abundant.⁴⁴

Objection 2: Designating the Peterkort property Urban Reserves fails to satisfy OAR 660-027-0040(1) that both the urban and rural reserve factors must be applied "concurrently

³⁹ Metro record page 70

⁴⁰ February 11, 2009 memo to the Core 4 and Reserves Steering Committee from the Core 4 Technical Team titled "Preliminary Analysis of Providing Urban Level Transportation Service Within Reserves Study Area." pages 5-7

⁴¹ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, "ODFW Comments", p 8-11.

⁴² *ibid.*, p 10.

⁴³ *Ibid.* See Exhibit 2 in Attachments, "From the "Forest Park Natural Resources Management Plan: Portland Parks and Recreation, Bureau of Planning, Adopted by City Council February 8, 1995.", p 2.

⁴⁴ "Northern Red-Legged Frog Survey" from Carol Chesarek letter to Multnomah County Board of Commissioners, May 6, 2010, Re: Urban and Rural Reserves. See Exhibit 4 in Attachments.

and in coordination with one another.” , Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

“Regarding the second objection, the Department addresses OAR 660-027-0040(10) because it contains language quoted in the objection that is not contained in the cited rule (OAR 660-027-0040(1)). As explained above, OAR 660-027-0040(10) does not require both urban and rural reserve factors to be considered for each and every property or area.

The rule states: Metro and any county that enters into an agreement with Metro under this division shall apply the factors in OAR 660-027-0050 and 660-027-0060 concurrently and in coordination with one another. Metro and those counties that lie partially within Metro with which Metro enters into an agreement shall adopt a single, joint set of findings of fact, statements of reasons and conclusions explaining why areas were chosen as urban or rural reserves, how these designations achieve the objective stated in OAR 660-027-005(2), and the factual and policy basis for the estimated land supply determined under section (2) of this rule.

The factors for designation urban reserves in OAR 660-027-0050 and those for rural reserves in OAR 660-027-0060 state that, when identifying and selecting lands for a given designation, a county shall, “...indicate which land was considered...” There is no indication in the text or context of the rule that the Commission intended that both urban and rural reserve factors must be considered simultaneously for each individual property.

Metro and Washington County have provided findings addressing the eight factors under OAR 660-027-0050. Metro Rec. at p. 56, WC Rec. at p. 3062. The objectors disagree with the jurisdictions’ findings and conclusions, but all the requirements of OAR 660-027-0040(10) have been completed by Metro and Washington County with regards to the Peterkort property.”⁴⁵

Response:

The Department is correct that we meant to cite OAR 660-027-0040(10) in our Objection.

But we continue to disagree with the Department’s conclusion that the rule does not require that both the urban and rural reserve factors must be applied “concurrently and in coordination with one another.”

Concurrent consideration of the urban and rural reserve factors is required near the edges of URs because 660-027-0070(3) generally does not allow new uses (including new roads) in Rural Reserves. The transportation network needed to serve an urban reserve candidate area could depend on construction of new roads or other transportation facilities through rural reserves. If the urban and rural reserve factors are not considered concurrently, this dependency might not be noticed before reserves were designated. Concurrent

⁴⁵ Department’s report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. pages 96-97

consideration of both sets of factors could lead Metro to decide to alter the shape or size of an urban reserve in order to accommodate needed transportation infrastructure within the existing urban area to eliminate a need for a new road through a nearby rural reserve.

Also, the adverse effects of new roads and added traffic on existing roads through resources lands must also be evaluated for OAR 660-027-0050(8).

While not explicitly stated as a requirement, a credible and thorough analysis of urban reserve factors for each candidate area implies a need for concurrent consideration of both sets of factors so that these interdependencies can be examined before reserves are designated.

We also believe that concurrent consideration of the urban and rural reserve factors might remind Metro and the Counties of the importance of preserving large blocks of agricultural land, and of the important service that natural features can provide as a buffer between urban and rural uses, which should lead them to protect more of these valuable features in rural reserves instead of including them in urban reserves.

Because Metro failed to concurrently consider the urban and rural reserve factors for the Peterkort property, the decision to designate the property as an urban reserve is flawed and should be remanded by the Commission.

Objection 3: Designating the Peterkort property as Urban Reserves fails to satisfy Goal 2, Evaluation of alternative courses of action, Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

“Regarding the third objection, as noted in the analysis of the first objection, OAR 660-027-0050 requires that Metro base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB, addressing eight factors. The record indicates that these factors have been considered by Metro. OAR 660-027-0050 does not require that Metro perform a comparative analysis of wetland mitigation sites, the location of roads, or sewer lines or determine that the site does not meet the rural reserve factors, in order to be designated an urban reserve.”⁴⁶

Response:

We do not allege that OAR 660-027-0050 requires Metro to perform the comparative analysis suggested in the Department’s Report.

Metro’s decision details four “key points” that support their decision to include the Peterkort property in the Bethany West urban reserve.⁴⁷ These key points are echoed throughout the urban reserve factor analysis provided by Metro.⁴⁸ cursory examination of those “key points”

⁴⁶ Department’s report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 97

⁴⁷ Metro rec page 69

⁴⁸ Metro rec pages 69-71

would lead a reasonable person to ask if there were alternative and less costly ways to achieve results comparable to those described in the “key points.”

In order to logically conclude that this basis for those “key points” is sound, a reasonable person would require Metro to perform the comparative analysis of the substance of those key points as suggested in our Objection, and then conclude that the results provide substantial support for an urban reserve designation.

There is inadequate credible evidence in the record to show that Metro explored these alternatives, therefore we conclude that the assertions that the urban reserve designation was based on were unsound, that the decision itself was substantially flawed, and that the decision should be remanded.

Objection 5: Designating the Peterkort property Urban Reserves violates Goal 5, OAR 660-015-0000(5), To Protect Natural Resources and Conserve Scenic and Historic Areas and Open Spaces, Violates Goal 2, Adequate Factual Base and is not Supported by Substantial Evidence in the Whole Record

“The fourth and fifth objections allege the urban reserve designation violates Statewide Planning Goal 3, “Agricultural Lands,” and Goal 5, “Natural Resources, Scenic and Historic Areas, and Open Spaces,” respectively. The provisions of the goals referenced by the objectors are Guideline A.1 in Goal 3 and Guidelines B.1 and B.2 in Goal 5. The Guidelines are advisory, and not requirements. The objectors did not identify any requirements in Goal 3 or Goal 5 that the reserves decisions violate. The fifth objection also asserts there are inadequacies in Washington County’s existing Goal 5 implementation program. Even if that were true, the objectors have not explained why that is relevant to the decisions on reserves.”⁴⁹

Response:

If the metro area’s Goal 5 programs had been demonstrated to provide adequate protection for all important natural landscape features, we believe that OAR 660-027-0050 would not include 3 urban reserve factors that require analysis of potentially adverse effects on natural features and natural ecological systems that could result from a new urban area. But what matters at this point is the analysis of those three urban reserve factors. Goal 5 has not proven adequate to protect all types of important natural landscape features, such as upland habitat and wildlife, sense of place, and species sensitive to human presence.

The joint state agency letter⁵⁰ says:

“As a general matter, the state agencies believe that larger floodplain areas that are on the periphery of the urban area should *not* be included in urban reserves and that, instead, they should be used as a natural boundary between urban and rural areas to the extent possible. Although some

⁴⁹ Department’s report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 97

⁵⁰ Joint State Agency Letter “RE: State Agency Comments on Urban and Rural Reserves, dated October 14, 2009. p. 10

development in floodplains may be possible, the overall amount of development likely to occur in floodplains does not justify their inclusion in urban reserves.”

Shortcomings in the region’s Goal 5 programs, including the Washington County’s Tualatin Basin program, are relevant to Metro’s evaluation of urban reserve factors 5, 7, and 8 for the Peterkort property. Urban development of the Peterkort property would put important natural features at risk.⁵¹ Metro’s analysis for urban reserve factor 8 refers indirectly to the Tualatin Basin program in their analysis of urban reserve factors: “The existing regulatory framework in urban Washington County would require significant levels of protection and enhancement of the Rock Creek corridor at the time of development of surrounding lands.”⁵²

Metro’s analysis of urban reserve factors 5 and 7 for the Peterkort property⁵³ both refer to the Special Concept Plan Area C, which requires the implementation of Metro’s “Integrating Habitats” approach in the concept and community planning of the reserves area. But Metro has failed to define the Integrating Habitats approach in the Reserves record. The information that is available suggests that Integrating Habitats depends on the regulations in Metro’s Title 13. If this is the case, then we are again left with the inadequate protections offered by the Tualatin Basin Plan, the County’s Goal 5 program, to protect the wildlife habitat, water quality, wildlife (including elk) that use the area today.

Because of these problems with the Tualatin Basin Program, there is an inadequate factual base in the record to support Metro’s decision to include the Peterkort property in the Bethany West urban reserve, and the decision should be remanded as requested in our Objection.

Objection 6: Designating the Peterkort property Urban Reserves fails to satisfy OAR 660-027-0005(2), Long-term Protection of Large Blocks of Agricultural Land and Important Natural Landscape Features, Violates Goal 2, Adequate Factual Base and is not Supported by Substantial Evidence in the Whole Record

“Regarding the sixth objection (purpose of reserves and long term protection of large blocks of agricultural land and important natural landscape features), the purpose statement at OAR 660-027-0025(2) is not a criterion that the local governments must satisfy, but rather a region-wide consideration (see also section V.C of this report). The findings adopted by the four local governments explain why they believe their collective decisions satisfy the overall objective of urban and rural reserves. The Department believes that their findings are adequate to comply with the Commission’s rule. The remainder of the objection cites no relevant urban reserve factor, and the objection relates it to a single property. The reserve factors are to be applied to *areas*, not *parcels* (see also subsection V.B.2 of this report).”⁵⁴

⁵¹ Chesarek and Amabisca Objection, July 14, 2010. pages 22-23

⁵² Metro Rec. page 71

⁵³ Metro Rec pages 70-71

⁵⁴ Department’s report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. pages 97-98

Response:

We disagree with the Department's conclusion that the Metro findings are adequate to comply with the Commission's rule. This Objection relates to urban reserve factor 8. As explained above, we also disagree with the Department's assertion that urban reserves are never to be applied to parcels, even if the parcel is very large (over 100 acres in size), contains both valuable farmland and a broad floodplain that provides an excellent buffer between urban and rural use, and it forms a significant portion of the urban reserve candidate area's edge.

"Finally, all the objections state the urban reserve decision violates Goal 2 due to an inadequate factual base (not supported by substantial evidence in the whole record). As noted earlier in this subsection, Washington County and Metro adopted specific findings related to all the issues raised in this objection and in consideration of the urban reserve factors in OAR 660-027-0050. Disagreement with the findings and conclusions does not make them inadequate."⁵⁵

Response:

We did not merely disagree with the findings and conclusions, our Objection identifies substantive shortcomings in the evidence and in the logic that Metro's decision relied upon. The Department merely restates their assertion that "Washington County and Metro adopted specific findings related to all the issues raised in this objection and in consideration of the urban reserve factors in OAR 660-027-0050."⁵⁶

The findings cited do not answer all of the issues raised in our Objection, and the Department has failed to address substantive concerns raised in our Objection.

Peterkort conclusion.

After peeling back all the hyperbole around this decision, and asking critical questions about Metro and Washington County's explanation of their decision to add the Peterkort property to the Bethany West urban reserve at the last minute, the only clearly identifiable benefit of adding this property to the urban reserve is the donation of easements worth \$61,000 and the goodwill of the property owner when they apply for licenses required for the sewer trunk line and wetland mitigation.

Compare that relatively small cost saving to the \$520M⁵⁷ total estimated cost of infrastructure to serve the adjacent 800 acres in North Bethany. Making North Bethany bigger has not been shown to make it better or less expensive to serve. Whether the addition will result in a net gain or a net loss in terms of infrastructure expenditures seems very uncertain.

⁵⁵ Department's report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 98

⁵⁶ Department's report on the Objections to Portland Metro Area Urban and Rural Reserve Designations, DLCD, September 28, 2010. page 98

⁵⁷ Carol Chesarek letter to Washington County Reserves Coordinating Committee, August 20, 2009, page 1

Then weigh the small, one-time advantages of this decision against the long term harm: a new 77 acre urban island, a valuable buffer for prime farmland destroyed, important wildlife habitat reduced, and sense of place diminished. Those consequences are permanent.

There are better places to invest our limited infrastructure funds than the Peterkort property.

A reasonable person would apply simple logic and ask the right questions to sort through the expansive claims that this decision relies on to uncover the flawed logic, conclusory statements, and exaggerated benefits. There is not substantial credible evidence in the record to support adding the Peterkort property to the Bethany West urban reserve.

Please remand that urban reserve decision for lack of credible evidence in the record and recommend that the Peterkort property be designated a rural reserve to protect both important natural features and valuable agricultural land.

Overall Conclusions.

"The question for the Department in this report (and that the Department recommends the Commission use in its review) is whether Metro considered the urban reserve factors in deciding to include particular areas, explained why the areas should be urban reserves using the factors listed in the statute and rules, and whether there is evidence in the record as a whole that a reasonable person would rely upon to decide as Metro did."⁵⁸

Rather, OAR 550-027-0050 [sic. We believe that 660-027-0050 appears to have been intended] requires Metro to make its decisions by applying the listed factors to the lands it identifies [for study] and selects. Metro did so on the basis of areas that it defined for purposes of its analysis and decision making process. The objector does not identify any reason why Metro erred by analyzing the application of the urban reserve factors at the geographic level of these areas, and the Department recommends that the Commission find that Metro's use of areas as its basis for analysis was reasonable given the legislative and regional nature of its decision. If Metro were required to apply the factors to every parcel or every part of the edge of urban reserve areas its analysis would quickly become impossible."⁵⁹

Keep in mind that if we make mistakes and designate "too much" land as rural reserves it is unlikely to result in any lasting harm. Rural reserves are intended to protect and preserve resource lands. It is doubtful that the region will run out of both urban reserve lands and undesignated lands while these rural reserves are still in effect, it is likely that even if we did the legislature will allow us to change some of those rural reserve designations before the 50 year time period ends. And rural reserves will automatically end in 50 years.

On the other hand, designating "too much" land as urban reserves will result in real harm. The joint state agency letter explains that "farmland in urban reserves once lands are designated as urban reserves they are unlikely to be managed for the long-term

⁵⁸ Ibid. p. 18; Subsection V.B.1

⁵⁹ p. 42; Subsection VI.B.5.b

investments needed for working farm or forest operations.⁶⁰ Urban reserves do not have an expiration date, and there is no tool for changing these designations later, even if there were adequate political will to do so.

We are not advocating for remand of all urban reserves designated in Washington County. In fact, we support several of them, including South Hillsboro and all of the Bethany West urban reserve except the Peterkort property.

We concur with the decision to designate the other portions of Area 8C (Bethany West) as Urban Reserves, because the developable portions of those properties are on the urban (south) side of Rock Creek, adjacent to existing arterials, bus line to light rail, and a small shopping center with a full service grocery store. Aside from the Peterkort property, the remaining developable land in Area 8C is all south of Rock Creek. The single parcel adjacent to the Peterkort property in Bethany West/PCC Rock Creek area is almost all constrained floodplain and riparian corridor, and it is owned by PCC Rock Creek. PCC Rock Creek has been a good steward for their rural lands and riparian areas, supporting floodplain restoration and offering wetland education classes⁶¹.

For these reasons, the Commission should sustain our objections and remand the submittal and direct the County to apply a rural reserve designation instead.

The good news is that most of the regional reserves decisions are appropriate and well supported with solid findings. Multnomah and Clackamas County did thorough reviews of the urban and rural reserve factors and reached thoughtful decisions about reserves designations with carefully considered boundaries. Washington County's rural reserve designations are appropriate and well supported by evidence in the record, but a handful of key urban reserve decisions are not well supported by evidence in the record and need to be remanded, including 7B⁶² (Forest Grove North), 7I⁶³ (Cornelius North), 8B⁶⁴ (Shute Road Interchange), and 8C⁶⁵ (Bethany West).

Please make sure that all of the Metro area urban and rural reserves decisions are based on solid data and logic. LCDC needs to establish good standards for this process to be credible. If Washington County approach and standards are allowed to become the norm, then we will actively opposed using this process again anywhere in Oregon. The stakes are too high to settle.

Thank you very much for your time and your consideration.

⁶⁰ Joint State Agency Letter "RE: State Agency Comments on Urban and Rural Reserves, dated October 14, 2009. p. 5

⁶¹ Brian Lightcap letter, Washington County Urban & Rural Reserves Record, May 28, 2010, p. 9463

⁶² Forest Grove PQCP, WashCo Rec. 3089-3098

⁶³ Cornelius PQCP, WashCo Rec. 3071-3075

⁶⁴ Hillsboro North PQCP, WashCo Rec. 3113-3137

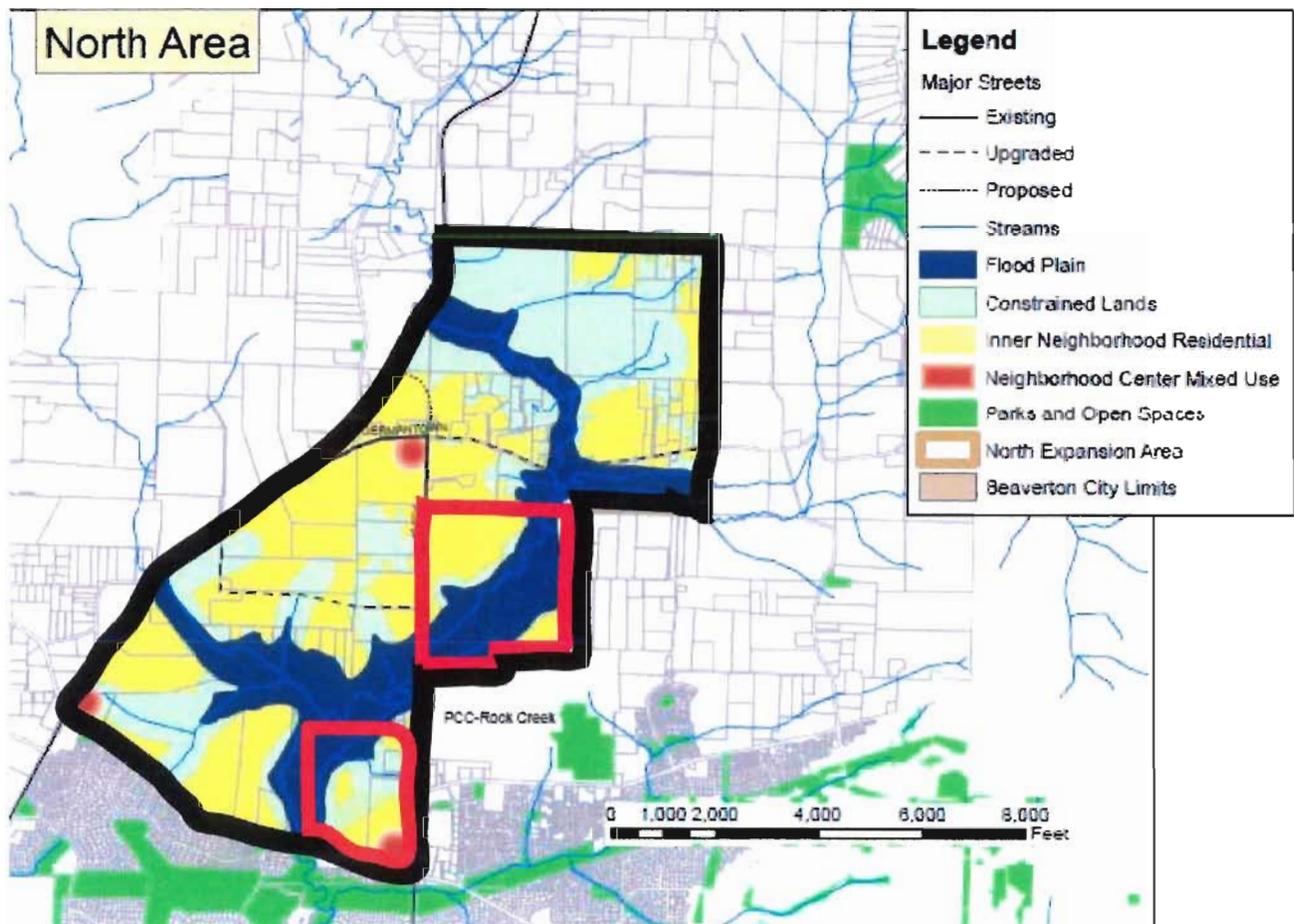
⁶⁵ Beaverton North PQCP, WashCo Rec. at 3062

Comparison of Beaverton's North PQCP Urban Reserve Study Area and Designated Urban Reserves

Based on City of Beaverton's "North Urban Reserve Area" from their Pre-Qualified Concept Plan.⁶⁶

 = Beaverton's North Urban Reserve Study Area

 = Beaverton's North Designated Urban Reserves



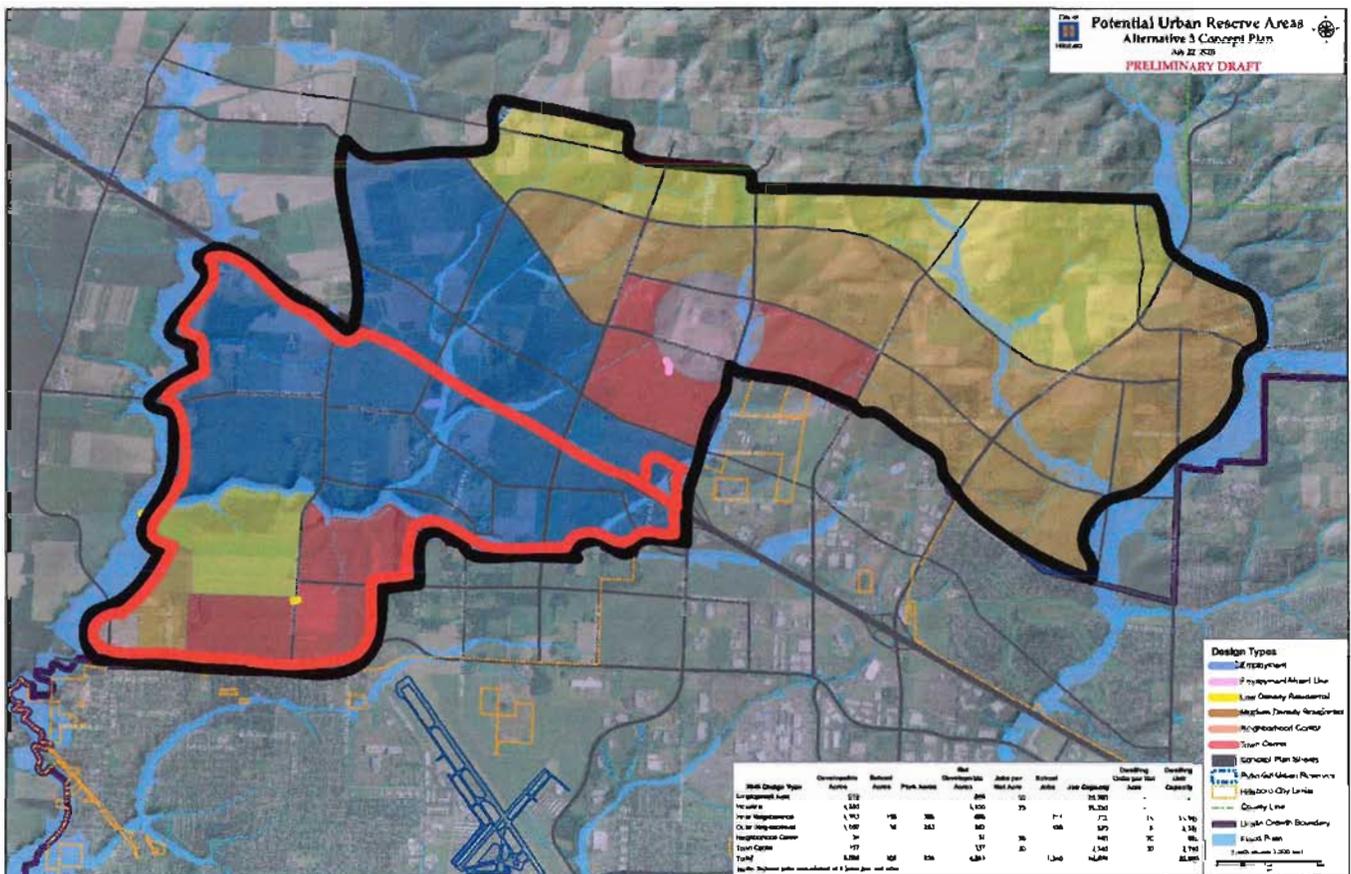
⁶⁶ Beaverton North PQCP, WashCo Rec. at 3044, page 7

Comparison of Hillsboro's North PQCP Urban Reserve Study Area and Designated Urban Reserves

Based on City of Hillsboro's North "Potential Urban Reserve Areas" from their Pre-Qualified Concept Plan. July 22, 2009.⁶⁷

 = Hillsboro's North Urban Reserve Study Area

 = Hillsboro's North Designated Urban Reserves



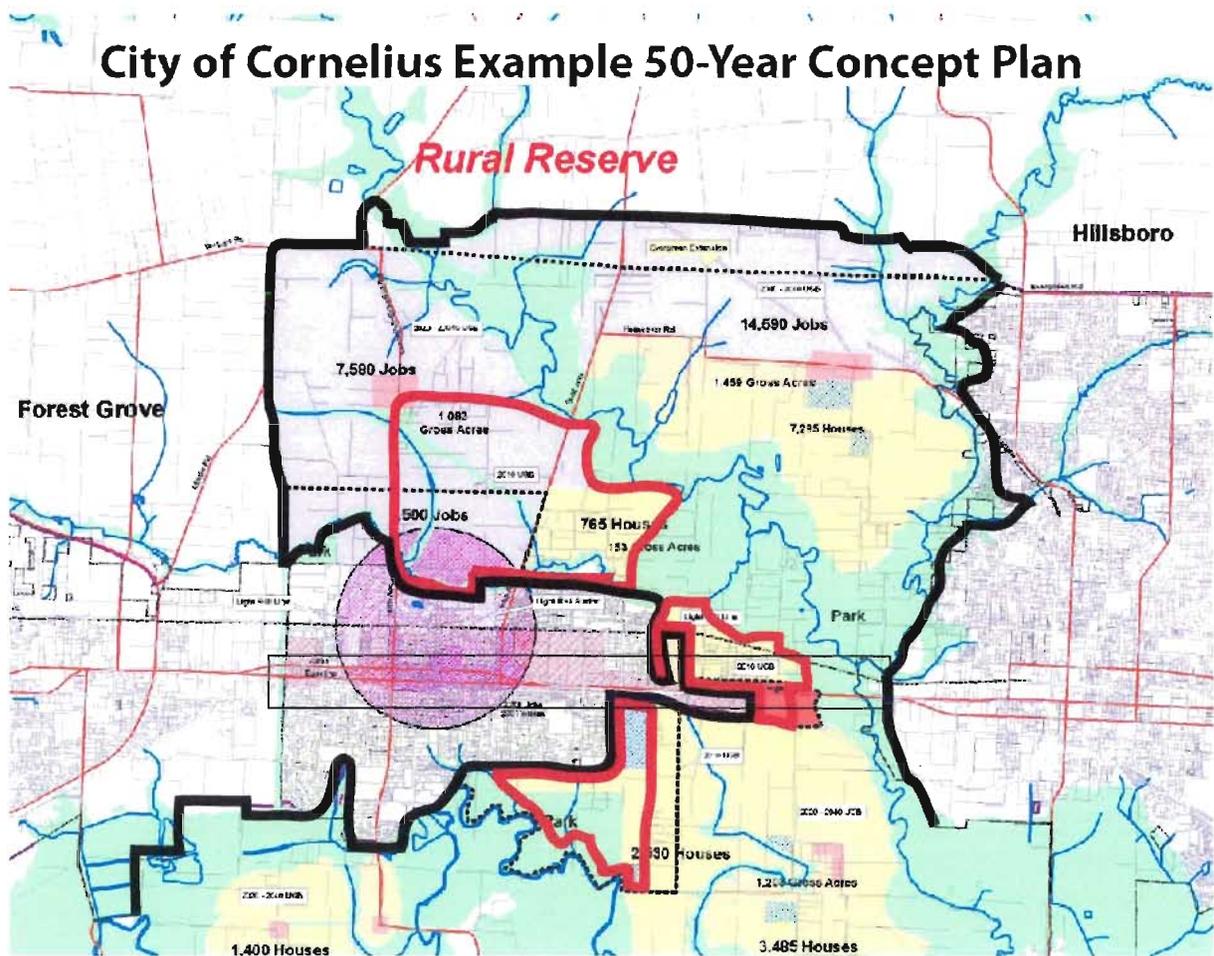
⁶⁷ Wash Co Rec page 3451

Comparison of Cornelius PQCP Urban Reserve Study Area and Designated Urban Reserves

Based on City of Cornelius's "Example 50-Year Concept Plan" June 2009 from their Pre-Qualified Concept Plan.⁶⁸

 = Cornelius' Urban Reserve Study Area

 = Cornelius' Designated Urban Reserves



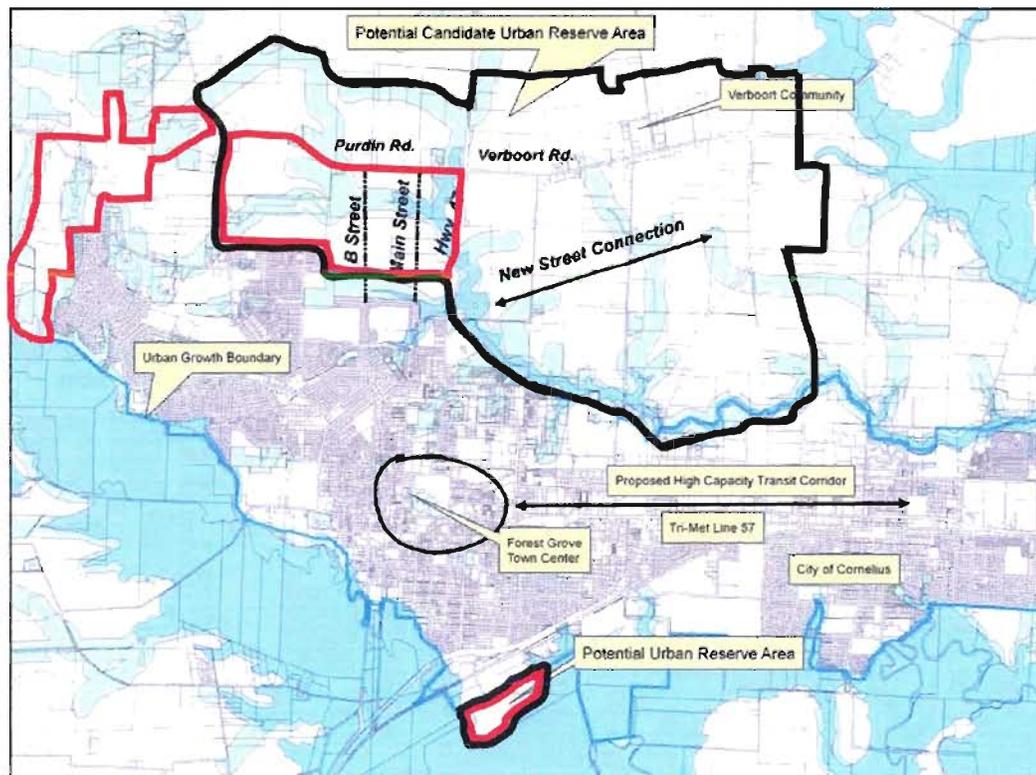
⁶⁸ Cornelius PQCP at WashCo Rec. 3066, page 17

Comparison of Forest Grove PQCP Urban Reserve Study Area and Designated Urban Reserves

Based on City of Forest Grove's "Potential Urban Reserve Areas" from their Pre-Qualified Concept Plan.⁶⁹

 Forest Grove's Urban Reserve Study Area

 Forest Grove's Designated Urban Reserves



city of
forest
grove

Potential Candidate Reserve Area
Context Map

0 1 125 2 250 4 500 6 750 9 000 Feet

Legend

-  Flood Plain
-  CWS Vegetated Corridors

⁶⁹ Forest Grove PQCP at WashCo Rec. 3084, page 19

Exceptions

**to the September 28, 2010 DLCD Report
on the
Objections to Portland Metro Area Urban and Rural Reserve Designations**

SUBMITTED October 8, 2010

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