Oregon
John A. Kitzhaber, MD, Governor

Department of Agriculture
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June 2, 2011

Mr. Jerry Lidz, Director
Mr. Larry French, Urban and Rural Reserves Specialist
Oregon Department of Land Conservation and Development
635 Capitol Street NE
Salem, Oregon 97301

Dear Mr. Lidz and Mr. French:

The Oregon Department of Agriculture (ODA) hereby files the objections discussed below to the decisions by Metro (and Washington County) to adopt urban and rural reserves (Metro Ordinance No. 11-1255). We also incorporate herein by reference and renew all objections, comments and testimony we made to the original Metro Ordinance No. 10-1238A and Washington County Ordinance No. 733.

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ODA submitted written comments related to the most recent decision in a letter dated March 8, 2011 addressed to Metro President Hughes and Washington County Commission Chair Andy Duyck.

ODA also participated in the process first as a member of the Reserve Steering Committee (RSC) and second as a party to letters providing comment from nine state agencies.[1] Additionally, ODA conducted analysis and developed a report entitled *Identification and Assessment of the Long-Term Commercial Viability of Metro region Agricultural Lands, January 2007*, which was the basis for much of the discussion relating to agricultural lands in the region and is referenced by name in the Land Conservation and Development Commission Administrative Rule that deals with the reserves process (OAR 660 Division 27).

[1] Letter dated October 14, 2009 addressed to the RSC and the Core 4, 1370 of Page Metro index of submitted materials (Ordinance No. 10-1238A) (here after referred to as the state agency letter); Letter dated January 22, 2010 addressed to the Core 4 members, Page 1630 of Metro Index of Submitted Materials Ordinance No. 10-1238A).

Objection 1: The decision is not consistent with the purpose and objective of OAR 660, Division 27.

OAR 660-027-0005(2) states:

> The objective of this division is a balance in the designation of urban and rural reserves that in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape features that define the region for its residents.

We discussed the failure to achieve the required balance in our original objection. We assert that Metro and Washington County (County) extended if not expanded support for this imbalance in their most recent decision. We believe that based on LCDC's (Commission) oral remand, Metro and the County mistakenly decided to "make up for lost acres" in effect replacing "lost" acres on an acre for acre basis. We do not believe that this was the intent of the Commission.

This mistake was further compounded by Metro and the County only looking to lands located within Washington County to "make up for the loss." There are many areas located throughout the region that could meet specified needs without impacting quality agricultural lands. As a side note, it is curious that most of the "lost" lands are located in the Cornelius and Forest Grove areas yet the replacement lands are located north the City of Hillsboro and Highway 26 (352 acres designated as urban reserve) and south of Hillsboro (383 acres removed from a rural reserve designation).

The remedy is a remand with instructions to reduce the amount of urban reserve lands that are recognized as Foundation Agricultural Lands. This would include the change of certain proposed urban reserves (see objections below) to rural reserves consistent with the rural reserve factors. The decrease of urban reserve acreage would still result in a total urban reserve within the 40-50 year range recommended in the urban growth report and the recommendation of then Metro COO, Michael Jordan.[2]

A remand could also include instructions to better designate rural reserves that meet both the quality standards and the threat factors established by the rule and to adjust the amount of urban reserves lands to better achieve a balance that protects quality agricultural lands that truly require protection from urbanization. Planning for a 40-year planning period as called for by the nine state agencies[3] could also remedy the situation in terms the total acreage required to meet the identified need.

Should the Commission decide that additional acreage is warranted, land not designated as Foundation Agricultural Land that could "substitute" for the subject urban reserves and

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[2] Pages 597 and 604 of the original Metro Index of Submitted Materials (here after referred to as the Metro COO Recommendation).

[3] State Agency Letter dated October 14, 2009; Letter dated January 22, 2010 addressed to the Core 4 members, Page 1630 of the original Metro Index of Submitted Materials.

undesignated lands is located southwest of Borland Road, southeast of Oregon City, in the Clackamas Heights area, east and west of Wilsonville, and between Wilsonville and Sherwood.

Objection 2: The analysis and designation of key Washington County agricultural lands as Urban Reserves and failure to designate qualified agricultural lands as rural reserves is flawed.

We discussed this concern in our previous objection and include those comments here by reference. In our letter to Metro and the County dated March 18, 2011 dealing with the most recent action, we also reiterated our previous comments related to the flawed agricultural analysis used by the County and incorporated by Metro. We also expanded our comments as follows:

> Much of the county analysis related to agricultural capability depends on a report done by an OSU Extension soil scientist (*Agricultural Productivity Ratings for Soils of the Willamette Valley*, J. Herbert Huddleston). This report provides an alternative method to characterize the relative fertility of soils in the Willamette Valley as an alternative to the agricultural capability system developed by the USDA Natural Resources Service that is commonly used in NRCS soil surveys, including the Washington County Soil Survey. Washington County staff has indicated their reliance on this report due in great part to the their contention that the county soil survey is outdated. The reference by county staff to the "published soil survey" in their testimony, both written and oral, in effect relates to the "paper survey" which refers to soils conditions in 1975 and later 1982. If this document were indeed the source for data used in soil capability analysis, we would agree that it is "outdated."
>
> It is important to note that the "official" soil survey for Washington County (and most others) is now found electronically on the Internet. Electronic soil surveys are the source for most spatial analysis relating to soils used involving geographic information systems. The USDA NRCS Soil Survey Geographic (SSURGO) database for Washington County was the source of soils data used by ODA to conduct all analysis related to soils. Since 1982, this database has been updated numerous times by the NRCS. According to the most recent meta data information from SSURGO, the Washington County Soil Survey has received several updates since 2000, the most recent in 2010.
>
> ODA staff has reviewed the Huddleston report. We would point out that the report is not dated, however cover notes within the report indicate that research on the subject began in 1976, making some of the assumptions about crop diversity and value rather dated. Data currently available within the official Washington County Soil Survey would be a much better source for data relating to agricultural capability. For further detailed analysis of this report see the attached memo from Paul Measeles, ODA hydrologist and a registered geologist to Jim Johnson, ODA Land Use Water Planning Coordinator.

The analysis for purposes of designating urban and rural reserves in Washington County is inconsistent with the applicable law. The analysis conducted by the County and integrated by Metro into their decision involve elements not in the law, and used various weighting analyses to measure those and other elements, resulting in some blocks of land being designated contrary to both the purpose and factors of the statute and rule. As pointed out in the state agency letter, factors used by the county many times downgraded the value of certain agricultural lands for protection as rural reserves.

The remedy for these deficiencies is a remand of the portion of the decision that discounts the value of agricultural land for protection as rural reserve on the basis of the analysis conducted by the County and incorporated by Metro. The Commission could also consider the analysis done by ODA and require designation of lands located north of Cornelius, north of Waibel Creek, north of Highway 26 and south of and adjacent to Highway 10 as rural reserves.

Specific Area Objections

Objection 3: Failure to designate agricultural land north of Council Creek (Area 7I) as a rural reserve is inconsistent with the Reserves Statute and Rules.

This area originally contained 623 acres located north of Council Creek. Metro and the County originally designated this area as an urban reserve. The Commission directed Metro to remove the urban reserve designation from this area. Metro on remand decided to designate the northern 263-acre portion of the area as rural reserve but left the southern 360 acres north of and adjacent to Council Creek undesignated. The dividing line between the northern and southern portions is just that, a line (property lines of existing lots/parcels).

The decision to leave the area north of Council Creek undesignated is not consistent with the reserve rules and statute. The following statement we made in our previous objection to this areas merit stating again.

> This area is perhaps the textbook example of land that qualifies for protection as a rural reserve. It is Foundation Agricultural Land and meets all of the factors in law that are required to be considered for the designation of rural reserves including valuable, prime farmland soils, availability of water and agricultural infrastructure and perhaps just as important as these physical capability factors, the area is part of a much larger block of agricultural land that maintains the integrity needed to sustain agricultural operations with minimal conflict from urbanization and nonfarm land uses. It is also under constant threat to be urbanized as evidenced by its long history of advocacy for inclusion within the Cornelius Urban Growth Boundary, including the designation as an urban reserve by Metro. This is supported by testimony from area farmers, Washington County Farm Bureau, agri-businesses, and the recommendations from the Metro COO and the state agencies.

As with the previous urban reserve designation, the integrity of this area is at risk by not protecting the subject area as a rural reserve. An "undesignated" strip of land sandwiched

between an urban area and a rural reserve in effect acts as a future area for development. In this case, the "undesignated" land runs parallel to the existing urban creating a "new edge" with agricultural lands located to the north, east and west. This edge provides no buffer or protection to adjacent agricultural lands, unlike Council Creek.

Left "undesignated, these lands become in effect a protrusion of potential urban land which would have implications on agricultural operations both within and adjacent to the subject lands. First as "undesignated" lands, these lands in effect become next in line for urbanization and in fact, could move up in line should they be designated by future actions as urban reserves, current law does not limit the addition of new rural reserves from land not protected as a rural reserve. Second, because these lands could be urbanized sooner, the speculative value of the land becomes much higher then if protected for agricultural use making it difficult at best for farmers to rent, lease or acquire the subject lands. Speculation and high land values also tend to preclude current farmers from developing agricultural infrastructure and developing high-value crops, such as perennials, that require a long time to mature and realize income for the farmer.

This very concern was recently discussed in an article in the April 29, 2011 *Capital Press* (Submitted into the record by North Plains area farmer Larry Duyck, see attached)[4]. The example cited involved 89 acres of Washington County farmland currently zoned EFU listed for sale for $3.3 million by a local real estate agent. The article indicates that the designation of the subject property as an urban reserve increases the value of the subject property by $2.8 million over its value as farmland. We would suggest that this speculative land value would also impact lands that remain undesignated. This would especially be of concern in the subject situation, as the "undesignated" land would be sandwiched in between the existing urban growth boundary and a rural reserve area.

Finally, urbanization of these areas has implications to adjacent agricultural operations. Council Creek currently provides an excellent and definable edge and buffer between urban lands and the block of agricultural land located to the north. The protrusion of "undesignated" land into this area as proposed creates an additional two edges for agricultural operations to deal with. These edges provide no real buffer to adjacent agricultural lands. Additionally, such a protrusion out and into agricultural lands has long-term implications on surrounding agricultural lands. The extension of urban services such as roads, sewer and water lines north into this area can do nothing but put pressure to ultimately urbanize and infill the notches of rural land remaining to the west and east. And any such extensions of roads to the northern edge of this area could promote further extension north to U.S. Highway 26 with implications to the larger agricultural area. It is also important to point out that the "undesignated status" does not provide the added protection from plan amendments and zoning changes that is afforded by a rural reserve designation.

Metro has provided no findings to explain why this area should not be designated as a rural reserve or any findings that explain why the area was left undesignated. It would seem that the only reason to leave this area undesignated is to provide the potential for future urbanization with all the implications previously discussed to area agriculture.

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[4] *Farmers contend urban reserve eroding farmland*, Capital Press, April 29, 2011.

The remedy is to remand this portion of the decision with direction to designate this area as rural reserve.

Objection 4: The 440 acres added to the urban reserve Area 8B should be designated rural reserve.

This area is located north of U.S. Highway 26 and west of Helvetia Road. Metro's most recent decision changes 352 acres from "undesignated" status to urban reserve. With the existing 88 acres previously approved as an urban reserve, this area now encompasses an urban reserve area of 440 acres.

This area was specifically called out in the state agency comments dated October 14, 2009.

> The area north of Highway 26 to the west of Helvetia and east of Jackson School roads should be designated rural reserves to form a "hard edge" to the boundary in this important agricultural region, except for an area just east of the City of North Plains, which could remain "undesignated."

We, along with eight other state agencies made only one exception to protecting the lands north of Highway 26 as a rural reserve. This involved the original 88 acres that was ultimately designated as urban reserve. The state agencies remarked that this area should remain undesignated or be designated urban reserve in order to facilitate the "...additional transportation investments that are anticipated."

Because this is a new area of "concern" that was not discussed in detail in our first objection, we provide a more detailed discussion below of the attributes that qualify this area for rural reserve designation related to agricultural capability and suitability.

The subject 352 acres are part of a much larger block of agricultural land and as such, are highly suited to and merit designation as rural reserve. This area was determined by ODA to be Foundation Agricultural Land. The soils in this area are defined as high-value soils in state law. Most of the soils in the Helvetia area are also prime soils as defined by the U.S. Department of Agriculture and are classified as Class I and II agricultural soils. These soils are considered the best of the best for agricultural production. Farms in the area have also made substantial investment in drainage infrastructure in the area.

While the subject area is not located within an irrigation district, it is important to note that there are significant numbers and quantity of both surface and ground water withdrawals in this and the surrounding area. There are also numerous examples of high-value crops in the area that do not require substantial irrigation due to favorable climate conditions.

The subject area is also part of a larger block of agricultural land that has maintained excellent agricultural integrity resulting in few negative implications to conducting efficient and effective farming operations. The pattern of parcelization in the region has facilitated a full range and

scale of operations, tenure (fee title, lease, rent) that in turn provide good opportunities for adaptation to changing trends in agriculture. Maintaining existing, well-developed edges and buffers from existing and future urban development would best sustain the existing integrity. Highway 26 provides such an edge, currently from development located to the southeast and when urbanized as currently planned, to the south of Highway 26.[5]

This area meets all the legal requirements for designation as a rural reserve. Designation as an urban reserve that protrudes out into the larger rural reserve area would have implications on the area agricultural lands already deemed qualified for rural reserve designation.

The remedy is to remand this area with direction to designate it as rural reserve.

Objection 5: The area located north of and adjacent to Rosedale Road and south of Area 6A were improperly converted from Rural Reserve to undesignated status.

This area meets all the requirements for designation (as decided earlier) as Rural Reserve land. It is Foundation Farmland, is part of a larger block of agricultural land and includes tracts of land currently employed in farm use. The area is most certainly subject to a threat of urbanization as evidenced by its location adjacent to the urban growth boundary and the removal of the rural reserve designation that was previously afforded to the area.

The "new" undesignated area would in effect extend the potential for urbanization along the entire length of the urban growth boundary from southern Hillsboro to Kings City. It would also extend the potential for urbanization much farther south then ODA found to be conducive to long-term viable agricultural operation in the area. ODA analysis early on recommended that development in the 'South Hillsboro" area stop at Butter Creek where a good edge and buffer could be established.[6] After consultation with other state agencies, the ultimate decision was to support an urban reserve designation south to Rosedale Road where an edge and buffer could be maintained to protect the large agricultural region to the south. The decision to potentially urbanize the area south of Rosedale Road by removing the protection afforded by the rural reserve designation in effect removes the edge.

The shape of the proposed undesignated block of land is also of concern. It does not simply parallel the existing urban growth boundary. Instead, it protrudes out into the larger block of agricultural land creating multiple edges with no buffers to the adjacent agricultural lands. There is little discussion in the decision by Metro, as required by OAR 660-027-0050(8)[7], relating to

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[5] The original ODA analysis of this area and classification as Foundation Agricultural Land can be found in *Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007*, Oregon Department of Agriculture.

[6] *Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands, January 2007*, Oregon Department of Agriculture, page 51.

[7] OAR 660-027-0050(8) is the urban reserve factor that requires that an area "can be designed to avoid or minimize adverse effects on farm and forest practices and on important natural landscape features on nearby resource land, including land designated as urban reserve.

impacts to area agricultural other than conclusionary statements relating to future land use decisions. The state agency recommendation recognized the need for an adequate edge in the area resulting in the recommended edge at Rosedale Road. The proposed removal of the rural reserve status on the subject area creates an area with multiple edges with little if any opportunities to protect adjacent agricultural lands.

The remedy is to remand this area with direction to designate it as rural reserve.

Sincerely,

Katy Coba
Director
Oregon Department of Agriculture

Attachment: Capital Press article

Cc: Metro
Washington County
Multnomah County
Clackamas County
Richard Whitman

Farmers contend urban reserve eroding farmland

Critics say flawed process puts agricultural lands at risk from developers

By MITCH LIES
Capital Press

Mitch Lies/Capital Press
Bob Vanderzanden climbs aboard his fertilizer buggy March 23 in a grass seed field just north of Hillsboro, Ore. Vanderzanden and other farmers say Washington County fails to adequately preserve farmland in its long-term land-use plan.

Real estate agent Clint Currin is advertising 89 acres of Washington County farmland for sale at $3.3 million.

Although zoned exclusive farm use, the land is among approximately 13,500 acres designated "urban reserve" in the county's long-term land-use plan.

The designation increases the value of the property by $2.8 million over its farm-use assessment, according to the Washington County Farm Bureau, essentially pricing the land out of farming.

Area farmers say that far from preserving farmland, the Portland Metro area's urban- and rural-reserves process is eroding their land base and increasing development pressure on sensitive lands.

The reserves process was adopted by the 2007 Legislature to preserve some farmland for farm uses for the next 50 years by designating it "rural reserves." The idea was to give farmers near urban growth boundaries confidence to make long-term investments in farming.

The process also calls for local government to set aside acreage for "urban reserves." Urban reserves would be the first areas brought into urban growth boundaries when development pressure warrants expansion.

Under the 2007 legislation, Metro Council must reach agreement with Clackamas, Multnomah and Washington counties before the process can be ratified by the Oregon Land Conservation and Development Commission.

The process hit a snag last year when LCDC remanded part of the plan back to Portland Metro Council and Washington County.

Key areas of contention were acreage north of Council Creek, acreage north of Waibel Creek and acreage north of Highway 26.

In the intergovernmental agreement hatched last month, Washington County and Metro officials changed the designation on approximately 360 acres north of Council Creek from urban reserve to "undesignated," and converted about 260 acres in the area from urban to rural reserve.

Officials also converted approximately 352 acres north of Highway 26 from undesignated to urban reserve.

Officials left acreage north of Waibel Creek in urban reserve.

Farmers say the new intergovernmental agreement, now going out for public comment, did nothing to address their concerns.

The new agreement fails to use natural barriers, such as the creeks and Highway 26, to establish boundaries between urban and rural reserves.

"We're saying respect the buffers," Washington County farmer Dave Vanasche said. "But they don't care about buffers."

Also of concern are hundreds of high-value farm acres abutting urban growth boundaries that officials left as urban reserves or as "undesignated," which, farmers say, is tantamount to urban reserve.

Mike Dahlstrom, a program educator in the Washington County Planning Division, said county and Metro officials based their plan on the need to accommodate population growth. And, he said, officials used conservative growth estimates.

"It is about as conservative as you can be with a 50-year time frame," Dahlstrom said.

Dahlstrom also said there is a potential for urban reserves to "never be touched." And, he said, urban reserves "won't be brought in wholesale" to the urban growth boundary.

"They likely will be brought in in small pieces," Dahlstrom said. "And anytime an urban reserve will be considered (for inclusion in the UGB), there will be a public process."

Ultimately, Vanasche and other Washington County farmers fear the reserves process will hasten loss of farmland in the county and erode a critical mass needed to maintain agricultural infrastructure.

Farmers working "urban reserve" parcels will shy from upgrading the acreage, Vanasche said, and will be hesitant to buy new farm equipment or plant perennial crops for fear the land could be rezoned.

And farmers looking to locate in Washington County will have a hard time amortizing a $3.3 million price tag for 89 acres of farmland, Vanasche said.

The plan now is headed to hearings before Portland Metro and Washington County officials. It is expected to be back before LCDC in August.

Pet food industry barks at proposed registration fee

Reduced general fund brings about so-called 'Alpo tax'

By MITCH LIES
Capital Press

Whitsett

Welsh

SALEM — A proposed pet food registration fee would provide funds for the Oregon Department of Agriculture and be used in large part to fund pet services, state agriculture officials said.

But pet food manufacturers questioned whether the fees would go to pet services and objected to having their fees fund livestock programs.

"We're having some real difficulty drawing a nexus between the revenue being collected from pet food manufacturers and the beneficiary of that revenue, which is the livestock programs," said Drew Hagedorn, a lobbyist for the national Pet Food Institute.

The state Agriculture Department proposes raising registration fees for veterinary products and initiating a pet food registration fee to generate revenue for the agency's animal health division and broaden its support base.

In a hearing March 23 before the House Agriculture Committee, Hagedorn said the institute supports the agency's efforts to generate more funds in its animal health division.

"We just have a problem with us being a source of that revenue," he said.

ODA Director Katy Coba told committee members she hesitated to propose the new registration fee, but a depletion of general funds forced the agency's hand.

The amount of general fund dollars allocated to the department has dropped from $22.5 million a decade ago to about half of that under Gov. John Kitzhaber's proposed 2011-13 budget.

General fund support for the animal health division, currently 25 percent of the division's funding, is zeroed out in the governor's proposed 2011-13 budget, Coba said.

Sen. Doug Whitsett, R-Klamath Falls, a veterinarian, said he didn't think it appropriate that a division critical to the state's $1.4 billion livestock industry should be forced to seek what he called an "Alpo tax."

Whitsett said he was "disheartened" to see the Oregon Farm Bureau, Oregon Dairy Farmers Association and the Oregon Cattlemen's Association support the pet food registration fee.

"This is not something we want to do," Oregon Cattlemen's Association lobbyist Jim Welsh said. "We feel like this is being forced on us with the economy and reduction in support from the general fund.

"We would much rather have general fund dollars. We think it is a public benefit program," Welsh said.

Pet food registration fees are not unique, Coba said. Forty-six states have them.

Under House Bill 2120, the fee is capped at $150 per product. The fee is expected to generate about $200,000 a year.

The fee cap for veterinary product registration under the bill would increase from the current $75 to a maximum of $250.

The department doesn't anticipate reaching the cap for either fee in the near future. Fees would be set through rule-making.

The committee moved the bill without recommendation to the House floor with a subsequent referral to Ways and Means.

ODA's share of general fund shrinking

Gov. Kitzhaber's proposed budget for 2011-13 calls for a reduction in general funds to the Oregon Department of Agriculture, down more than 16 percent from current totals and about half of what it was 10 years ago

Source: Oregon Department of Agriculture
Alan Kenaga/Capital Press

Food safety fee increase gains endorsement

Legislator claims ODA support vital to processors, beneficial to public

George

Coba

SALEM — Sherwood Sen. Larry George, like many Republicans, shies from voting for fee increases.

But George, owner of a hazelnut processing facility, said he backs the Oregon Department of Agriculture's request to raise food safety license fees as much as 3 percent a year.

"I rarely vote for fee increases," George said. "But this is necessary for us."

The fees are paid by food processors, dairies and other food establishments.

ODA Director Katy Coba said the agency doesn't plan to increase fees this session and won't raise fees in the future unless an increase is needed.

The earliest Coba said she expects to raise fees would be July 1 of 2013.

Senate Bill 118 would give the department authority to do so without coming back to lawmakers.

Under previous law, the department was required to raise fees 2 percent annually, a provision that at times created an ending fund balance that lawmakers swept for other programs.

That law expired last year.

SB118 includes a 2018 sunset date.

George, vice chair of the Senate General Government, Consumer and Small Business Protection Committee, said the department provides technical information on food safety issues that processors can't get elsewhere.

The federal Food and Drug Administration, he said, is strictly a regulatory agency and doesn't help food processors improve food safety.

"Our only island of support is Katy's department," George said in reference to Coba.

The committee is expected to move SB118 to Ways and Means in an upcoming work session. The bill did not move March 28 because of a technical issue.

—*Mitch Lies*

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COMMISSIONER NOMINATIONS ACCEPTED
Three elected positions are currently open for nominations to the Washington State Potato Commission board. The Washington State Department of Agriculture is asking for one potato grower nomination from District 1, which includes the counties of Douglas, Chelan, Okanogan, Grant, Adams, Ferry, Stevens, Pend Oreille, Spokane, Whitman and Lincoln, and two grower nominations from District 2, which includes Kittitas, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield and Asotin. Current Commissioner Cully Easterday from District 2, Position 5 has indicated he does not intend to run again for the position. If you are interested in running for one of the open positions, please follow the nomination instructions you will be receiving from WSDA. The nomination forms were mailed on March 24. Please note that your nomination form must be postmarked no later than April 11 to be counted as a valid nominee. If you have any questions, please contact the WSPC office at 509-765-8845.
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