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June 2, 2011

**ORIGINAL**

Via Electronic Mail and Hand Delivery  
Urban and Rural Reserve Specialist  
Department of Land Conservation and Development  
635 Capitol St. NE, STE 150  
Salem, Or 97301

Re: Supplemental Objection to Decisions of Metro, Washington County, Clackamas County and Multnomah County Designating Urban and Rural Reserves

Dear Sir or Madame:

This firm represents Steve and Kelli Bobosky (Bobosky), the owners of a 9.76 acre parcel (subject property) in Washington County. The subject property is located at 21393 NW West Union Road (Tax Lot 1N2 14A 3000), zoned AF-5 and is subject to an acknowledged exception to Goal 3 (Agriculture). See Attachment 1 (includes map); Map Supp Wash. Co. Rec. 11521; see also Map at Wash. County Supp Rec. 10118 and 11025, 11468; see further Wash. Co Supp Rec 9824-25; Original Objection Exhibit 1 p 15, 21, 22, 23, 27-38, 40, 42, 43, 170, 173; see also Original Wash. Co. Rec. 8185 and 8186; 8192-98; and see Original Bobosky Objection Exhibit 2, p 1.<sup>1</sup> The Bobosky property exists within the approximately 130 acre "Bendemeer" community, which is a residential subdivision also subject to a Goal 3 exception. Original Record Exhibit 1 p 37. Bendemeer is composed of 58 lots averaging two (2) acres or less, 40 of which are developed with homes with the exception of an R-COM parcel that is commercially developed at the corner of West Union and Cornelius Pass Roads. Original Bobosky Objection Exhibit 1 p 16, 37.<sup>2</sup>

<sup>1</sup>Original Bobosky Objection Exhibit 2 p 1 is a map the Bobosky's paid Metro to create. It is based on information Metro had available for the last open record Metro submittal – which was a map based on data from the IGA decision in February 2009. The pink areas are exception areas in Washington County. Comparing the final adopted urban and rural reserves map with Exhibit 2 p 1 makes plain that nearly all of the exception lands in Washington County are improperly locked up as "Rural Reserve" in the challenged decision and that "Urban Reserves" were selected primarily from the region's best "Agricultural Land." OAR 660-0033-0020(1)(c). No reason is given in the challenged decision for rejecting exception lands and there is none.

<sup>2</sup> The undersigned was advised by Dick Benner that it is appropriate to reference exhibits submitted with the previous Bobosky Objection in these Supplemental Objections, rather than reattaching them and resubmitting them; and that those exhibits referred to herein are capable of use in the upcoming LCDC proceedings. Accordingly, in an effort to avoid wasting trees and paper, the undersigned accordingly cites the exhibits Bobosky previously submitted to LCDC and which are in the record of the Supplemental Decision.

This is the second time the Bobosky's have submitted objections to DLCD/LCDC regarding Metro/Washington County urban and rural reserves. Herein we refer to the 2010 regional submittal of urban and rural reserves to DLCD/LCDC as "Original Decision" or "2010 Decision". The Metro/Washington County decision submitted on May 12, 2011 is referred to herein as "Supplemental Decision" or "challenged decision". The decision challenged in these objections is the Supplemental Decision." The Bobosky's first objections against the Original Decision were filed in July 2010. That Objection and the exhibits to that Objection are referenced herein as "Original Bobosky Objection". The exhibits attached to the Original Bobosky Objection are referenced herein as "Original Bobosky Objection Exhibit \_\_\_". The citations to the Original Decision are "Original Record \_\_\_". The citations to the supplemental record for the Supplemental Decision are "Supp Metro Rec \_\_\_".

## INTRODUCTION

In the beginning, Washington County's professional staff and the Washington County Planning commission determined the subject property met the "Urban Reserves" criteria and should be so designated. Original Metro Rec. 64; Original Bobosky Objection Exhibit 1 p 17-18. The subject property maintained that designation throughout the process leading to the Original Decision, until a last minute political reversal in December 2009 when a deal was announced after having been quietly cut between then Metro Council members Bragdon and Hostika. Original Wash. Co. Rec. 8602. Notwithstanding the Hostika/Bragdon map which came out in December 2009 showing for the first time the subject Bobosky property as "Rural Reserve", the County planning commission disagreed that the property met the rural reserves criteria, specifically rejected the proposed "Rural Reserve" designation for the subject property and the 130 acre residential subdivision within which it exists and recommended the area be "urban reserve". Original Metro Rec. 64. Without commenting on why or at all, the Washington County Board of Commissioners simply refused to follow the planning commission's recommendation and returned the "Rural Reserve" designation to the subject Bobosky property and its residential subdivision. Original Bobosky Objection Exhibit 3.

Steve and Kelli OBJECT to the Original and Supplemental Decision's designation of their exception lot as "Rural Reserve".

## MERITS

**Steve and Kelli Bobosky participated at the local level orally or in writing during the local processes**

Steve and Kelli Bobosky participated in both the Supplemental Decision and Original Decision Metro and Washington County proceedings and objected to the proposal to make their small exception parcel located in a residential subdivision a "Rural Reserve". Steve and Kelli participated in the Washington County and Metro processes by supplying oral and written testimony as shown on the Supplemental Wash. Co Rec. 10222; 10239-10262; 10285-86; 10526;

11565; 11511; Metro Supp Rec. 604; Original Bobosky Objection Exhibit 1 page 1, 11, 15, 167, 170, 175; *see also* Original Wash. Co. Rec. 8150, 8179, 8178, 8330, 8335, 8339, 8343; *see also* Attachment 1.

**Specific objections to the Metro and Washington County decisions, citing the relevant statewide planning goal, LCDC rule or land use statute believed to be violated by the challenged decisions, and proposed remedy for the violations**

**OBJECTION 1:** Neither Metro nor Washington County had authority to adopt the challenged decisions. The region made its decision and submitted it to DLCD in June 2010. LCDC assumed jurisdiction and issued a preliminary oral decision which, by law, was to be followed by a final written order. In this circumstance, there was no “remand” to respond to and only LCDC has jurisdiction over the designation of urban and rural reserves in the Metro region.

The challenged decision is styled a regional decision responding to a “remand” from LCDC. There is no remand from LCDC. Neither Metro nor Washington County had any jurisdiction to select the terms of a remand and then change the Original Decision pending the required Final LCDC Order. In the absence of a final written LCDC order, no one knows what LCDC’s decision is. LCDC’s decision could have been viewed as a remand of *all* of the Washington County rural reserves. It could have been viewed as favoring the change to the Bobosky property from “rural reserve” to either urban reserve or undesignated. *See* Wash. Co. Supp Rec. 10950 et seq. But the one thing that is sure is that there can be no “remand” from LCDC for anyone to speculate about and respond to until the required LCDC written order is issued. Without these, any “remand” is conjecture and speculation.

The legal public process requires LCDC to make a final decision on the designation of urban and rural reserves appealed to it, not for Metro and Washington County to rob LCDC of its statutory responsibility to issue a required written order or rob participants of their right to a final order deciding the issues they spent significant resources appealing.<sup>3</sup> In turn, it is a truism that the required LCDC final decision and analysis may be itself challenged as containing legal error at the court of appeals. If appealed to the court of appeals then the *court* has the statutory and constitutional responsibility of finally resolving the matter. Even then, neither the county nor Metro could act to preempt the court’s authority over appeals of such an LCDC remand final order. The requirement for a final written order from the agency statutorily responsible to issue one is designed to prevent the mischief of the type that happened here.

It is unlawful for Metro and Washington County to convert LCDC’s preliminary oral statements into a final decision on remand. It is unlawful for particular officials to skirt public meeting laws and meet to come up with a final LCDC decision to which they could “respond” in a predetermined remand decision. The scheme of the Supplemental Decision (1) robbed LCDC of its statutory responsibility to craft a final written order, (2) invented a final LCDC order having

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<sup>3</sup> OAR 660-025-0100(5) makes clear that: “\* \* \* A valid objection must either be sustained or rejected by the department or commission based on the statewide planning goals and related statutes and administrative rules.”

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a character favorable to the positions of the appealed body, (3) confers on the appealed “fox” inappropriate authority to design the decisional “henhouse”, (4) lays a foundation for the erroneous claim the region’s hands were tied to the invented “LCDC Remand”, and (5) led to a fictitious and wholly contrived “remand” decision.

On October 29, 2010, LCDC issued a preliminary oral decision on the Metro region’s final decision designating rural and urban reserves. No one knows what LCDC determined regarding the 46 objections to that decision, including Bobosky’s objections, because there is no final written order. However, the Bobosky property was the only rural reserve property that the LCDC commissioner’s comments reflected any concern about and suggestion that it should be reevaluated as a rural reserve. *See Wash. Co. Supp Rec. 10186; 10257; 10262; 10186; 10222.* Regardless, individual statements in deliberations do not rise to the level of a final commission decision.

Instead of waiting for a final LCDC written order, as required by law, an unknown spectrum of officials began meetings carefully designed to avoid the letter of the public meetings law to design an “interpretation” of the LCDC commissioners’ comments on October 29, 2010 as well as the contours of the decision challenged here. Notwithstanding that participants were told for months that the attorney general’s office was drafting a final written order for LCDC to review and adopt, such a draft order never surfaced.<sup>4</sup>

Washington County was the first government to officially float an interpretation of what a final LCDC’ order might look like following the October 29, 2010 deliberations. Washington County explained in the County’s bold December 7, 2010 “Informational Memo” concerning a “revised” Intergovernmental Agreement (IGA) it proposed on reserves:

“The supplement to the IGA is in response to the Land Conservation and Development Commissions (LCDC) October 29, 2010 decision. That decision directed the County to remove the Urban Reserve designation on lands north of Council Creek, near the City of Cornelius and to provide additional findings for the Urban Reserves north and east of Council Creek, north of the City of Forest Grove. The decision also provided the County and Metro an opportunity to reconsider rural reserves in Washington County to comply with the LCDC decision.” Attachment 3

Further meetings ostensibly viewed as above the public meetings law transpired between some number of officials and apparently some private landowners, such that a new Washington County and Metro decision on urban and rural reserves was announced to the public, through a February 22, 2011 press release. Wash. Co. Supp. Rec. 10418-10419. The decision expressed in the above quoted “Informational Memo” morphed into an officially proclaimed interpretation of

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<sup>4</sup> It is impossible to know whether LCDC was aware or advised of why it never got a final written order to review on the October 2010 hearings on objections to the Metro region urban and rural reserves. These are questions the commission should be concerned about.

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LCDC's "decision" that all of the 46 participant's objections had been rejected by LCDC, except for the small issue of the designation of two particular Washington County urban reserves areas. This February 22, 2011 press release introduced the plan thusly:

"On behalf of the staff and elected officials of Washington County and Metro we are pleased to report there is a new urban and rural reserves proposal that responds to the direction provided by the Land Conservation and Development Commission in October.

As you may know, the Commission voted unanimously last fall to approve urban and rural reserve designations in Clackamas and Multnomah counties, and most of the urban reserve designations in Washington County. \* \* \*" Supplemental Record 10418-19 (February 22, 2011 Metro Washington County Press Release).

Then, on March 15, 2010, an Intergovernmental Agreement (IGA) was made public and later adopted solidifying the scope of the invented "remand":

"This IGA is limited to addressing the LCDC oral remand and shall apply only to the revised designations depicted on Exhibit 'A' and described in Exhibit 'B', together with the Rural Reserve areas depicted on Exhibit 'A.'" Supplemental Wash. Co. Rec 10502.

The privately decided February 22, 2011 urban and rural reserves were then sent to the March 2, 2011 county planning commission but only as a part of Ordinance 740 which limited the planning commission's job to merely respond to the "LCDC remand" -- as interpreted. The planning commission was required to assume that all June 2010 designated rural reserves were legal, Bobosky's objections had been wholly denied, and rural reserves would not be revisited except as potential replacements for certain urban reserves. Instead of considering removal of the rural reserves designation of the Bobosky property as a fair reading of the oral comments of LCDC commissioners would suggest appropriate, the County refused to allow such consideration. Rather the issues on the table were those the county allowed based on the restrictive view of what a remand would be. The challenged decision reinforces the crabbed view of the fictitious LCDC "remand":

"The four governments submitted their ordinances with designated reserves to LCDC in periodic review on June 23, 2010. On October 29, 2010, the Commission gave its oral *approval to the reserves designated in Clackamas and Multnomah Counties and to the rural reserves and most of the urban reserves in Washington County. The Commission, however, rejected the designation of Urban Reserve 7I, north of Cornelius, and directed reconsideration of Urban Reserve 7B, north of Forest Grove. The Commission authorized Metro and Washington County to consider designating as urban reserve, or leaving undesignated, land the County had previously designated rural reserve or left*

*undesignated. In order to provide flexibility, the Commission also returned the rural reserves in Washington County for further consideration.*

“Washington County and Metro responded to LCDC’s oral decision by revising the intergovernmental agreement between them and adopting ordinances amending their respective comprehensive plan and regional framework plan maps (Washington County Ordinance No. 740; Metro Ordinance No. 11-1255). The ordinances made the following changes \* \* \*”. (Emphasis supplied.) Supp Metro Rec. 1.

Accordingly, the Washington County and Metro interpretation of what was supposed LCDC might or should do, took on the character of a final LCDC written order, with Metro and Washington County asserting their claimed interpretation was right and exclusive and the only thing to which any consideration or response was allowed.

Washington County and Metro are wrong on a number of fronts in the “remand decision.” However, the gravest error is that they had no jurisdiction whatsoever to adopt the challenged Supplemental Decision. Once LCDC’s authority was invoked, Metro and Washington County lost jurisdiction over the Final Decision they submitted on urban and rural reserves for the Metro region. This is clear from the statutory grant of authority and is consistent with principles of appellate review.

Once appellate court jurisdiction is invoked appellate authority, “is exclusive and plenary, until such time as the appellate courts have made disposition of the appeal,” *Murray Well-Drilling v. Deisch*, 75 Or App 1, 9, 704 P2d 1159 (1985). Further, the Oregon Supreme Court has held in *State v. Jackson*, 228 Or 371, 382, 365 P2d 294 (1961):

“[i]t is a well-settled rule that after jurisdiction has been vested in an appellate court by the taking of an appeal the lower court cannot proceed in any manner so as to affect the jurisdiction acquired by the appellate court or defeat the right of the appellants to prosecute the appeal with effect.”

Under *Standard Ins. v. Washington County*, 17 Or LUBA 647 (1989), LUBA explained that unless there is statutory authority to the contrary, a local government does not have jurisdiction to modify a decision pending before LUBA:

“We find there is a clear pattern to these statutory provisions for appellate review. Where jurisdiction is conferred upon an appellate review body, once appeal/judicial review is perfected, the lower decision making body loses its jurisdiction over the challenged decision unless the statute specifically provides otherwise. In this case, the statutes do not authorize the county to take further action on its decision while that decision is being reviewed by LUBA or by the Court of Appeals. \* \* \* Therefore, the county was without jurisdiction to adopt

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the challenged decision. This requires us to reverse the county's decision. OAR 661-10-071(1)(a).”

*See also Rose v. City of Corvallis*, 49 Or LUBA 260, 270. Here, in the regional designation of reserves, the legislature has specifically limited local authority to make a decision and for its review in the manner provided in periodic review. There is no room in the statutory scheme for Washington County and Metro to make a new decision changing the Final Decisions they submitted to and that was pending at LCDC. This is especially true where 46 objections were awaiting resolution after some four (4) days of hearings and commission deliberations. In this case, the Metro/County Final decision was within the exclusive jurisdiction of LCDC. Local officials are foreclosed from both submitting a Final Order to LCDC and deciding the scope of the LCDC decision on their Final Order thus submitted. This is evident from state law. At the outset it is unquestionable that LCDC decisions on Final Decisions submitted in periodic review are required to be reflected in written orders that are appealable to the court of appeals. ORS 183.470(1) and (4); ORS 183.480; ORS 197.650; 197.651. ORS 197.644(3)(a) makes clear that:

“Commission action pursuant to subsection (1) or (2) of this section is a final order subject to judicial review in the manner provided in ORS 197.650.”

Additionally, ORS 197.628(5) provides: “\* \* \* Action by the commission in response to an appeal from a decision of the director is a final order subject to judicial review in the manner provided in ORS 197.650. \* \* \*”

The reserves decision making process begins with one Final Decision at the local level, and ends with a final written commission order. There is no room for local governments to monkey with the Final Decision submitted to LCDC or the scope of what LCDC does with objections to the submitted Final Decision. ORS 197.626 says that in making a decision on urban and rural reserves, Metro and the three counties “shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.” In turn, ORS 197.644(2) establishes that:

“The commission shall have *exclusive jurisdiction* for review of the evaluation, work program and completed work program tasks as set forth in ORS 197.628 to 197.650. \* \* \*.” (Emphasis supplied.) *Accord* OAR 660-025-0040(1).

Local governments are only allowed to submit “Final Decisions” to LCDC in periodic review and it is these final decisions that LCDC in turn is required to take final action on, including responding to all valid objections. OAR 660-025-0130(1), (3); OAR 660-025-0100(5); 660-025-140(6); see OAR 660-025-0020 (defining what constitutes the locally submitted Final Decision). LCDC, at the end of its review on the Final Decision thus submitted, issues its final written order. OAR 660-025-0110(9); OAR 660-025-0160(6). Remands are always contemplated to be embraced in written orders. *Id.*, and see OAR 660-025-0150(1)(b). Appeals are to the court of appeals per ORS 182.482, which requires a final written order to appeal as established above. There is no authorization in any statute or rule for the Commission’s deliberations to be

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translated by the appealed local governments into a limited type of remand as the appealed local governments may decide. The decision whether and what to remand is vested exclusively in LCDC. It is emphatically is not vested in Washington County or Metro.

The harm to citizens, including the Bobosky's, in this process that led to the challenged decision is that no one, not the Bobosky's, not the county planning commission, not anyone had an opportunity to participate in a meaningful way in shaping or deciding the rural or urban reserves for the region. The Supplemental Decision was 100% constrained by bogus restrictions on what could be considered, and was based on bogus assumptions about what the applicable law was. On the latter, Metro/Washington County demanded everyone assume that all of the 46 objector's legal arguments about the errors of law in the 2010 decision were all unmeritorious and the only issue was to replace two urban reserve areas with indistinguishable EFU zoned urban reserve areas somewhere else.

No rationale was ever revealed about why the two urban reserves areas that were the centerpiece of the "remand" had to be removed and there was no guide for the replacement of the urban reserves thus removed. This convenience led the region to simply replace the land removed from urban reserves with land having the same EFU zone character. There were no standards governing the "remand"; rather there was just the bare political decision that certain land around Cornelius and Forest Grove should be removed from urban reserves and be replaced with EFU zoned land somewhere else. No consideration was given to using exception lands instead of EFU zoned land for urbanization and this is a fatal error.

**REMEDY:** Reverse the challenged decision as outside Metro and Washington County's authority; issue a Final Order on the Final Decision on urban and rural reserves submitted to LCDC in 2010.

### **THE OBJECTIONS THAT FOLLOW ARE MADE IN THE ALTERNATIVE ONLY AND WITHOUT WAIVING THAT THE COUNTY AND METRO LACKED JURISDICTION TO ADOPT THE SUPPLEMENTAL DECISION**

**OBJECTION 2:** The Boboskys were deprived of the right to participate in a lawful public process based on lawful standards and criteria. Metro and Washington County unlawfully limited the scope of the issues considered in adopting the challenged decision, including the issues to which the planning commission and other decision makers were allowed to respond and that the public could address in response to a "remand" which never existed.

The designation of urban and rural reserves is required to be based on the standards and criteria established in ORS 195.141, 143, 145 and OAR 660-027-0060. The process for the County to amend its plan and designate rural reserves must be consistent with the County's Code. The Washington County Code requires planning decisions to be based on standards and criteria in state law, county plan and county CDC. CDC 207-3. In this regard, the Planning Commission is required to decide planning matters before it in a manner that is consistent with the County's Code. CDC 107-2.2.

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The designation of urban and rural reserves (and undesignated land) in the challenged decision is not based on required state law standards, or even the county plan (including county policy applicable to “exception land” like the Bobosky’s) or county CDC. Rather the challenged decision is based on the limits arbitrarily proscribed in the above-described fictitious “remand”. The Washington County Planning Commission in the Original Decision determined that County professional planning staff was correct that the Bobosky property should be designated as urban reserve. However, on the fictitious “remand”, the planning commission was not allowed to even consider or evaluate the Bobosky property under the urban and rural reserve rules, but was required to assume the Bobosky property’s designation as rural reserves was legally sound and look only to the purported remand bases – which were ostensibly to take out some EFU zoned land and replace it with more EFU zoned land.

The challenged decision failed to evaluate the Bobosky property on whether it met the standards for rural or urban reserve or should be undesignated. No decision maker was given the option in public at least in the Supplemental Decision process to decide whether the Bobosky property should be designated as urban reserve or left undesignated. This is error. Designation of urban and rural reserves must be based on an evaluation of and consistent with applicable legal standards.

REMEDY: Remand the decision to evaluate the Bobosky property under applicable statutory and rule standards for urban reserve, rural reserve or for whether the property should simply be left as undesignated land. In the alternative, the commission should REVERSE the challenged decision as it relates to the Bobosky property because the Bobosky property fails as a matter of law to meet the requirements for rural reserves. The findings do not establish the property is “agricultural land” or that it plays any role in agriculture, they do not establish that the Bobosky property has any designated natural resources. There is simply no lawful foundation to designate the Bobosky property Rural Reserve. Therefore, the Bobosky property designation in the Supplemental Decision as Rural Reserve should be reversed and the Bobosky property at a minimum simply left “undesignated.”

**OBJECTION 3:** The challenged decision was unlawfully adopted per the terms of the County Charter, as well as the terms of public involvement laws. The substance of the challenged decision was only exposed to the public when the affected governmental officials were committed to the decision reflected in the challenged decision.

County Plan amendments are required by County Charter to follow a specific process. Further, County Comprehensive Plan amendments and amendments to the Regional Framework and Functional Plans are required to take place in a public process. Neither required Charter processes nor public involvement laws were properly observed.

As to the County Charter, Charter Section 103(c) requires a final decision land use ordinances by October 31 and that all land use ordinances to be adopted by November 1. If these things do not occur, then any land use ordinance is “deemed rejected.” Further, Charter Section 104

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requires proposed land use ordinances to go through the County Planning Commission. Here, County Ordinance 740, which designated rural reserves in the challenged decision, did not even go to the planning commission until March 2, 2011, was clearly not “initiated” until after October 31, 2010 and certainly had no final decision by November 1. While a final decision can be punted to a later point if the Board of Commissioners “continues a proposed ordinance that has otherwise gone through proper processes to a time and date certain “on or after March 1 of the subsequent year,” that small window does not allow an elephant to climb through. The adoption of a proposed ordinance that was not even initiated by October 31 or November 1, and did not even get to the planning commission until March 2, is such an elephant. Where Ordinance 740, a part of the challenged decision, was not initiated by October 31 and never even made it to the planning commission until March 2, 2011, then as a matter of law per the terms of the County Charter the challenged decision is invalid and must be “deemed rejected.”

As to public process, the challenged decision failed to go through required public processes. Goal 1 requires citizen involvement and opportunity to comment on, and shape the substance of, land use ordinances including the challenged decision. The Metro required public processes (MC Policy 1.13 Participation of Citizens) were similarly ignored as is evident here. Similarly, public meetings laws require the public’s business to be accomplished in public. ORS 192.610; *see Dumdi v. Hanley*, Lane County Circuit Court Case No. 16-10-02760 (January 14, 2011). The challenged decision here was crafted in the reverse of the required public processes.

Here, all signs point to the challenged decision being developed thusly: officials met (but not in or with the public), then officials themselves or through their staffs shuttled decision points back and forth ostensibly to avoid a quorum and public meeting requirements; a deal on the “remand decision” was eventually brokered (in private), and when the substance of the challenged decision finally made it into the public eye, the “deal” was a “done deal”. At the point of release to the public, the votes had been counted and no significant changes dreamed up by the public or planning commissions could be or were tolerated. This is evident as there are no minutes, no notices, no public processes that otherwise explain the appearance of the “draft” of the challenged decision. This is also evident from snippets in newspapers and minutes of meetings. This perception is not blunted by the silence from the attorney general’s office and LCDC regarding the required final order on the Original Decision.

While it is true that the public was given a supposed opportunity to weigh in on the “remand decision”, comments of the public in fact could not have and did not have any influence. News accounts quote Chair Duyke as damning the planning commission for not falling into line and not serving as the anticipated “rubber stamp” on the restricting “remand” issues that the planning commission was allowed to consider. *See Attachment 2*. Even Washington County Commissioner Malinowski noted the lack of transparency in the development of the challenged decision. In the Washington County Board of Commissioners February 14, 2011 meeting minutes, Commissioner Malinowski stated he’d “always had concerns about the lack of public ability to shape the decision on December 14, 2010” (the draft County IGA). Further, in the Board of Commissioners minutes for February 15, 2011, Commissioner Malinowski is reported to have stated:

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“His concern moving forward was that if Metro and the board come to a deal, by the time we ask the public what they think, it will be a ‘yes or no and thanks for coming’ kind of thing rather than a ‘okay let’s shave this off and add this one.’”

Moreover, Commissioner Malinowski stated he was: “not sure why we do not need to involve the public more.”

In adopting the challenged decision the Board of Commissioners had the following discourse about the Bobosky property:

Commissioner Malinowski:

“I live in the area and watching this interesting little orphan site for quite a while. I would tend to agree with you, *picking that out as resource land was a bit of a reach. I was surprised to see it not be urban reserve or at least undesignated given the option.* Couple suggestions I would make if it ever came back ... remove marginal soils \* \* \*, and discussion of PCB.

“If you took that 130 acre Bendemeer and cut off the part on out on the other side of Cornelius Pass rd. and cut off the church and cemetery simply because its bad luck to make cemetery land worth a lot of money. At least it has proved in other communities.

“I think it is perfectly reasonable that this would have some option considering that we are here to protect resource land and looking at what we are protecting compared to what we are not.

“So I sympathize with you, but I would make those exceptions.

“I would be confused too.

Commissioner Roy Rogers:

“The only comment I’d make is when *I look at the particular proposal that you had it makes a great deal of sense. We’re going on some high valued farmland versus that area. You’ve got to count to three on this board.* When you get to Metro and our surrounding counties you have a few more fingers to count on. *That proposal that you are making doesn’t have a majority vote. Doesn’t make it right, doesn’t make it wrong, it is just the way it is.* Your case is well said and the comments by the commissioner on my right (Malinowski) he made some awfully good observations. *If we could start over and we were all kings for a day the map would look different, but it is what it is after 2 and ½ years.*” (Emphasis supplied.)

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REMEDY: As to the County Charter violation, the Challenged Decision including the Ordinance 740 component of it regarding rural reserves, should be reversed as beyond the County's and by extension the region's, authority to make. As to the violation of public processes, (and in the alternative only because as is stated above Ordinance 740 should be reversed per the County Charter), the challenged decision should be reversed or remanded with instructions to conduct a public process on the matter involving the planning commission as required, where the public has meaningful opportunity for comment on the challenged decision based on applicable standards, and the planning commission is allowed a meaningful opportunity to apply those standards based on public input.

**OBJECTION 4:** The analysis area for the Bobosky property is unlawful as arbitrary, unreasonably large and result driven. The designated "rural reserve" analysis area is so large (34 square miles) as to make the "analysis" of whether it or the subject property met the standards for designation as rural reserve, useless. The challenged decision fails to establish that the Bobosky property or the residential subdivision within which it is located meets the standards for designation as Rural Reserve.

The subject 10 acre Bobosky property and the 130 acre residential Goal 3 exception lands subdivision within which it is located, were designated "rural reserve" by being sandwiched inside an enormous rural reserve study area. Ironically, the Bobosky / Bendemeer property is also among or perhaps the least meritorious rural reserve in the entire challenged decision. The Bobosky property and its Bendemeer residential subdivision are the largest exception area in Washington County not left undesignated or made an urban reserve. A reasonable decision maker would evaluate this exception area carefully under the urban and rural reserves factors. However, the challenged decision attempts to squeeze the Bobosky property into a Rural Reserve category on the basis of general statements about 34 square miles (21,440 acres) of land within which the Bobosky property and its 130 acre residential subdivision were arbitrarily lumped. This 34 square miles is called Area 8F. While all the other analysis areas OAR 660-027-0060 "Factors for Designation of Lands as Rural Reserves" requires:

- "(1) When identifying and selecting *lands for designation as rural reserves* under this division, a county shall indicate *which land* was considered and designated in order to provide long-term protection to the agriculture and forest industries and *which land* was considered and designated to provide long-term protection of important natural landscape features, *or both*. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both. (Emphasis supplied.)

The challenged decision fails to supply the required explanation about the lands selected for designation as rural reserve. Under the analysis used in the challenged decision, it would be permissible to lump everything and anything, anywhere into a whole and if there was any farm or forest or natural resources in any part of any such places, it would be enough to saddle the

whole with a Rural Reserve designation. In other words, the factors do not matter. The quest is to find enough or as small an amount of land to justify whatever result.

This absurd result allows the region to ignore the factors of OAR 660-027-0060 and is a nonsense interpretation of OAR 660-027-0060. An interpretation of a statute or rule can only be correct if it gives effect to all parts and is consistent with the words and context of the words. None of the principles of interpretation are correctly applied by making the Bobosky property Rural Reserve in the context of the features of a 34 square mile area.

OAR 660-027-0060(2) begins by requiring areas for rural reserves to be subject to urbanization, in close proximity to a UGB or in close proximity to properties having "fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land." There are no findings supported by an adequate factual base that the entire analysis area of Area "8F" is subject to urbanization. Moreover, evaluating 21,446 acres or 34 square miles – an area larger than the City of Hillsboro and not much more than the size of Hillsboro and Beaverton combined -- cannot reasonably be considered having near proximity to a UGB and there is no analysis about market values in this enormous area to even begin a "fair market value" evaluation for so large an area.

Moreover, OAR 660-027-0060(2) requires that for designating lands as "Rural Reserves," findings supported by substantial evidence must establish that such "Rural Reserve" land meet the following standards:

- ”(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;
- “(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and
- “(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:
  - (A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;
  - (B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;

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- (C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and
- (D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.”

There is no evidence that the Bobosky property or the residential subdivision within which it is located meets *any* of these “Agriculture” related standards. In fact, the specific evidence and findings about the Bobosky property are to the contrary. The evidence in the record makes such findings impossible because the subject property is an exception parcel, as is its residential subdivision, meaning as a matter of law it cannot be considered available for any “Agriculture.”

The Bobosky property is completely surrounded by either the UGB and new designated Intel Site or a Goal 3 exception residential subdivision. It can meet none of the rural reserves factors and should have been evaluated with such result, rather than evaluated to see if there is anything in 34 square miles in Washington County that might meet some of the rural reserve factors.

Under the “natural resources” factor, the 34 square miles of Area 8F fares no better. OAR 660-027-0060(3) establishes the “Natural Resource” basis for rural reserves.

“Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural landscape features, a county must consider those areas identified in Metro's February 2007 "Natural Landscape Features Inventory" and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:

- “(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described OAR 660-027-0040(2) or (3);
- “(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;
- “(c) Are important fish, plant or wildlife habitat;
- “(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;
- “(e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;
- “(f) Can 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

- “(g) Provide for separation between cities; and
- “(h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.”

The Bobosky property has none of these above described features to justify the rural reserve designation and there are no findings that say that it does. In fact, protection of natural resource features was not consistently applied in the challenged decision as a basis for designating rural reserves at all. As explained in the Challenged Decision’s staff report natural resources justified both rural and urban reserves designations:

*“Protection of Natural Landscape Features*

*“The state rule factors reflect the importance of protecting these features, which were initially identified in an inventory completed for Metro that was intended to complement the Great Communities Report and the ODA Agricultural Assessment. However, due to how the rule addressed the protection of natural landscape features, a discussion emerged regarding whether it was better to protect some of the natural landscape features by including them in rural reserves or in urban reserves and applying pro-active protection measures once the land is added to the UGB. Under the factors for designation of urban reserves, two subsections address natural systems and natural features in a way that can be interpreted to endorse including them in urban reserves and using design, avoidance and mitigation for protection. The factors for designation of rural reserves can be interpreted to consider using rural reserves to protect the natural landscape features. \* \* \*”*

In fact, several thousand acres are designated urban reserve on the idea that doing so protects important natural resources. Take for example the following findings for Urban Reserve 1 D and 1F:

“There are two significant buttes located in the northwest part of this Urban Reserve. These buttes have been identified as important natural landscape features in Metro’s February 2007 “Natural Landscape Features Inventory”. These buttes are wooded. Existing rural homesites are scattered on the slopes. There is minimal development potential on these buttes.” Supp Metro Rec 18.

There is no uniformity in the application of the natural resource factor. The lack of uniformity makes the application of this factor to designate rural reserves arbitrary and unlawful.

Finally, while OAR 660-027-0060(4) allows designation of rural reserves on a “Foundation Agricultural Land” basis, that is not evident as the basis for the designation of the Bobosky property or indeed Area 8F, as rural reserve. The challenged decision specifically explains the so called “safe harbor” of OAR 660-0027-0060(4) was not applied in Washington County for the

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land that ODA mapped as Foundation Agricultural land. Original Metro Dec. 96; Supp Metro Rec. 90-91. If the region attempted to make this a basis for designating the Bobosky property or Bendemeer area as Rural Reserve, as explained below, such would be wrong as a matter of law, as the Bobosky property as well as Bendemeer, is not Agricultural Land – foundation or otherwise.

A strong demonstration of how meaningless the “analysis” of 34 square miles is to use as a basis to apply the rural reserve factors, can be found in the Supplemental Decision findings themselves. These findings are a series of conclusions about features in parts of this gigantic area and make no findings at all about the 130 acre Bendemeer residential subdivision or Bobosky property. Importantly, the land in the adjacent and nearby areas that were designated as urban reserves and left undesignated are zoned Exclusive Farm Use and listed as “Foundation Farmland.” These are smaller parcels evaluated on the basis of the applicable factors. Had Bendemeer been evaluated similarly, the result would have been similar. It is only through the fiat of gerrymandering that the challenged decision attempts to pass off the Bobosky property, and indeed the Bendemeer residential subdivision, as a rural reserve. It is impossible to find a consistent methodology for the application of the rural or urban reserves factors in the challenged decision – some areas are smaller, some are a few thousand acres size and Area 8F is enormous weighing in with 34 square miles. The challenged decision treats the “rural reserve” category in Washington County like a default. But then in Washington County leaves large swaths of land zoned EFU “Undesignated”. Undesignated should be the default. If the region wishes to designate rural reserves then it must sincerely apply the rural reserves factors. The lack of uniformity in the application of the rural and urban reserves and undesignated designations is stunning. Take for example Study Area 8C – Bethany West / PCC Rock Creek:

*General Description:* Including the Peterkort site, the PCC Rock Creek portion of Study Area 8C is **approximately 173 acres in size**. This land is located near the intersection of NW Springville Rd. and NW 185th Avenue at the northern end of the PCC Rock Creek Campus. This area abuts the current UGB along its eastern and southern boundaries. Supp Metro Rec 89.

Another example is consider the findings for Urban Reserve 7C: Cornelius East

*“General Description:* Urban Reserve Area 7C is located along the eastern edge of the city of Cornelius and generally extends north of Tualatin Valley Highway to the north and east to the floodplains of Council Creek and Dairy Creek. This area also includes a 6.5-acre parcel of land adjoining the eastern limits of the city of Cornelius south of Tualatin Valley Highway between the highway and Southern Pacific Railroad line. Urban Reserve Area 7C is **approximately 137 acres**. The area supports approximately 96 detached single family homes and a small number of commercial activities.” Supp Metro Rec 81.

Findings about Area 8F describing 34 square miles could describe an urban or a rural reserve area within it having qualifying special features or indeed could be transported to apply to land

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anywhere in the region. Importantly, there is nothing to distinguish this 34 square miles from the rest of the areas designated Urban Reserves within just a few feet of the subject property.

Consider the below findings in the context of the rest of the region and how these findings could apply anywhere:

“Rural Reserve 8F: Highway 26 North

*“General Description:* Highway 26 (Sunset Highway) forms the southern boundary of this approximately 21,446-acre rural reserve. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. Tributary ravines are common in the area, particularly in the eastern half. NW Cornelius Pass Road and NW West Union Road are designated arterials in the county's Transportation Plan; collector roads include NW Shady Brook, NW Jackson School, NW Helvetia, and NW Phillips Roads. Urban Reserve Area 8C (West Bethany) occurs as two small units located on the east boundary adjacent to the regional UGB. The area best qualifies as a rural reserve through agricultural and natural landscape features factors. The community of Helvetia is located in this reserve.

Findings: Designation of Lands as Rural Reserves Agricultural Considerations Under Factor (2)

Factor (2)(a) is addressed in the *general comments* section in the rural reserves introduction. Land in existing agricultural use extends from the south reserve boundary north to the foothills of the Tualatin Mountains. The larger parcels, such as those located adjacent to Jackson School Road and Mountaindale Road, are in agricultural use. Class II soils predominate north of West Union Road. Areas of Class I soils exist south of West Union Road in the vicinity of Jackson School road and on either side of Helvetia Road. Relatively large areas of Class I soil occur north of North Plains and Mountaindale Road. Mountainous areas of the reserve tend to be Class III and IV soils. Water rights are concentrated along McKay and Dairy Creeks and intermittently along Waibel Creek and Rock Creek. Water rights are sporadic throughout the rest of the reserve. Wash Co Rec. 3015. Residential and small farm use is typical in the foothills, where parcels are generally smaller than those on flatter terrain to the south. Availability of water was an important consideration in staff's analysis of agricultural lands given assumptions of climate change impacts and expected limitations to in-stream flow over the reserves timeframe.

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The majority of this reserve ranked as Tier 2 and Tier 3 for rural reserve designation. Relative to other rural areas of the county, dwelling density and parcelization is high throughout much of the reserve, particularly in the Helvetia area. WashCo Rec. 3021-3022. Also, agricultural productivity ratings developed by applying the Huddleston methodology ranked considerably lower throughout this reserve than rural reserve areas in the Tualatin River floodplain and the Dairy Creek basin between Banks and Forest Grove. The most productive agricultural areas in the reserve are located northwest of North Plains in the Mountaindale area. Wash Co Rec. 3017.<sup>[5]</sup>

### Forestry Considerations Under Factor (2)

The majority of this reserve area is in agricultural use. Forested parcels and rural residential areas occur in the foothills of the Tualatin Mountains. The ODF inventory included several areas designated *Wildland Forest* at the northern edge of the study area, including north of the Highway 26/Highway 6 junction as well as areas at the county's east edge northeast of North Plains. All areas designated *Wildland Forest* in the ODF inventory had Tier 1 suitability in the county's forestry analysis. The foothills are typified by scattered woodlots and soils are potentially suitable for long-term forestry operations. Existing parcelization and dwelling density would likely limit larger commercial forestry operations.

### Natural Landscape Feature Considerations Under Factor (3)

Factor (3)(a) is addressed under the *general comments* section in the rural reserves introduction. Rock Creek, McKay Creek, and the East Fork of Dairy Creek flow through this reserve and several important tributaries - including Bledsoe Creek, Jackson Creek, and Holcomb Creek - originate in the Tualatin Mountain foothills. These streams are critical for enhancement of water quality and quantity necessary for resident and anadromous fish habitat. Downstream flow for agriculture is dependent on the tributary streams in this reserve. Relatively large floodplain areas exist in the Mountaindale area north of Highway 26 and north of North Plains, providing a buffer between rural uses and the city.

Elevations over 350 feet were included as Tier 1 areas for rural reserves to address factor (3)(e) relative to a sense of place. Portions of the hills above this elevation were also included in Metro's Natural Features Inventory given their significance as headwaters to Rock Creek.

Foothills to the Tualatin Mountains provide a natural buffer between agricultural uses closer to the Sunset Highway and the more intensive residential use further north. Access to recreation areas such as Forest Park and Sauvie Island in

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<sup>5</sup> This is not where the Bendemeer subdivision or the Bobosky property is located by any stretch. Rather this is miles away.

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Multnomah County are provided through several roads that run north-south in this reserve. The Banks-to-Vernonia State Trail from Stub Stewart State Park to the city limits of Banks occurs in this reserve and is likewise unimpeded from recreational access.”

These findings supporting the challenged decision simply state the entirety of 34 square miles Area 8F has some agricultural and some natural resources. They do not properly apply OAR 660-027-0060 and certainly do not apply those rules to the Bobosky property. The Bobosky property has no agricultural characteristics, none of the above described streams or watershed values, and is below the foothill threshold. Evaluation of this Area 8F is a series of meaningless words and fails to provide any required analysis of the above factors. Any area composed of 34 square miles will have some smaller or larger parts with some or all the urban and all of the rural reserve characteristics, depending on how the area is gerrymandered. These same findings could be used to describe an urban reserve on either side of the Bobosky property except that those urban reserves are actually farmland being actively farmed and zoned EFU. The only difference is that there the Bobosky property and its residential subdivision within which it is located is a significant Goal 3 exception area well positioned with urban facilities and services to supply urban land supply to the region. In fact, the same sort of findings were discounted and used to support *urban reserves* designations on nearly next door property in urban reserve area 8A, and others:

“There are several inventoried natural landscape features [factor (3)(e)] within the Foundation Lands designated urban reserve. Rock Creek flows through a portion of Urban Reserve 8C (Bethany West). The IGA between Washington County and Metro included a provision to limit development on approximately 115 acres of constrained land within the portion of the watershed in 8C, through application of the county’s Rural/Natural Resources Plan Policy 29 and Clean Water Services programs developed to comply with Title 13 (Nature in Neighborhoods) of Metro’s Urban Growth Management Functional Plan. Metro Rec.821. Urban Reserve 6B includes portions of the slopes of Cooper Mountain. Metro’s Cooper Mountain Nature Park lies within this area and protects much of the mountain’s slopes. Metro Supp. Rec.821. Urban Reserve 6D includes a segment of Tualatin River floodplain. King City will apply its floodplains ordinance to limit development there. WashCo. Rec. 3462-3463; Metro Supp. Rec.821. There are such inventoried natural landscape features at the edges of Urban Reserves 6A (South Hillsboro, Tualatin River), 6C (Roy Rogers West, Tualatin River), 6D (Beef Bend, Tualatin River), 7C (Cornelius East, Dairy Creek), 7D (Cornelius South, Tualatin River), 7E (Forest Grove South, Tualatin River and Lower Gales Creek) and 8A (*Hillsboro North, McKay Creek*); Metro Supp. Rec.821. These features serve as edges to limit the long-term extent of urbanization and reduce conflicts with rural uses [factor (3)(f)]” (Emphasis supplied.) Supp Metro Rec 9.

LCDC should not be fooled by the challenged decision. There is no basis to justify making the Bobosky property a rural reserve. Even land within the densest part of the City of Portland will

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have some community garden, or something like the Japanese Gardens or International Rose Test garden, or some other similar type of place with some sort of farm related activity going on, but that does not make all of Portland or all of Hillsboro or all of Beaverton good candidates to be designated "Rural Reserve." With the exception of the Bobosky property and its residential subdivision, the characteristics described for Area 8F are no different from lands left undesignated or made urban reserve or anything else in the whole of Washington County. The inclusion of the Bobosky property in Area 8F, indeed the use of the 34 square miles as "area 8F," is wholly arbitrary and can only be explained as designed to gerrymander a political result. The analysis and evidence in the record establish that the Bobosky property and the exception area within which it is located was not in fact evaluated under the rural reserves factors and therefore its inclusion in the rural reserves is error. For more information about why the rural reserves characterization is erroneous, see remaining objections which are incorporated herein by this reference as reasons why the rural reserves designation is in error.

REMEDY: Reverse or remand with instructions to evaluate the Bobosky property or at a minimum the 130 acre Bendemeer residential exception area against the urban and rural reserve factors and well as to consider leaving the property undesignated. Further to instruct that when it is established the Bobosky property does not meet the Rural Reserve factors and meets the urban reserve factors as the county's professional staff and planning commission have already decided, either make the Bobosky property urban reserve or leave it as undesignated.

**OBJECTION 5:** The Challenged Decision errs in characterizing the Bobosky property as "Foundation Agricultural Land" or as "Agricultural Land" at all. The subject property is a Washington County Comprehensive Plan designated exception parcel. This means it has already been determined not to contain "Agricultural Land" and already conclusively determined as not being suitable or available for "Agriculture." There is no adequate evidentiary basis for claiming this "exception" lot is suitable for "Agriculture". By definition, exception lands cannot be "Foundation Agricultural Land" or "Agricultural Land."

The Supplemental Decision Supp. Metro Rec 60-61, states:

*"Bobosky / Bendemeer:* The Bobosky property is a ten acre tax lot included within a small rural residential community known as Bendemeer, located north of West Union Road between NW Cornelius-Pass Road and NW Dick Road. On April 21, 2010, the Planning Commission heard testimony from Wendie Kellington and Wink Brooks on behalf of owners Steve and Kelli Bobosky to change the Bobosky property from rural reserve to urban reserve. The applicants asserted during the hearing that exception lands (AF-5 and AF-10 designations) do not serve to promote continued agricultural use. The Planning Commission subsequently recommended that all properties within the Bendemeer subdivision be changed from rural to urban reserve. The property in question ranked high for both urban and rural reserves in staff's analysis. *The Oregon Department of Agriculture classified the properties as Foundation agricultural land.* The city of

Hillsboro developed a pre-qualifying concept plan that addressed how the area met the urban reserve factors. This area was originally designated as an urban reserve but was changed to a rural reserve designation during Core 4 deliberations. Ms. Kellington and the Boboskys provided testimony to the Board of Commissioners at their April 27, 2010 hearing.

“A description and analysis of staff’s recommendation for urban reserve was included in Issue Paper 4 of the May 11 staff report to the Board. The Board elected not to include this amendment request in the engrossed ordinance. WashCo Rec. 8601-8619.” (Emphasis supplied.) Washington County Supp Rec. 10005.

The Supplemental Metro Rec 103-105, further states the following about the 21,446 acre area within which the Bobosky property was lumped and evaluated:

The Supplemental Decision goes on to state:

“Rural Reserve 8F: Highway 26 North

*General Description:* Highway 26 (Sunset Highway) forms the southern boundary of this approximately 21,446-acre rural reserve. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. Tributary ravines are common in the area, particularly in the eastern half. NW Cornelius Pass Road and NW West Union Road are designated arterials in the county's Transportation Plan; collector roads include NW Shady Brook, NW Jackson School, NW Helvetia, and NW Phillips Roads. Urban Reserve Area 8C (West Bethany) occurs as two small units located on the east boundary adjacent to the regional UGB. The area best qualifies as a rural reserve through agricultural and natural landscape features factors. The community of Helvetia is located in this reserve.

“Findings: Designation of Lands as Rural Reserves Agricultural Considerations Under Factor (2)

“Factor (2)(a) is addressed in the *general comments* section in the rural reserves introduction. Land in existing agricultural use extends from the south reserve boundary north to the foothills of the Tualatin Mountains. The larger parcels, such as those located adjacent to Jackson School Road and Mountindale Road, are in agricultural use. Class II soils predominate north of West Union Road. Areas of Class I soils exist south of West Union Road in the vicinity of Jackson School road

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and on either side of Helvetia Road. Relatively large areas of Class I soil occur north of North Plains and Mountaindale Road. Mountainous areas of the reserve tend to be Class III and IV soils. Water rights are concentrated along McKay and Dairy Creeks and intermittently along Waibel Creek and Rock Creek. Water rights are sporadic throughout the rest of the reserve. Wash Co Rec. 3015. Residential and small farm use is typical in the foothills, where parcels are generally smaller than those on flatter terrain to the south. Availability of water was an important consideration in staff's analysis of agricultural lands given assumptions of climate change impacts and expected limitations to in-stream flow over the reserves timeframe.

“The majority of this reserve ranked as Tier 2 and Tier 3 for rural reserve designation. Relative to other rural areas of the county, dwelling density and parcelization is high throughout much of the reserve, particularly in the Helvetia area. WashCo Rec. 3021-3022. Also, agricultural productivity ratings developed by applying the Huddleston methodology ranked considerably lower throughout this reserve than rural reserve areas in the Tualatin River floodplain and the Dairy Creek basin between Banks and Forest Grove. The most productive agricultural areas in the reserve are located northwest of North Plains in the Mountaindale area. Wash Co Rec. 3017.

“Forestry Considerations Under Factor (2)

The majority of this reserve area is in agricultural use. Forested parcels and rural residential areas occur in the foothills of the Tualatin Mountains. The ODF inventory included several areas designated *Wildland Forest* at the northern edge of the study area, including north of the Highway 26/Highway 6 junction as well as areas at the county's east edge northeast of North Plains. All areas designated *Wildland Forest* in the ODF inventory had Tier 1 suitability in the county's forestry analysis. The foothills are typified by scattered woodlots and soils are potentially suitable for long-term forestry operations. Existing parcelization and dwelling density would likely limit larger commercial forestry operations.

“\* \* \* \* \*”.

The Original Decision expressly stated it did not rely on the ODA's map of so-called “Foundation Agricultural Lands” for designation of Washington county rural reserves and the challenged decision continues that determination. Supp Metro Rec 91. However, it seems that the idea of “Foundation Agricultural Land” when convenient to do so, was used to justify rural reserves anyway. Thus, to the extent the ODA map that shows the Bobosky property or its Bendemeer subdivision as “Foundation Agricultural Land” plays *any* role in the rural reserve designation of the Bobosky property, as could be inferred from the above quoted Area 8F findings, then it is error to rely on such map to that end as a matter of law.

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First, it is error to apply Foundation Agriculture as an evaluation mechanism for rural reserves to any Washington County property because the findings explain the decision do not rely on this factor. Second, this process is the only time such ODA map took on any relevance or any import in any planning process and it has never been subjected to a public process in other than this reserves designation process. To the extent the ODA map is relied on for designating reserves, then it is just as much at issue in these proceedings as the rural and urban reserves designations. Third, the ODA map errs as a matter of law in showing the Bobosky property as "Foundation Agricultural Land." The Bobosky property is not "Agricultural Land" foundation or otherwise as Agricultural Land is defined in state law. OAR 660-033-020(1)(c), clearly states that "Agricultural Land" does not include \* \* \* land within acknowledged exception areas for Goal 3 or 4." The Bobosky property and the 130 acre Bendemeer subdivision within which it sits are subject to acknowledged Goal 3 exceptions. ORS 197.732 establishes that land subject to goal exceptions are deemed as a matter of law as not being available for goal uses. See ORS 197.732(2). The reserves statute (ORS 195.141 and 143) do not authorize non Agricultural Land like the Bobosky's being locked up as rural reserves on the unsupported and unsupported idea it serves agriculture to lock up a residential lot and residential subdivision on an acknowledged Goal 3 exception. The laws unequivocal that the subject property is not available or suitable for agriculture as is explained in the acknowledged Washington County "Exception Element" and associated findings establishing the subject property as a Goal 3 exception area. Additional information in the record and legal analysis about why the Bobosky property is not in fact, and cannot be as a matter of law, considered "Agricultural Land" is contained in the remaining objections below and those objections are incorporated herein.

Therefore, a determination that the subject Bobosky property is "Foundation Agricultural Land" is not supported by substantial evidence in the record as a reasonable decision maker would not so conclude based on the record of this proceeding. Such a determination is further contrary to ORS 195.141, 143; ORS 197.732; OAR 660-027-0060 and the county's acknowledged comprehensive plan and therefore is unlawful.

REMEDY: Reverse or remand the challenged decision to remove the Bobosky property from rural reserve designation as it cannot and does not satisfy any factors for agricultural use or capability.

**OBJECTION 6:** Washington County and Metro erroneously re-designated the subject exception lot as "Rural Reserve" in the Supplemental Decision, in violation of OAR 660-027-0060 and ORS 195139(1)(a), ORS 195.141(2) and (3), ignoring the recommendation of Washington County's professional staff and the Washington County Planning Commission that the property met the urban reserve criteria and should be designated urban reserve.

The subject property is within "Rural Reserve 8F: Highway 26 North". Original record Metro Rec. 108; Supp. Metro Rec. 103. As explained above and in more detail here, the findings supporting the challenged decision classifying the subject property as rural reserve are inadequate to establish compliance with rural reserve criteria and the record lacks an adequate

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factual basis for that classification. The challenged decision erroneously asserts the subject property was designated rural reserve on both “agricultural” and natural resources bases. Rec. 108. However, both are impossible since the subject property has neither characteristic and is subject to an acknowledged Goal 3 exception, in a developed exception land residential subdivision and is itself developed with a residence. Original Bobosky Objection Exhibit 1 p 1, 15-16, 23, 37; Original Bobosky Objection Exhibit 2, p 1. Further, there are no identified important (or in fact any) natural resources on the property. Original Bobosky Objection Exhibit 1 p 17, 103 104; Original Metro Rec. 64-65.

The findings make the remarkable but wrong statement that “the property in question ranked high for both urban and rural reserves in staff’s analysis.” Original Metro Rec. 65; Supp Metro Rec 65. There is no evidentiary support for this statement as it relates to rural reserves suitability.<sup>6</sup> To the contrary, the record *only* supports a conclusion that the subject property was ranked low for rural reserves suitability – being given a “Tier III” of four tiers ranking. Original Bobosky Objection Exhibit 1 p 18-19. As explained above under Objection 5, the only way the challenged decision was able to assert the property met rural reserve criteria was to lump the subject property with 34 square miles of other property and thus improperly avoid evaluating the subject property. The *only* reason the subject property was not given the lowest fourth tier ranking for rural reserves was because the county improperly treated it as “Agricultural Land” when clearly it is not as a matter of law and has no suitability or capability for agriculture; and has not been farmed. Original Bobosky Objection Exhibit 1 p 18-19; OAR 660-0033-0020(1) and Original Bobosky Objection Exhibit 1 p 31-38. The general findings for the 34 square mile area of Area 8F do not describe or apply to the Bobosky property at all. It is not agricultural land, has no identified natural resource features and is below the 350 foot threshold in any case. Original Wash. Co. Rec. 2344. The findings are inadequate to support the subject property’s designation as rural reserves and the record lacks an adequate factual basis to conclude that the subject property may properly be designated a rural reserve.

In fact, throughout the process, including where professional staffs evaluated candidate urban and rural reserves based on legal standards, the subject property was determined to meet the criteria for an urban reserve. Original Metro Rec. 61-62; *see also* Original Bobosky Objection Exhibit 1 p 17-19. As explained in the challenged decision:

“The Washington County Planning Directors and respective city staff reviewed the factors of OAR 660-027 along with the concepts of building “Great Communities” (Original WashCo. Rec. 2930-3819) in order to develop "pre-qualifying concept plans" for areas being recommended as urban reserves.” Original Metro Rec. 61-62; Supp Metro Rec 57.

The City of Hillsboro developed a “pre-qualifying concept plan” (County Prequalified Plan No. 5) which included the subject property as an important part of a “Great Communities” -

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<sup>6</sup> There is no dispute the subject property ranked in the highest category for urban reserves. Original Bobosky Objection Exhibit 1 p 17-18, and page 90.

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complete community to make the north Hillsboro Industrial area – a Metro Title 4 important regional industrial area – viable. Original Wash. Co Rec. 3110- 3274; 8215; Original Metro Rec. 65; Supp Metro Rec 60.

Then some people who live in distant Helvetia began vocal calls that they did not want any development near them. Original Metro Rec. 63, 108-09; Supp Metro Rec 58-59. The next thing that happened was at the end of the process only *after* the December 2009 release of the “Bragdon/Hosticka” map, there was an abrupt reversal – deciding that the subject property and the residential subdivision within which it is located should be designated as “Rural Reserve.” It is analytically impossible for a property to meet both urban reserves and rural reserves factors. If the property met the urban reserves factors but as a policy matter was not wanted as an urban reserve, the answer is to leave it undesignated. It cannot be gerrymandered into 34 square miles with the goal of attempting to change the character of the subject property. Original Wash. Co. Rec. 8602; Original Metro Dec. 63. No reason founded in the rural reserves criteria or based on an adequate factual basis was given. This decision lacked transparency and had all the earmarks of political gerrymandering. Original Wash. Co. Rec. 8602; Original Metro Dec. 62-63, 65. If land use standards are more than words on a page, and if the rule of law matters in this land use decision, then the challenged decision must be remanded with instructions to remove the rural reserve designation on the subject property (as well as the 130 acre residential subdivision within which the subject property is located). There is simply no lawful justification for the property’s designation as “rural reserve” and its designation as such violates the letter and spirit of the 2009 urban and rural reserves laws.

ORS 195.139(1)(a) provides the following policy that establishes the purpose for the application of rural and urban reserves:

“Long-range planning for population and employment growth by local governments can offer greater certainty for:

“(a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability[.] \* \* \*”

ORS 195.141(3) specifies that property may be designated rural reserve for “long term protection “to the agricultural industry” based on the following standards:

“(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

- “(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;
- “(b) Is capable of sustaining long-term agricultural operations;
- “(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and
- “(d) Is suitable to sustain long-term agricultural operations, taking into account:
  - “(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;
  - “(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;
  - “(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and
  - “(D) The sufficiency of agricultural infrastructure in the area.”

Designating the subject property rural reserve is contrary to the policy expressed in ORS 195.139(1)(a) and the whole point of designating rural reserves. There are no large blocks of farmland being protected in locking up the subject residential lot and this subdivision lot offers no help or certainty to the agricultural industry. The converse is the case. Original Bobosky Objection Exhibit 1 p 176, 37, 40, 42, 43. By pretending that locking up a 9.76 acre residential lot in a residential subdivision – where both of which are subject to a Goal 3 exception -- as the region’s way to provide for long term agriculture, the region does a huge disservice to agriculture. Making the subject property a rural reserve leaves nothing to agriculture but a developed residential subdivision lot and subdivision to which Goal 3 does not apply. This is hardly supplying large blocks of Agricultural Land for long term agriculture. But it does create the *appearance* that land is being set aside for agriculture, and the *appearance* that the region has given more than lip service to the viability of long term agriculture in the region. However, the appearance is just that – there is no adequate factual basis to conclude the subject 9.76 acre residential subdivision lot developed with Steve and Kelli’s home has anything to do with agriculture.

The truth is the subject property does nothing for agriculture and that locking it up harms the region's agriculture as well as the region's prospects for establishing the "Great Communities" about which so many words are written in the challenged decision. Original Metro Rec. 1, 3, 4, 10, 11, 34. The "Great Community" Hillsboro envisioned connected the subject property to the Title 4 regionally significant City of Hillsboro industrial area right across West Union from the subject property. Original Wash. Co. Rec. 3119-20; 3124-26; 3140; Logically, the subject exception area supplied needed housing to that Title 4 employment area in the UGB that regardless the City of Hillsboro will develop and that is now held in part by Intel for its future needs. Original Bobosky Objection Exhibit 1 p 16. However, the subject property and indeed Bendemeer could just as easily supply needed industrial lands to the region's long term urbanization needs. Under the City of Hillsboro Great Community Plan, the subject property supplied housing (and could supply industrial land as well) at no expense to agriculture because the subject property is subject to an exception to Goal 3 as is the residential subdivision in which it is located. Instead, the challenged decision makes the subject exception property and its exception area a rural reserve and the very best regional farmland urban reserve and does little that is meaningful to connect future needed housing to the Hillsboro Title 4 site across the street from the subject property.

Please understand, there is no special problem in relying on the subject property or the residential subdivision in which it is located to deliver housing for the adjacent Title 4 industrial area. There are no steep slopes, or water or sewer service problems; rather, water, sewer and transportation connections to the subject property are ranked as superior. Original Bobosky Objection Exhibit 1 page 91-93, 103-104. The original decision's findings at Original Metro Rec. 17 supplied no justification for passing over the Bobosky flat, easily serviced exception land to make it a rural reserve in order to urbanize the best farmland:

"Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development is not only very expensive, it is politically difficult. There is no better support for these findings than the experience of the city of Damascus trying since its addition to the UGB in 2002 to gain the acceptance of citizens to plan to urbanize a landscape characterized by a few flat areas interspersed among steeply sloping buttes and incised stream courses and natural resources."

The challenged decision makes the same point although attempts to mask its significance:

"\* \* \* Converting existing low-density rural residential development into compact, mixed-use communities through infill and re-development is not only very expensive, it is politically difficult. Metro Rec. 289-300. Mapping of slopes, parcel sizes, and Foundation Agricultural Land revealed that most flat land in large parcels without a rural settlement pattern at the perimeter of the UGB lies in Washington County, immediately adjacent to Hillsboro, Cornelius, Forest Grove, Beaverton, and Sherwood. These same lands provide the most readily available supply of large lots for industrial development. *Business Coalition Constrained*

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*Land for Development and Employment Map*, Metro Rec. 301; 1105-1110. Almost all of it is Foundation Agricultural Land. Metro Supp. Rec.799. Had the region been looking only for the best land to build great communities, nearly all the urban reserves would have been around these cities. It is no coincidence that these cities told the reserves partners that they want significant urban reserves available to them, while most other cities told the partners they want little or no urban reserves. *Washington County Cities' Pre-Qualified Concept Plans*, Wash Co Rec. 3036-3578. These facts help explain why there is more Foundation Agricultural Land designated urban reserve in Washington County than in Clackamas or Multnomah counties. Had Metro not designated some Foundation Land as urban reserve in Washington County, it would not have been possible for the region to achieve the "livable communities" purpose of reserves in LCDC rules [OAR 660-027-0005(2)]." Supp Metro Rec 5

There is no urban or rural reserve standard that elevates assumed political difficulty as justification to make exception land like the subject property a rural reserve. Moreover, political difficulty, if it were a standard, was not evenly applied in the challenged decision in any case. See Metro Rec. 33 regarding the Stafford basin made an urban reserve: "No area in Clackamas County engendered as much public comment and diversity of opinion as this Urban Reserve." Here, for the subject property, we have land subject to a Goal 3 exception, a willing government -- the City of Hillsboro --; property capable of efficient public facilities and services (since water and sewer are adjacent anyway this is easy), that is flat and adjacent to an industrial area needing adjacent housing; and that has no important natural features to worry about. See Original Bobosky Objection Exhibit 1 p 16-18; 91-93. The subject Bobosky property has already been planned to serve as residential land for the Title 4 industrial area across the street in the North Hillsboro Pre-qualifying concept plan. Metro Rec. 64; Supp Metro Rec 60-61..

It should be plain then, at the most basic level, the designation of the subject Bobosky property as a "rural reserve" is contrary to the special authority the legislature entrusted to the Metro region -- (and to no other place in the state) -- in ORS 195.141 and OAR 660-0027-0060 and 0050. Designating the subject property as rural reserve does not in any respect comply with ORS 195.141(3) and there is an inadequate factual basis to conclude designating the subject property rural reserve complies with that statute. The subject property has no "Agricultural" value, as a matter of law and fact. First, as explained in other parts of this objection, an exception lot, it cannot by definition be considered "Agricultural Land." OAR 660-033-020(1)(c) ("Agricultural Land" does not include land within acknowledged urban growth boundaries or land within acknowledged exception areas for Goal 3 or 4."). Therefore as a matter of law it is impossible for the subject property to be "suitable to sustain long term agricultural operations" or "capable" of sustaining agriculture.

Even ignoring that the subject lot's status as residentially developed exception land, the challenged decision even makes the case that the area in which the subject property exists has low agricultural capacity:

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“[A]gricultural productivity ratings developed by applying the Huddleston<sup>7</sup> methodology *ranked considerably lower throughout this reserve* than rural reserve areas in the Tualatin River floodplain and the Dairy Creek basin between Banks and Forest Grove. The most productive agricultural areas in the reserve are located northwest of North Plains in the Mountindale area. Wash. Co. Rec. 3017.” Original Metro Rec. 109; Supp. Metro Rec 104. (Emphasis supplied).

This is not a finding supporting rural reserve designation, but rather one that has the opposite effect.

Moreover, the subject property has no irrigation water rights. Original Bobosky Objection Exhibit 1 p 18 (“[t]he subject 10 acres and its larger exception area is not within the Tualatin Valley Irrigation district Boundary, nor does it include properties with water rights.”); *see also* Original Wash. Co. Rec. 8242, 8302.

There is no agricultural infrastructure on the subject property or adjacent to it. The subject property is located on a busy major arterial – West Union Road. Original Bobosky Objection Exhibit 1 p 92-93. The Bendemeer area has long been parcelized as reflected in a 1980s vintage residential exception. Original Bobosky Objection Exhibit 1 p 28-38; *see also* Original Wash. Co. Rec. 8192-98. Moreover, “adjacent” --across from the subject property on West Union Road -- is the Hillsboro designated, Title 4 significant, industrial area and future Intel site. Original Bobosky Objection Exhibit 1 p 16; Original Wash. Co. Rec. 3436, 3438.

Property values in the Bendemeer area already well exceed and do not in any respect reflect any agricultural value; rather their value necessarily reflects value as an exception area residential subdivision. In this regard, and to its credit, Washington County specifically excluded exception land from its analysis of agricultural land values. Original Bobosky Objection Exhibit 1 p 59; *see also* Original Wash. Co. Rec. 8199. It did so recognizing the subject property had no agricultural value given it was an exception lot, developed with a residence, in a residential subdivision.

Further, the subject property both abuts and is adjacent to other lots in a residential; subdivision and fronts on West Union Road, so it cannot be considered adjacent to farm uses. In fact it is completely is surrounded by nonfarm uses. Original Bobosky Objection Exhibit 1 p 176.

The subject lot has municipal water and sewer connections available nearby and rates highly for efficient and inexpensive public water and sewer extension. Original Bobosky Objection Exhibit 1 p 91-92; *see also* Original Wash. Co. Rec p. 752, 3333, 3331, 3338, 8255, 8256). The subject property ranks highly for transportation connectivity. Original Bobosky Objection Exhibit 1 p 93; *see also* Wash. Co. Rec. 752, 8257.

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<sup>7</sup> *See* Original Wash. Co. Rec. 890 for explanation of the “Huddleston” methodology.

The subject property is not now and has not been in any sort of farm use. Original Bobosky Objection Exhibit 1, p 1, 15-16; 28-38.

The following findings also lack an adequate factual basis:

“\* \* \* In consideration of the concerns raised by the Farm Bureau as well as likeminded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 [60]<sup>8</sup> percent (34,200 acres to 13,561 acres) to the WCRCC's urban reserve recommendation. These adjustments represented the Core 4's judgment in balancing the need for future urban lands with the values placed on "Foundation" agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment. Rural reserve acreage increased during Core 4 deliberations, from the WCRCC recommendation above to 151,666 acres.” Original Metro Decision p 62; Supp Metro Rec. 58.

The above findings lack an adequate factual basis because they assume the subject land and the 130 acre residential subdivision within which it is located is “Agricultural land” and it is not. OAR 660-0033-0020(1)(c). As is evident from the analysis in this OBJECTION, the subject property can in no way be construed to “provide for long-term protection for large blocks of agricultural land and forest land and for important natural landscape features that limit urban development or define natural boundaries of urbanization.” Wash. Co. Rec. 4030.

Designation of the subject property as rural reserve is also contrary to OAR 660-027-0060, which provides:

- “(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.
- (2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation.
  - (a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair

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<sup>8</sup> Bracketed number is a change between the original decision and the challenged decision.

market values that significantly exceed agricultural values for farmland, or forestry values for forest land;

- (b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;
  - (c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and
  - (d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:
    - (A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;
    - (B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;
    - (C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and
    - (D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.
- (3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural landscape features, a county must consider those areas identified in Metro's February 2007 "Natural Landscape Features Inventory" and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:
- (a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described OAR 660-027-0040(2) or (3);
  - (b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;
  - (c) Are important fish, plant or wildlife habitat;

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- (d) *Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;*
- (e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;
- (f) Can 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
- (g) Provide for separation between cities; and
- (h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks. (Emphasis supplied.)

The fallacy of designating the subject property rural reserves on agricultural bases is demonstrative above and reiterated here by this reference. The Bobosky property is an exception area already conclusively determined in an acknowledged comprehensive plan as being subject to an exception to Goal 3 meaning it is not available or suitable for agriculture and also cannot as a matter of law be defined as “Agricultural Land”.

As to a natural resources reason to make the subject property “rural reserve,” the rule is clear that the natural resources worth locking up land in rural reserves must be “important”. OAR 660-0027-0005 and 0060(1). This was an explicit change to the administrative rule. See Original Wash Co. Rec. 5 and 10. As explained above, the application of the natural resources factor is inconsistent (just as the agricultural factor is applied inconsistently). In fact, as explained above, natural resources presence was as much a basis for designating urban reserves as for rural reserves. In any case, the Bobosky property neither meets the agricultural nor the natural resources bases for rural reserves. The challenged decision establishes that for identifying important” natural resources, Washington County and indeed the region relied on the Metro 2007 Inventory of natural resources plus certain supplements. Metro Rec. 97; Supp Metro Rec 18, 19, 21, 22, 23, 26, 31, 74, 125, 146, 161. Washington County created a composite map of all county and regional inventoried natural features and nothing is identified on the subject property. Original Bobosky Objection Exhibit 1 p 89, 103, 104; Original Wash. Co. Rec. 3028; 8267-68. The subject property clearly has no natural resource value based on this map or anything else in the record.

The subject property is flat; it is not subject to natural disaster, has no designated floodplains, or steep slopes or landslides. Original Bobosky objection Exhibit 1 p 17; 103-104; Wash. Co. Rec. 566. The subject property is not important as fish or wildlife habitat – it is a 9.76 acre residential lot in a developed residential subdivision with no water features whatsoever. Original Bobosky Objection Exhibit 1 p 17, 103, 104. There are no buttes, bluffs, islands or wetlands. Original Bobosky Objection Exhibit 1 p 17, 89, 103, 104. There are no rivers or

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cliffs. *Id.* There are no cities nearby to separate. The subject property provides no access to any recreational opportunity; it is nowhere near the City of Banks or the Banks-to-Vernonia State Trail or Stub Stewart State Park. Original Bobosky Objection Exhibit 1, p 40, 42, 173, 174, 176, 177, 178,181; Exhibit 2 p 1. The subject property is below the magic 350' elevation. Original Wash. Co. Rec. 2344. There is simply no "natural resources' basis for designating the subject property a rural reserve.

Regardless of what the factors say about designating rural and urban reserves, the challenged decision exemplifies a decisional pattern of applying the factors arbitrarily and inconsistently, which is the equivalent of not applying them at all. On the one hand, there are plenty of urban reserves designated on Foundation Farm land and on land that is actually zoned EFU in the vicinity of the subject property. In fact, Metro designated 11,551 acres of honest to goodness farmland composed of Foundation Land as urban reserve, including parcels on either side of the subject property. Supp. Metro Rec 3 n 2; Original Bobosky Objection Exhibit 1 p 4-10; 154-165; Original Metro Rec. 65, 90, 92 *see also* Original Metro Rec. 79, 323, 392. Particularly stunning are the examples explained at Original Wash. Co Rec. 8604 regarding urban reserve area "8A" as well as "8B" explained at Metro Rec. 90-91 and area "8C" at Metro Rec 92-94. These areas are composed of the highest quality EFU zoned land, much of which is in or certainly suitable and capable of active farm use and opposed for urbanization by farmers but somehow managed to become an urban reserve. *See* Original Bobosky Objection Exhibit 1 p 4-10. However, all of the factors that made the county select these areas – particularly as explained at Wash. Co. Rec. 8604 for area "8A" -- urban reserves --apply to the subject property. These include proximity to industrial areas, cost effective infrastructure, planned by Hillsboro in a pre-qualified concept plan). The main and critical difference here is that the subject property is an exception parcel in a 130 acre exception subdivision area (and even larger exception area beyond the subdivision see Exhibit 1 p 176) that could be urbanized at *no expense* to agriculture to serve the north Hillsboro industrial area with housing as the City of Hillsboro demonstrated in its "pre-qualified" plan. *See* Wash. Co Rec. 8604. This situation is among the best evidence that the challenged decision is irrational (read: not a correct interpretation of the law and not supported by an adequate factual basis), violating to the applicable legal standards explained in these objections.

The subject property meets no natural resources basis for inclusion in the rural reserves. Exhibit 1 p 17; 103-104.

The general findings in the challenged decision explain:

"Finally, a criterion that included a "sense of place" [factor (3)(e)] was met by including all areas above 350 feet in elevation as suitable for rural reserve designation in addition to those natural areas that might shape and define a regional identity perspective. Limiting urban development above 350 foot elevation level helps provide a sense of place by preserving viewpoints and minimizing residential density. The composite map for the above features revealed

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a reserves map that included all areas of the Chehalem Mountains as suitable for rural reserve designation.” Supp Metro Rec 92.

The Bobosky property and the Bendemeer subdivision are below the 350’ elevation. Original Wash. Co. Rec. 2344.

The findings (p 108-110) simply do not and cannot establish compliance with the standards for designating rural reserves. In this regard, the findings make a lame attempt stating:

*“Bobosky / Bendemeer:* The Bobosky property is a ten acre tax lot included within a small rural residential community known as Bendemeer, located north of West Union Road between NW Cornelius-Pass Road and NW Dick Road. On April 21, 2010, the Planning Commission heard testimony from Wendie Kellington and Wink Brooks on behalf of owners Steve and Kelli Bobosky to change the Bobosky property from rural reserve to urban reserve. The applicants asserted during the hearing that exception lands (AF-5 and AF-10 designations) do not serve to promote continued agricultural use. The Planning Commission subsequently recommended that all properties within the Bendemeer subdivision be changed from rural to urban reserve. The property in question ranked high for both urban and rural reserves in staff’s analysis. The Oregon Department of Agriculture classified the properties as Foundation agricultural land. The city of Hillsboro developed a pre-qualifying concept plan that addressed how the area met the urban reserve factors. This area was originally designated as an urban reserve but was changed to a rural reserve designation during Core 4 deliberations. Ms. Kellington and the Boboskys’ provided testimony to the Board of Commissioners at their April 27, 2010 hearing.

A description and analysis of staff’s recommendation for urban reserve was included in Issue Paper 4 of the May 11 staff report to the Board. The Board elected not to include this amendment request in the engrossed ordinance.” WashCo Rec. 8601-8619. Metro Findings 64-65. (Emphasis supplied.)

“\* \* \* \* \*

“Rural Reserve 8F: Highway 26 North

*General Description:* Highway 26 (Sunset Highway) forms the southern boundary of this approximately 21,446-acre rural reserve. The north and west boundaries are defined by the edge of the study area and the east boundary is formed by Rock Creek. The area is characterized by several tributaries flowing south from the Tualatin Mountains, including Waibel, Storey, and Holcomb Creeks. Sections of McKay Creek and the East Fork of Dairy Creek also flow through this reserve area. The topography of the area is characterized by the foothills of the Tualatin Mountains. Tributary ravines are common in the area,

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particularly in the eastern half. NW Cornelius Pass Road and NW West Union Road are designated arterials in the county's Transportation Plan; collector roads include NW Shady Brook, NW Jackson School, NW Helvetia, and NW Phillips Roads. Urban Reserve Area 8C (West Bethany) occurs as two small units located on the east boundary adjacent to the regional UGB. The area best qualifies as a rural reserve through agricultural and natural landscape features factors. The community of Helvetia is located in this reserve.

Findings: Designation of Lands as Rural Reserves Agricultural Considerations Under Factor (2) Factor (2)(a) is addressed in the *general comments* section in the rural reserves introduction.

Land in existing agricultural use extends from the south reserve boundary north to the foothills of the Tualatin Mountains.<sup>9</sup> The larger parcels, such as those located adjacent to Jackson School Road and Mountaindale Road, are in agricultural use. Class II soils predominate north of West Union Road. Areas of Class I soils exist south of West Union Road in the vicinity of Jackson School road and on either side of Helvetia Road. Relatively large areas of Class I soil occur north of North Plains and Mountaindale Road. Mountainous areas of the reserve tend to be Class III and IV soils. Water rights are concentrated along McKay and Dairy Creeks and intermittently along Waibel Creek and Rock Creek. Water rights are sporadic throughout the rest of the reserve. WashCo Rec. 3015. Residential and small farm use is typical in the foothills, where parcels are generally smaller than those on flatter terrain to the south. Availability of water was an important consideration in staff's analysis of agricultural lands given assumptions of climate change impacts and expected limitations to in-stream flow over the reserves timeframe. The majority of this reserve ranked as Tier 2 and Tier 3<sup>10</sup> for rural reserve designation. Relative to other rural areas of the county, dwelling density and parcelization is high throughout much of the reserve, particularly in the Helvetia area. WashCo Rec. 3021-3022. Also, agricultural productivity ratings developed by applying the Huddleston methodology ranked considerably lower throughout this reserve than rural reserve areas in the Tualatin River floodplain and the Dairy Creek basin between Banks and Forest Grove. The most productive agricultural areas in the reserve are located northwest of North Plains in the Mountaindale area. WashCo Rec. 3017.

Forestry Considerations Under Factor (2)

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<sup>9</sup> There is no evidence in the record that the subject residential lot is in agricultural use or that any of the residential lots in the residential subdivision that surrounds it in an agricultural use. The evidence is exclusively to the contrary. See Original Bobosky Objection Exhibit 1 p 16-18. Similarly, the Title 4 significant industrial area across West Union from the subject property is not in agricultural use.

<sup>10</sup> The subject property is "Tier 3". Original Wash. Co Rec. 956.

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The majority of this reserve area is in agricultural use.<sup>[11]</sup> Forested parcels and rural residential areas occur in the foothills of the Tualatin Mountains.<sup>[12]</sup> The ODF inventory included several areas designated *Wildland Forest* at the northern edge of the study area, including north of the Highway 26/Highway 6 junction as well as areas at the county's east edge northeast of North Plains. All areas designated *Wildland Forest* in the ODF inventory had Tier 1 suitability in the county's forestry analysis. The foothills are typified by scattered woodlots and soils are potentially suitable for long-term forestry operations. Existing parcelization and dwelling density would likely limit larger commercial forestry operations.

Natural Landscape Feature Considerations Under Factor (3)

Factor (3)(a) is addressed under the *general comments* section in the rural reserves introduction.

Rock Creek, McKay Creek, and the East Fork of Dairy Creek flow through this reserve and several important tributaries - including Bledsoe Creek, Jackson Creek, and Holcomb Creek - originate in the Tualatin Mountain foothills. These streams are critical for enhancement of water quality and quantity necessary for resident and anadromous fish habitat. Downstream flow for agriculture is dependent on the tributary streams in this reserve. Relatively large floodplain areas exist in the Mountaindale area north of Highway 26 and north of North Plains, providing a buffer between rural uses and the city.<sup>[13]</sup>

Elevations over 350 feet were included as Tier 1 areas for rural reserves to address factor (3)(e) relative to a sense of place. Portions of the hills above this elevation were also included in Metro's Natural Features Inventory given their significance as headwaters to Rock Creek. Foothills to the Tualatin Mountains provide a natural buffer between agricultural uses closer to the Sunset Highway and the more intensive residential use further north. Access to recreation areas such as Forest Park and Sauvie Island in Multnomah County are provided through several roads that run north-south in this reserve. <sup>[14]</sup>

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<sup>11</sup> As explained in several parts of this OBJECTION there are no agricultural uses on the subject property or adjacent to it.

<sup>12</sup> There is no forestry on the subject residential lot or adjacent to it in the residential subdivision or Title 4 industrial site. Original Wash. Co. Rec. 8265.

<sup>13</sup> None of these apply to the subject property, however. It has no stream or other watercourses, no wetlands, no irrigation or rights to the same, and is not above the 350' elevation calculus noted in the findings in any event. Original Bobosky Objection Exhibit 1 p 103-104.

<sup>14</sup> It is possible to get to Forest Park and Vernonia on any of the roads that traverse all of the designated urban reserves. There is nothing special or unique about West Union Road or Cornelius Pass Road in this area that makes it uniquely special access to anything.

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“The Banks-to-Vernonia State Trail from Stub Stewart State Park to the city limits of Banks occurs in this reserve and is likewise unimpeded from recreational access.” (Emphasis supplied).

As explained in the above analysis, the subject property:

1. is an acknowledged exception to Goal 3 and as such as a matter of law is not “agricultural land.”
2. has the poorest type of Washington County soils, and no irrigation rights if agricultural significance mattered for a 9.76 exception lot in a subdivision (which it does not); Exhibit 1 18; *see also* Wash. Co. Rec. 8258.
3. is below the 350’ elevation. Original Wash. Co. Rec. 2344.
4. is a 9.76 acre lot in a residential subdivision developed with Steve and Kelli Bobosky’s home located in a residential subdivision all of which are subject to a Goal 3 exception.
5. it is not valued at agricultural land values and neither is any of the property to which it is adjacent or abutting.
6. fronts on West Union Rd. and is across from an acknowledged Title 4 industrial area. Original Wash. Co Rec. 3436, 3438.
7. has zero identified natural resources, important or otherwise. Original Wash. Co Rec. 3437
8. was rated by Washington County’s professional staff as low for rural reserves suitability; Exhibit 1 p 18 (even assuming, erroneously, that it could have agricultural significance) and the Washington County Planning Commission recommended it to be urban reserve. Original Metro Rec. 64; Supp Metro Rec 60.
9. has been shown to be a logical part of a “Great Community” to supply housing to support the adjacent Title 4 industrial area. The City of Hillsboro found the subject property and the residential subdivision within which it is located to be suitable for a complete community. Original Wash Co. Rec. 3269, and that it has as all the “Great Communities Characteristics”. Original Wash Co. Rec. 3277-3282. The City of Hillsboro found the exception area within which the subject property exists to be compelling to provide housing for the key Hillsboro, Metro Title 4 critically important industrial area now in the UGB. Original Wash Co. Rec. 3426; 3438; 3113-3114; 3119-22; 3124-25; 3128. The City of Hillsboro specifically found and explained that in deference to Agricultural uses and protective policies, that its request for urban reserves for a “complete community” was “conservative. Original Wash. Co. Rec. 3136. The City of Hillsboro specifically determined that the subject property and its residential subdivision in which it is located, are not in or available to farm use. Original Wash. Co. Rec. 3137.

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**REMEDY:** Reverse or remand the challenged decision and order Metro and Washington County to remove the rural reserve designation for the subject property and make it undesignated or urban reserve consistent with the recommendation of the Washington County professional staff, City of Hillsboro and the Washington County Planning Commission. Similarly, LCDC should remand the challenged decision to require Metro and Washington County to remove the rural reserve designation for the 130 acre Bendemeer subdivision on the same bases. Finally, LCDC should order reversal or remand of the entire Washington County decision to designate rural reserves because, as demonstrated above, there is significant risk that the decision improperly locks up exception lands on the erroneous assumption it is Agricultural Land; leaving nowhere else to go for future urbanization needs but Goal 3 “Agricultural Lands” more distant. Order the remaining counties to adopt any necessary adjustments to implement that order.

**OBJECTION 7:** The challenged decision unlawfully fails to distinguish “Agricultural” land subject to Goal 3. Rather, the challenged decision improperly lumps all land as “Agricultural land” – whether subject to an acknowledged Goal 3 exception or subject to Goal 3. Metro and Washington County’s decisional failure to distinguish “Agricultural Land” from land not subject to Goal 3, makes it impossible for the decision to lawfully apply the urban and rural reserves criteria. To determine which Agricultural Land to protect under OAR 660-0027-0060 as rural reserves, and to evaluate the significance of decisions to make the very best land zoned EFU “urban reserves” in satisfaction of the requirements of ORS 195.141(3) and OAR 660-0027-0050(8), requires identification of exception land and Goal 3 Agricultural land and a separate evaluation of each. The decision fails to do so, lacks an adequate factual basis and therefore must be remanded.

There are two bases for designating land as “rural reserve.” The first is the “Agricultural” land preservation basis specified in ORS 195.141(3) and OAR 660-0027-0060(1). The other is the “important natural resources protection basis of OAR 660-0027-0060(1) (explained in greater detail in other objections). The challenged decision unlawfully uses the “Agricultural” lands protection prong to designate the subject property and nearly all other exception property in the Washington County as “rural reserve”.<sup>15</sup>

The challenged decision violates Goal 3, ORS 195.141(3), OAR 660-0027-0050 and 0060 in making the unlawful assumption that forcing thousands of acres of exception lands into “rural reserves” and many more thousands of acres of the very best “Agricultural Land” (as defined in OAR 660-0033-0020(1)) into “urban reserves”, protects Agricultural Lands. Metro Rec. 49, 65, 96, *see also* 14, 15, 41, 46, 47, 50, 52, 62-63, 82. The challenged decision fails to distinguish between Agricultural Lands as defined in state law (OAR 660-0033-0020(10(c) and developed exception lands. The challenged decision instead erroneously treats Goal 3 Agricultural land and exception lands coequally in applying urban and rural reserves agriculture

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<sup>15</sup> It is unknown how pervasive this problem is in other counties. There is no map or other document in the record that assists in evaluating how many exception lands were made “rural reserves” on the fiction of protecting agriculture. However, the apparent assumption that all land outside the UGB is “Agricultural Land” is a pivotal error in the challenged decision and its evidentiary foundation.

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related standards and protection. The erroneous focus of the challenged decision is on the ODA "Foundation Agricultural Land" map. However, as explained elsewhere in this Objection, that map has nothing to do with actually protecting agriculture. Moreover, the findings pretend that the challenged decision avoided real Agricultural Land:

"Twenty percent of the land within Washington County's study area is classified as Conflicted or Important agricultural lands. Just under 80% of the study area was classified as Foundation land by ODA. *Where possible*, Metro and the county utilized Conflicted and Important lands for Urban Reserves. Findings earlier in this report for Urban Reserves and Rural Reserves, including findings regarding overall regional balancing, explain the choices made when designating Foundation lands for Urban Reserves. Additional findings for Urban Reserves not discussed in this supplemental findings document were prepared for A-Engrossed Ordinance No. 733 (Washington County Record pages 9616-9695)." (Emphasis supplied.) Supp Metro Rec. 192. (Emphasis supplied.)

However, the record does not provide an adequate factual basis for this statement. There was no need or reason to convert farmed, high quality EFU land to urbanization through the designation as urban reserves particularly within a few feet of the Bendemeer exception area within which the subject Bobosky property is located. It was certainly possible to avoid Foundation Agricultural Land (applying the ODA map minus exception areas that are by definition not Agricultural land). However, it is evident that political expediency trumped the required legal analysis.

Thus, for example, the challenged decision selected the subject 9.76 acre residential subdivision lot and the developed residential subdivision within which it exists as rural reserves to supply long term protection to agriculture, but it can do no such thing. In fact, where rural reserves are designated on the basis of protecting agriculture, the decision treats *all* land outside the UGB as if it was "Agricultural Land" without identifying or analyzing which lands are in fact "Agricultural Land" as defined in state law. Original Metro Rec. 16, 49, 65, 96. See OAR 660-0033-0020(1)(c). Thus, while the challenged decision claims to protect Agricultural Lands, the record shows that the region is protecting residential subdivision lots for agriculture and the very best Agricultural land for urbanization.

Neither the challenged decision nor its evidentiary base supplies a way to know the extent to which agriculture is protected in fact. If the land that was made rural reserve to protect agriculture is composed of developed and committed exception lands in a residential subdivision (as is the case for the subject land) and such rural reserves are not as a matter of law Agricultural Land *and* are not in fact suitable or capable of delivering agriculture, then the long term effect of the challenged decision's sacrifice of working farms is at best unknown and at worst leaves little to nothing for long term agricultural needs. This should be of great concern to LCDC.

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The Washington County professional staff knew better. Until four political leaders (so called "Core 4") weighed in at the end of the process *after* the December 2009 release of the "Bragdon/Hosticka map, the Washington County Planning directors and all other evaluators and groups agreed the subject exception land should be "urban reserve." Original Wash. Co. Rec. 8602. Further, in "Issue Paper No. 10", Washington County's professional staff explained that the protection of farm land had been achieved in part by making virtually all exception lands urban reserves. Original Bobosky Objection Exhibit 1 p 2, 168; 149-150.

The Washington County Planning Commission was certainly not fooled that making a residential lot subject to a Goal 3 exception a "rural reserve" somehow protected agriculture. The county planning commission recommended the county reverse the poorly considered December 2009 Core 4 / Bragdon/Hosticka map decision and make the subject property, and the residential exception land subdivision within which it is located, an urban reserve. Original Metro Rec. 65; Supp Metro Rec 60. What the Board of County Commissioners and the Metro Council did instead was ignore the planning commission recommendation and instead affirm the "Core 4" decision to lock up the subject residential lot and its residential exceptions lands subdivision as a rural reserve without any apparent discussion or consideration of the recommendation. The County Commission did so making no comment as to their rationale. Original Bobosky Objection Exhibit 3 (portions of minutes of BOC "deliberation" on planning commission recommendation). This problem persisted in the so-called "remand" where regardless of the fact that LCDC was obviously concerned about the rationale for making the Bobosky property a rural reserve, the "remand" process demanded that there be no consideration to removing the rural reserve designation from the Bobosky exception property. Supp Metro Rec 105-106. However, at the same time as making the subject exception land a rural reserve in the original decision, Metro and the Board of Commissioners removed a rural reserves designation for a 135 acre "Foundation Agricultural land" (Peterkort) EFU zoned parcel and made it urban reserve for no apparent reason. Similarly, in the challenged decision metro and Washington County continued to ignore the Bobosky residential lot and Bendemeer exception lands and made more high value farmed land zoned EFU "urban reserve." This is irrational and inconsistent with ORS 195.141, 195.143 and OAR 660-027-0060 as well as Goal 2 which requires all land use decisions have an adequate factual basis.

It is no answer to claim an ODA map shows the subject exception lot or its residential subdivision as "Foundation Agricultural Land." The challenged decision properly explains that the ODA "Foundation Agriculture" map is not conclusive to establish the land is properly designated as urban or rural reserves. Metro Rec. 96; Supp Metro Rec. 91. Further, since the ODA did not distinguish between exception land and "Agricultural Land" in mapping "Foundation Agricultural Land" that map contains significant and obvious legal and factual errors and the decision so acknowledges. *See* for example Metro Rec. 96, Supp Metro Rec 91 ("As an example, the entirety of Hagg Lake and relatively large blocks of forestland were classified as foundation land. \* \* \*). Properly then, the challenged decision explains the so called "safe harbor" of OAR 660-0027-0060(4) was not applied in Washington County for the land that ODA mapped as Foundation Agricultural land. Original Metro Dec. 96; Supp Metro

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Rec. 90-91. However, because the challenged decision relies on the flawed ODA map as the source of identifying "Agricultural Land" (where there is no dispute that it in fact does not do so), the record lacks an adequate factual base to conclude it has supplied long term protection for the best "Agricultural Land" in the region by designating land urban or rural reserves or leaving land "undesigned".

In this regard, undesigned land is the next place the region will look for urban reserves and UGB amendments. Original Metro Rec. 95; Supp Metro Rec 90, 62. ("It is the county's expectation that such planning will result in application of urban reserve designations in appropriate locations and quantities within these currently undesigned areas. Original Wash Co. Rec. 9044-9046"). Since the number of acres of urban reserves, particularly in Washington County, is at the low end of the spectrum, there are likely to be further additions of urban reserves over the planning horizon. Original Bobosky Objection Exhibit 1 p 18-19, 83

Given Washington County has locked up all the county exception land in rural reserves, only Goal 3 Agricultural lands in the region and whatever exceptions there might be left (the record does not disclose how much or where) are left to be urbanized over the long term horizon. The record only supports a conclusion that what is left as "undesigned" is all Agricultural or Forest Land. There is simply nothing in the record to establish anything else. This unlawful consequence naturally follows the decision's significant error in failing to distinguish exception and Agricultural (or Forest) lands.

Furthermore, even though Metro is responsible for the regional UGB and reserves, Metro unlawfully removes all regional protection for these "undesigned" Goal 3 Agricultural Lands by repealing Metro Code Section 1.12 "Protection of Agriculture and Forest Resource Lands." Metro Decision p 6. Despite its flowery prose, the challenged decision is not one that can claim to protect agricultural or forest lands or, in particular, to balance the needs of agriculture against urbanization.

The findings admit that "The inventory of Foundation and Important Agricultural Lands includes land that is 'exception land' no longer protected agriculture for farming." Metro Record p 16; Supp Metro Rec 4. The challenged decision then assumes with no evidentiary support that both exception and Goal 3 Agricultural Land provide protection to agriculture. Original Metro Rec. 15-16; 49; Supp Metro Rec 3-4. The challenged decision begins with this wholly erroneous assumption and then posits the correspondingly erroneous question as the framework for its urban reserves selection decisions: "The most difficult decisions made by the four governments involved Foundation Agricultural land near the existing UGB and the circumstances in which this land should be designated as urban reserve to accommodate growth in a compact urban form and provide opportunities for industrial development difficult or impossible on steep slopes[(sic)]." Metro Rec 15; Supp Metro Rec 3-4.

The closest the original decision came to assessing compliance with required agricultural standards is to assert that "Of the 28,615 acres designated urban reserves, *some 10,767* are zoned

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EFU.” (Emphasis supplied.) Metro Rec. 16. The challenged decision is even further from the required compliance with agricultural standards in state law as the challenged decision backslides and adds more EFU land to the urban reserves:

“Of the 28,256 acres designated urban reserves, *some 13,746 acres* are zoned EFU. Even including the 3,532 acres of these EFU lands that are classified by ODA as “conflicted”, these 13,746 acres represent slightly more than five percent of all land zoned EFU (266,372 acres) in the three counties.” (Emphasis supplied.) Supp Metro Rec 4.

The record in turn contains a chart (created one week before the first final decision was adopted) purporting to show the gross number of acres zoned EFU in urban and rural reserves and the number of acres in “Other Zoning”. Metro Rec. 179. However, this chart is of little utility because the record fails to include any map showing exception lands and lands subject to Goal 3 in the region. The challenged decision takes a run at curing this problem but fails to cure it in fact by adding charts that supply more information. However, the challenged decision persists in insisting that exception land like the Bobosky subdivision lot is “Foundation Agricultural Land” the locking up of which in a rural reserve protects agriculture while the fact of adding thousands of acres of land actively farmed and zoned EFU to the urban reserves for urbanization is equally good for agriculture. This has the legal standard exactly backwards, and the record supplies no adequate factual basis for a determination that the challenged decision protects agriculture. Original Bobosky Objection Exhibit 2 is a map Steve and Kelli paid Metro to make and put into the record; compare to Metro Rec. p 3. Exhibit 2<sup>16</sup> shows that at least in Washington County (and as of February 2010 but the problem persists in the first decision), the challenged decision erroneously assumed that *all* land outside the current UGB was assumed to be “Agricultural land” in violation of OAR 660-033-020(1)(c) which clearly states that “Agricultural Land” does not include \* \* \* land within acknowledged exception areas for Goal 3 or 4.” The challenged decision persists in making this error. See Attachment 1 New Map the Bobosky’s paid Metro to make showing urban and rural reserves (as of March 2011 – the last day for submittal of materials into the Metro record), undesignated lands, the existing UGB, and the Metro jurisdictional boundary.

Moreover, the findings and chart referenced above are inadequate to establish compliance with ORS 195.141(3) or OAR 660-0027-0060(3) because they lack linkage to the particular areas designated a rural or urban reserves. Instead, the findings supporting designation of rural reserves to protect “Agricultural Lands” fail to identify whether lands subject to this protection as Agricultural Lands are subject to Goal 3 exceptions and developed with nonfarm uses. In fact, the findings determining each area’s designation as rural or urban reserves or undesignated assumes all land to be set aside for rural reserves on the “Agricultural Land” prong (OAR 660-0027-0060 and ORS 105.141(3)) are “Agricultural land” and there is no way to know whether that is true. Original Metro Rec. 33, 39, 41-42; 46, 47, 50, 51, 52-53, 62, 65, 82, 96, 97, 98, 100,

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<sup>16</sup> As noted in the beginning of this OBJECTION, in the Exhibit 2, p 1 map, all of the “pink” exception areas surrounded by green were made “rural reserves” as were some of the pink exception areas surrounded by blue.

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101, 103, 105, 107, 108, 110. Accordingly the challenged decision fails to establish the subject property (as well as any particular area) designated rural reserve is:

- capable of sustaining long term agricultural operations
- Has suitable soils and available water needed to sustain long term agricultural operations
- Is suitable for agriculture considering the agricultural land use pattern in the area, parcelization, tenure and ownership patterns, or
- The sufficiency of agricultural infrastructure in the area.

The chart clearly in its context is referring to specifically designated Exclusive Farm Use zones when it refers to EFU. However, another problem is that there can be no serious dispute that the EFU zoning designation relied on in the chart is not the only Goal 3 complying land use district in the region; or that Goal 3 and Goal 4 zones often act interchangeably to protect exclusive farm and forest lands. In this regard, Goal 4 protects Forest Lands and the above chart fails to recognize that lands set aside for exclusive forest use or exclusive farm use take many forms other than merely "EFU." Goal 3 complying districts include various districts throughout the region. For example, one of Multnomah County's Goal 3 complying zones is the Multiple Use Farm Zone. *See* Multnomah County Comprehensive Plan Policy 10. Multnomah County has numerous Goal 4 complying Forest zones which are not EFU zones, but warrant protection under Goal 4 and OAR 660-006 et seq., as well as Goal 3 and its implementing rules that recognize Goal 3 and 4 are crossovers. *See* Clackamas County Comprehensive Plan Land Use Element Policy 9.0 "Forest zoning districts which require a minimum lot size of 80 acres or larger may be applied in Agriculture areas provided the primary uses are forest and forest related and that permitted uses will not conflict with agricultural uses. (4/13/06)" Washington County is similar with an Exclusive Farm Use zone, and Exclusive Forest Lands zone and a Mixed Agriculture and Forest – 20 zone that implements both Goals 3 and 4. *See* Original Wash. Co. Rec. 8223. So what zoning districts are included in the "Other Zoning" on the Metro Dec. 179 chart? The challenged decision and record supplies no answer. The only thing that is clear is that it is impossible to tell the level of farm and forestry sacrifice demanded by the challenged decision. Nothing in the record describes the type of agriculture carried on in the designated urban reserves versus the agriculture carried on (or not) in the designated rural reserves either. This level of analysis is required to make findings that satisfy both ORS 195.141 and 143 as well as OAR 660-027-0060.

The challenged decision fails to adequately explain the extent to which and why Goal 3 Agricultural Land was selected for urban reserves over exception land and conversely whether and why exception land was locked up in rural reserves to protect agricultural operations. Nowhere is this error more pronounced than in the challenged decision's designation as rural reserves to protect agriculture for the subject 9.76 acre exception lot -- developed with a residence, located in a developed residential subdivision and subject to a Goal 3 exception. The record supplies no way to know how often this error was repeated throughout the region.

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Finally, the challenged decision fails to explain why Metro and Washington County designated nearly all of the exception lands in the county as “rural reserve” and how such decision affects land zoned EFU throughout the region that is left “undesigned.”

**Remedy:** The challenged decision should be reversed or remanded with instructions to: (1) remove the rural reserve designation for the subject 9.76 acre exception lot and redesignate it either as urban reserve or leave it as “undesigned,” (2) revisit all other the urban and rural reserves decisions and determinations that land should be left as “undesigned”, with reference to an analysis of which lands (a) are Goal 3 “Agricultural Lands” as defined in OAR 660-0033-0020(1), and which are Goal 4 “Forest Lands” (b) are subject to Goal 3 (or 4) exceptions, (c) for the lands subject to Goal 3 and Goal 4 the nature and types of agricultural or forestry operations on those Goal 3 or Goal 4 lands including soils types and irrigation. Then, to apply rural reserves designations to support agriculture (or forestry) only on Goal 3 “Agricultural land” as defined in OAR 660-0033-0020(1). A similar exercise should occur for Goal 4.

In no case should “rural reserves” be applied on the basis of protecting agriculture to lots like the subject one in a developed residential subdivision that is subject to a Goal 3 exception.

**OBJECTION 8:** In designating acknowledged exception lands as “rural reserve” assigning exception lands coequal status as “Agricultural” lands with acknowledged Goal 3 EFU protected Agricultural lands, the challenged decision unlawfully undermines Goal 3 “Agricultural” land; the agricultural land use policy of ORS 215.243 because it repeals regional protection for Agriculture.

The challenged Metro decision adds an amount of urban reserves acreage that is at the low end of the recognized land need spectrum. Exhibit 1 p 19, Wash. Co. Rec. 8274-75; 8303. The challenged decision acknowledges that if the newly minted urban reserves are inadequate, that the next round of urbanizable land will be borrowed from the “undesigned lands.” Metro Dec 95. (“It is the county's expectation that such planning will result in application of urban reserve designations in appropriate locations and quantities within these currently undesigned areas. WashCo Rec. 9044-9046”). However, since the challenged decision locks up all of the Washington County goal exception lands as “rural reserve” on the unsupported idea of protecting agriculture, the only places for the region to look for land will be Goal 3 land elsewhere and any remaining exception lands if there is any (it is impossible to know where or how much of these there are).

Improperly, then, in the quest for the land for the next round of urban reserves, Metro has relieved itself of its existing policy to protect Agricultural and Forest Lands by repealing Metro Code Policy 1.12, while as explained in this OBJECTION ignoring Agricultural Land values expressed clearly in state and local law (ORS 195.139; 141(3); 215.243; OAR 660-0027-0050 and 0060; Goal 3 and Goal 4 and OAR 660-0033-0020(1)(c)). Original Metro Decision p 6, 111 (favoring to “conform to the new approach to urban and rural reserves.” LCDC should remand the challenged decision at the least in order to avoid this “new approach” that ignores exception

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lands in urban reserves, rural reserves and UGB amendments from catching on in other areas of the state undermining the entire statewide planning program). While the findings indicate that the counties each have Goal 3 obligations, the counties are not the ones bound to select urban reserves and make UGB amendments. This is Metro's job. Accordingly, it is error for Metro to attempt to avoid protecting Goal 3 agricultural land by repealing Policy 1.12.

**REMEDY:** Remand for Metro to restore Policy 1.12 protecting Agricultural Land. Instruct Metro that it must prioritize exception lands for urban reserves, evaluate whether exception lands can accommodate land needs for urban reserves and make "Agricultural Land" urban reserves as a last resort. Further, LCDC should instruct Metro and the counties that exception lands may not be locked up as "rural reserves" without some compelling reason founded in protecting inventoried "important natural resources" and with consideration to the long term adverse effects on Agriculture and Forest land when making exception land unavailable for future urbanization needs.

**OBJECTION 9:** The challenged decision errs in making the subject 9.76 acre developed residential lot a "rural reserve" on the idea doing so protects long term agriculture, is an unlawful collateral attack on the final 1981 county land use decision taking an exception to Goal 3 on the subject property based on the fact that it is physically developed and committed to nonfarm uses.

Once a land use decision is final, it may not be collaterally attacked. *J. C. Reeves v. City of Portland*, 131 Or App 578 (1994) *rev den* 320 Or 569 (1995) ("We reiterate that recourse to circuit court under that statute is not permissible in order to obtain what amounts to a holding that a land use decision that was appealable to LUBA is erroneous); *State ex rel Moore v. City of Fairview*, 170 Or App 771, 777-78 (2000) (citing *Doney v. Clatsop County*, 142 Or.App. 497, 502, 921 P.2d 1346 (1996) "The county's argument that its denial of the access permit was also a land use decision amounts to nothing more than a collateral attack on the city's decision.") Further, the challenged decision is unlawful because it is inconsistent with the county's acknowledged comprehensive plan that conclusively establishes the subject exception land is unsuitable and not available for agriculture and is not in any way to be considered "Agricultural Land. Since *Baker v. City of Milwaukie* it's been the law in Oregon that planning matters are required to be consistent with acknowledged plans. The challenged decision that purports to characterize an acknowledged exception area as "Agricultural land" is contrary to the acknowledged county plan.

The county made a final, binding, land use decision in 1981 that the subject property and indeed the entire residential subdivision within which it is located, is committed to nonfarm uses. Original Bobosky Objection Exhibit 1 p 28-38. This means per that final 1981 land use decision, the county has *already* determined, based on factors strikingly similar to those that are supposed to be applied for determining lands properly made rural and urban reserves, that the subject lot and its residential subdivision *are not* suitable for, or capable of, agriculture. Specifically, the final land use decision establishing the subject land as exception land determines the subject property is not capable or suitable for sustaining any type of agriculture and lacks characteristics

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that would make it suitable or capable. Original Bobosky Objection Exhibit 1 p 32-34. This is the same for the residential subdivision in which the subject property exists. *Id.* The challenged decision unlawfully collaterally attacks the county's final acknowledged land use decision that the subject land is not subject to Goal 3 – it is neither capable of nor suitable for agriculture. It is unlawful to collaterally attack the county's final land use decision.

**REMEDY:** Reverse or remand the challenged decision ordering Metro and Washington County to remove the rural reserve designation on the subject property and make it either an urban reserve or leave it as undesignated. Also to reverse or remand the challenged decision ordering Metro and Washington County to remove the rural reserve designation on the entire residential subdivision within which the subject property is located and that is also subject to the Goal exception shown at Exhibit 1 p 37 and make it either a urban reserve or leave it undesignated. Require the region to make any required corresponding adjustments to implement LCDC's order.

**OBJECTION 10: The challenged decision inconsistently applies the urban and rural reserves statute and administrative rule factors in an irrational and improper manner leading to an unlawful result.**

The arguments made above in other objections making these arguments are incorporated herein, in particular those made in Objections 4 and 6 and 9 above. The challenged decision is internally inconsistent in how it applies both the rural and urban reserves standards as should now be evidence in reviewing these objections. The challenged decision determines that "Conflicted Agricultural Land" does not meet the Rural Reserve criteria. Original Metro Rec. 28, 31, 37<sup>17</sup>. This includes high quality soils underlying flat EFU zoned land (Area 5G). Original Metro Rec. 36. It determines that "Important" farm land does not meet the rural reserves criteria. Original Metro Rec. 31. It determines that Goal 3 Agricultural Land can be sacrificed as urban reserves if it is "physically isolated" from nearby agricultural land". Original Metro Rec. 30. It determines that a highly parcelized residential subdivision in one part of Washington County does not meet the rural reserve criteria. Original Metro Rec. 74. Similarly, an area composed apparently of high quality EFU zoned land but that "supports only limited commercial agricultural activities \* \* \* and "30%" developed with "suburban home sites \* \* \* immediately adjacent to fully serviced urban development" does not meet the rural reserves criteria but rather is designated "urban reserves." Original Metro Rec. 82. Yet the challenged decision also determines that nearly 12,000 acres of "Foundation Agricultural Land" zoned EFU can be converted to urbanization through the urban reserve designation.

The challenged decision remarkably makes an area of "Foundation Agricultural land" (Area 8B "Shute Road Interchange") composed of Goal 3 EFU zoned land in working farms just west of the subject property "Urban Reserves" on the unsupported idea that it will supply "needed flexibility in planning for needed interchange improvements as well as other

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<sup>17</sup> The challenged and original decisions are identical on these points and in the interest of time, all Supplemental Record citations are not provided but pagination is easily correlated.

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infrastructure needs (*e.g.* sewer and stormwater management) for developing urban lands to the east.” Original Metro Rec. 91-92; *see also* Supplemental Exhibit 1 p 4-10. As to the latter, these “developing urban lands to the east” apparently include lands one has to leap frog over the subject property to get to (the new urban reserves – Bethany and Peterkort)– they are east of the subject property too. *See* Original Metro Rec. 401. And those lands to the east proposed for urban reserve (Area 8C are zoned EFU and composed of “Foundation Agricultural Land.”)

Washington County and Metro gave lip service to property applying OAR 660-0027-0060 and ORS 195.141(3):

‘To better apply the rural reserve factors found under OAR 660-027-0060, staff believed a more intensive agricultural analysis was important to the rural reserve designation process. Components of this analysis included parcelization, dwelling density, potential crop productivity based on successive agricultural inputs, and possession of a water right or inclusion within the Tualatin Valley Irrigation District. WashCo Rec. 2971-2980.” Original Metro Dec. 96; Supp Rec 91.

However, since the subject 9.76 acres of exception land is a small lot, in a highly parcelized area, with significant suburban density, having no crops or crop productivity, no agricultural inputs, no water rights to irrigation, and is composed of Class 3 soils (the worst type in Washington County), the county obviously did not apply these factors consistently. Original Wash. Co. Rec. 8258, 8187, 8142, 8260, 8261-62; *see also* 8165-66; 8313; 8263; 8347; 8221, 8226 *compare* Original Wash. Co Rec. 8604 and Original Bobosky Exhibit 1 p 4-10.

Accordingly, the contrast is striking and unlawful in how the region applied the above methodology and cited decisions with the challenged decision to make the subject residentially developed exception lot in a subdivision a rural reserve. It is easy to see there is no consistency in how the rural or urban reserves standards were applied. As to the subject property, the challenged decision inconsistently and irrationally, applies the rural reserve designation on the basis of protecting agriculture to the subject 9.76 acres of exception land, when there is no agriculture or possibility therefore on or near it. Moreover, if the region were to be consistent, the designation of rural reserves on the subject property makes no sense because it is “physically isolated” from any agricultural land -- there *is* no agricultural land. Original Bobosky Exhibit 1 p 176, 177. It is a developed residential subdivision right on the existing UGB. It has no natural resources values important or otherwise. Original Wash Co. Rec. 8181, 8245, 8253, 8267, 8268. The subject property fronts on West Union and is completely surrounded by its residential subdivision. Original Bobosky Exhibit 1 p 23, 37.

If the Shute Road farmland is properly made an urban reserve for provision of urban services to urban development presumably including urban reserves to its east, then it makes no sense to leapfrog over the subject exception lot --located just to the east -- that also can serve such purposes – in order to get to EFU zoned land even more distant to the east (*i.e.* the Peterkort property). Moreover, the proximity to the subject property and its residential subdivision to the

Shute Rd., urban reserve make it clear that there is no principled reason to choose the Shute Road area over the subject property and its residential exception subdivision which easily supplies needed housing to the industrial area with no Agricultural Lands sacrifice. In any case, if Shute Road qualifies for an urban reserve, then necessarily the subject property cannot qualify as a rural reserve -- if there is to be any consistency in the way the rural and urban reserves standards are applied region wide. Finally, if "exception land" can ever be treated as if it were "Agricultural" land, it certainly is never "foundation" agricultural land but rather at best by definition, it is "conflicted." In this regard, the decision lacks any adequate factual or legal basis to take the position as the challenged decision does that sacrificing "conflicted agricultural land" is better for agricultural preservation than sacrificing for urbanization exception land subject to a Goal 3 exception. To state the position is to show how nonsensical it is. The decision is irrational, arbitrary and fails to properly apply legal standards. In any case, viewed either as a developed and committed exception parcel or as "conflicted" agricultural land, there is no justification in making the subject lot a "rural reserve" and certainly no way to do so that is consistent with how rural and urban reserves standards were applied in other parts of the challenged decision. A lawful decision applies the standards of ORS 195.141 and 143 and OAR 660-027-0060 consistently. Goal 2 requires the challenged decision to have an adequate factual basis but the irrational manner of application of the applicable standards makes this impossible. The applicable standards are not applied consistently in the challenged decision. This makes the challenged decision irrational and arbitrary, wrong and lacking an adequate factual basis.

**REMEDY:** The challenged decision should be reversed or remanded with instructions to the region to (1) consistently apply the rural and urban reserve criteria, (2) to omit from rural reserves land subject to a Goal 3 exception that are developed with nonfarm uses specifically including the subject property's 9.76 acres, and (3) to include the subject property (as well as its residential subdivision within which it is located) in the urban reserves or at a minimum leave it as undesignated, (4) to remove the "Foundation Agricultural Land" designation for the subject property (and the residential subdivision in which it is located) in its entirety because exception land can never be "Agricultural Land" per OAR 660-0030-0020(1)(c).

**OBJECTION 11:** By designating the subject exception lot, in a developed residential subdivision "rural reserve", and leaving thousands of acres of high quality farmland subject to Goal 3 undesignated, the challenged decision violates ORS 197.298(2).

The challenged decision is contrary to Goal 14 and ORS 197.298. The challenged decision correctly explains (in the contexts of applying Goal 14), that "The designation of urban and rural reserves directly influences future expansion of UGBs, but does not add any land to a UGB or urbanize any land. Goal 14 will apply to future decisions to add urban reserves to the regional UGB. The designation of urban and rural reserves is consistent with Goal 14." Because the challenged decision directly influences how Goal 14 and the priorities of ORS 215.298 are applied the designation of urban and rural reserves must be consistent with ORS 197.298 and Goal 14. This means that agricultural land should be avoided for urbanization and exception

land like the Bobosky's should be designated for next in line to urbanize. It also means that the land left "undesigned" should not all be the very best agricultural land zoned EFU. But this is what the challenged decision does. If there is not enough urban reserve land for UGB needs in the future, having locked up all the exception land as "rural reserves" the only urbanization options are high quality land zoned EFU. This is error and contrary to both Goal 14 and ORS 197.298.

Specifically, locking up all the subject exception land having poorer agricultural soils, as well as all exception lands in Washington County, as rural reserves, but leaving high quality EFU land all over the region "undesigned" leaves only high quality EFU zoned land for urbanization in violation of ORS 197.298(2). ORS 197.298(2) requires UGB amendments to occur on the least valuable agricultural land. Leaving the best farmland undesigned while classifying poorer soils and exception land as land incapable of being added to the UGB makes it impossible for the region to comply with ORS 197.298(2) when adding land to the UGB.

**REMEDY:** Reverse or remand the challenged decision to remove the "rural reserve" designation from the subject 9.76 acre exception parcel and order that the subject property be designated as urban reserve or at a minimum left as "undesigned." Same for the exception residential subdivision in which the subject property exists.

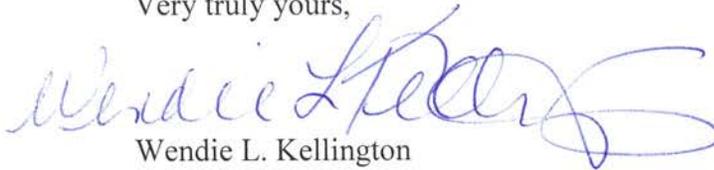
## **SUMMARY**

The subject 9.76 acre exception land residential lot in a residential exception subdivision meets no lawful basis for designation as rural reserve and the record does not supply an adequate factual basis for such designation of the Bobosky property. LCDC should order the rural reserve designation to be removed from the subject property, the residential subdivision in which it exists and all exception lands. LCDC should order the subject property not to be mischaracterized as "Agricultural Land." Moreover, LCDC should order the region to acknowledge that there are no "important" natural resources on the subject property. All professionals who have evaluated the subject property and its residential subdivision have concluded it easily met the urban reserves criteria. It ranked poorly when evaluated for rural reserve criteria. The subject property and its 130 acre exception area can be efficiently and economically served with public facilities and services, it has great transportation connections, it offers nothing to agriculture; it has no natural resources. LCDC should require the region – Metro, Washington County and any other corresponding implement actions by the other counties – to remove its designation as a rural reserve and restore its urban reserve characterization or at a minimum leave it as undesigned. To make a residential lot in a residential subdivision a rural reserve on the idea that doing so protects agriculture is disingenuous. The challenged decision should be reversed because it sets aside residential exception lots for agriculture and farmed EFU

Bobosky OBJECTION  
June 2, 2011  
Page 50 of 50

zoned land aside for urbanization turning in violation of the applicable law.

Very truly yours,



Wendie L. Kellington

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April 21, 2011

Via Hand Delivery  
Metro Council  
600 Grand Ave.  
Portland, Oregon

Re: Urban Rural Reserves/Amendments to the Functional Plan Metro  
Ordinance 11-1255

Dear Members of the Metro Council:

Please accept this letter and its attachments into the record of proposed Metro Ordinance 11-1255 concerning designation of urban and rural reserves. This firm represents Steve and Kelly Bobosky, the owners of a nearly ten (10) acre property at 21393 NW West Union Road (Tax Lot 1N2 14A 3000), which is zoned AF-5 and subject to an acknowledged exception to Goal 3 (Agriculture). The property is located in the "Bendemeer Area" of Washington County. Pursuant to ORS 197.615 (2)(B), please provide Steve and Kelli Bobosky and the undersigned with notice of decision or decisions regarding Metro Ordinance 11-1255 as required by ORS 197.615.

The undersigned has been advised by Metro legal counsel, Dick Benner, that the record of this matter above captioned includes the record of the previous decision designating rural and urban reserves. Accordingly, please accept this letter as one that reinforces the arguments the undersigned and its clients Steve and Kelli Bobosky have previously included in that record, which previous arguments are specifically incorporated herein having equal force to the proposed amendments as with the previous amendments to which they had been specifically addressed. Steve Bobosky also appeared and presented additional facts and arguments at the joint County/Metro hearings of the proposed IGA amendments on March 15, 2011, that are in the record of this proceeding and are also incorporated herein.

We object to the subject property being designated Rural Reserve and foreclosed from designation as urban reserve or from being considered land capable of being brought into the Metro UGB, as contemplated in proposed Metro Ordinance 11-1255. The subject 10 acre property should either be left as "Undesignated" or, given that Washington County's professional staff confirmed in the summer and fall 2009 staff reports that the property meets the factors for Urban Reserve designation, designated as "Urban Reserve". That the subject property meets the criteria for urban reserve means it should be at worst left undesignated so that if the region has guessed wrong about land needed for urbanization, this well situated exception land is available for that purpose rather than leaving only high quality agricultural land as is the

case under the proposed decision. In any case, the subject 10 acre property neither meets the "Agriculture" nor "Natural Resources" basis for designation as Rural Reserve in OAR 660-027-0060. Therefore, the Rural Reserve category does not make legal or policy sense to apply to it.

Attached are several documents for inclusion in the record of Metro Ordinance 11-1255. First, attached to this letter is a map showing, among other things, the subject property is in an acknowledged exception area and that it just borders the existing UGB. Second, also attached for inclusion in the record, are documents indicating that this process of establishing Rural Reserves on a "remand" lacked required transparency. The LCDC "oral remand" never made it into the form of a final appealable order and the deliberations about why that is so, never made it into the public processes. A final LCDC order should never be superfluous. The selection of the decision reflected in Ordinance 740 occurred outside of the public process and this, respectfully, puts the proposed decisions out of compliance with Goal 1 Citizen Involvement, Goal 2 Land Use Planning and state, Metro and the County rules about citizen involvement. Third and finally, under separate cover our clients put the audio DVDs of the joint Metro County hearing on March 15, 2011, where it is reinforced that the subject property and the Bendemeer subdivision within which the subject property is located, has no real agricultural or natural resource value to justify a rural reserve designation.

The subject 10 acres exception property should not be classified as Rural Reserve and we strongly object to such proposed classification. Washington County staff was correct in their assessment that this parcel (and the approximately 130 area in which it is located) should be either "Urban Reserve" or "Undesignated". We believe the subject property was initially mistakenly identified for designation by policy makers as Rural Reserve in the first place and that mistake has not had a serious review in the context of legal requisites since. We searched the record and have been unable to see why this exception parcel and area were designated rural reserve. On the various websites there is nothing about why the property could legitimately be a "rural reserve" and the only evidentiary statement is a statement in County Issue Paper No. 10 saying: "virtually all exception lands (AF-10 and AF-5) adjacent to urban areas have been included in the urban reserve recommendations". We have similarly found no recognition of the legal significance of the undisputed fact that the area within which the subject 10 acre property exists (Bendemeer) is a designated acknowledged exception area. There may be something that exists, but our point is that the difficulty of locating anything along these lines suggests the decision makers were likely not initially or now fully cognizant that they were converting exception land to "Rural Reserves" while designating a great deal of high quality EFU Goal 3 Agricultural Land as Urban Reserves including in the same area. We see no legal or policy justification for making the subject 10 acres of exception land, located directly across the street from the existing UGB and the well known future Intel expansion site, to be locked up as "Rural Reserve." At a minimum the subject 10 acres of exception land should simply be left as "Undesignated."

We understand that whether exception land property like the subject is selected for classification as "Undesignated" or "Urban Reserve", is a policy choice. However, please

understand that there is little room for policy choices for exception land like the subject 10 acres between leaving such land as "Undesignated" versus imposing the "Rural Reserves" category. In this regard, please understand that there is no allowed policy choice regarding whether exception land like the subject 10 acres is maintained as "Undesignated" versus imposing the "Rural Reserves" category upon it. Exception land will rarely if ever meet the legal tests for "Rural Reserves". Here, the subject 10 acres do not meet the legal tests for Rural Reserves and there simply cannot be a serious legal argument that it does. Moreover, State law has already made the policy choice that exception lands like the subject 10 acres are (1) not Agricultural Lands, and (2) are the first lands to be urbanized (after urban reserves). Therefore, in the absence of the most extraordinary of circumstances (not present here) exception lands must be left as "Undesignated" to fulfill the state statutory role assigned by the legislature as potential UGB land if urban reserves are unavailable. ORS 197.298(1). Making exception land Rural Reserves is inconsistent with not only ORS 197.298(1), but also ORS 195.141 because exception lands area as a matter of law nonfarm lands incapable, also as a matter of law, of "providing long term protection to the agricultural industry." ORS 197.141(3) and ORS 197.141(3)(d)(B). Exception land by definition is not "Agricultural Land." OAR 660-033-020(1)(c). It should be obvious that exception lands will rarely if ever be appropriately made off limits to future decision makers as a source of urban land supply on the idea they are farmlands and therefore rarely, if ever, could be appropriately designated Rural Reserve. Rather, as noted above, exception land is the first place state law requires future decision makers to look for UGB amendments when there are not enough urban reserves. ORS 197.298(1). The proposed decision makes it impossible for the region to comply with ORS 197.298(1) when it comes time to expand the UGB. If exception lands are designated as "Rural Reserves" this sets up an untenable legal conflict between the requirement to draw from exception lands in ORS 197.298(1) and the rules about locked up rural reserves and policy favoring the protection of Goal 3 "Agricultural Land". On the other hand, leaving exception lands as "Undesignated" serves both the policy of ORS 197.298(1) while leaving flexibility to future decision makers to chose exception land for future land needs rather than forcing them to urbanize high quality Agricultural Land.

Further, and importantly, pretending that exception land serves long term Agriculture does a disservice to the Agricultural industry because as a matter of law exception lands do no such thing, making set asides of exception land as Rural Reserves a charade that leaves Agriculture with nothing. One need only refer to the County's Comprehensive Plan Exception Element to see that exception like the subject 10 acres, and indeed the Bendemeer area, has already been determined unsuited for, and unavailable to, agriculture due to "parcelization and ownership patterns", "lot size", "substantial \* \* \* development of existing lots in the area \* \* \*", "existing and adjacent uses which create operational conflicts with farming and forestry practices", "soil and terrain characteristics", "productivity", "irrigation potential" among others. See Washington County Comprehensive Plan Exceptions Document pages 3-4.

Maintaining the subject 10 acre of exception land (and the Bendemeer exception area) as "Undesignated" is not only consistent with the authority vested in the region under ORS 195.141

and OAR 660-027 to designate rural reserves, but also consistent with law and good Agricultural Land policy. Making the subject 10 acres of exception land (and the Bendemeer exception area), also supplies important flexibility for future decision makers to choose exception land if more urban reserves or UGB land is needed than is set aside in this process. This is particularly important here because the region is not proposing to set aside all the land that Washington County's professional staff anticipated will be needed over the 50 year planning horizon and is even short of Metro's anticipated land need range. Specifically, according to Washington County staff, this process will result in a 35,000+ acre shortage of land likely to be needed over the 50 year planning horizon in Washington County. This makes clear that there is a strong possibility that at some point future decision makers will be asked to find more land and they will be limited to looking to those lands that the region now leaves as "Undesignated." No one disputes that "Undesignated" lands provide the exclusive source of additional land that future decision makers may draw upon to meet future land supply needs if the designated "Urban Reserves" are unavailable or used up. The region should have readily available exception lands situated as the subject where it could and has been proposed for designation as urban reserves, able to be urbanized rather than looking to high quality agricultural land. No one disputes that the land that will be "off limits" to future decision makers as a source for identified unmet land needs, are the land current policy makers in this process tie up as "Rural Reserve." Well placed exception lands such as the subject land should never be designated as rural reserves.

While OAR 660-027-0060(3) allows Rural Reserve designation of areas identified in Metro's February 2007 "Natural Landscape Features Inventory" and "other pertinent information", the subject 10 acres are not on any such inventory (including in the most recent supplemental evaluation) and no such "pertinent information" has even been, nor could it be, identified to bring the subject 10 acres within this narrow "Rural Reserves" category. There are no natural resources on or associated with the subject 10 acres of exception land. Further, it does not make sense that the subject 10 acres of exception land containing no identified important or other natural resources, being across the street from an important Intel expansion site and having high quality transportation connections and public infrastructure investment, would be tied up on this narrow basis especially when nearby high quality agricultural land zoned EFU is proposed to be urbanized.

Accordingly, it seems obvious that it makes no legal or policy sense for current decision makers to designate the subject 10 acres as "Rural Reserves." Therefore, we write this letter to request that Metro amend Metro Ordinance 11-1255 to reclassify the subject 10 acres as either "Urban Reserves" or to leave it as "Undesignated."

#### BENDEMEER AREA DESCRIPTION

The subject property is located within the Bendemeer Area which is north of NW West Union Road, between NW Cornelius Pass Road and Dick Road. The subject-property is in residential use.

This area is fully covered by an exception to Statewide Planning Goals 3 (Agriculture). By definition, "Agricultural Lands" do not include "land within acknowledged exception areas for Goal 3 or 4." OAR 660-033-0020(1)(c). Therefore, there are no "Agricultural Lands" within this area or on the subject 10 acres.

Bendemeer is a small area encompassing approximately 130 acres immediately adjacent to the North Hillsboro Industrial Area and Hillsboro's northern Regional Urban Growth Boundary which is located on West Union Road, running along the southern edge of Bendemeer. The majority of lots contain homes or businesses served by shallow wells and septic tanks. Land use in the Bendemeer Area is primarily residential in nature. Commercial development is located at the Cornelius Pass, West Union Road intersection. A railroad right-of-way bisects the area north-south. There are 58 tax lots in the Bendemeer area, with most lots being less than three acres in size, the smallest lot being .24 acres with three of the largest lots being approximately 5 acres and the largest being slightly smaller than 10 acres. More than 40 of the lots contain homes. A summary of lot sizes and dwellings is shown on Exhibit "B".

#### CURRENT PLANNING DESIGNATIONS / EXCEPTION AREA

The County's Rural/Natural Resource Plan – Land Use Districts designate the Bendemeer Area as AF-5, Agricultural and Forest (5 acre minimum lot size) with one lot located at the intersection of West Union and Cornelius Pass Roads zoned R-COM, Rural Commercial. None of these are exclusive farm use districts or implement Goal 3 (Agriculture) in any way.

Because of the historical small lot configuration and residential development in the Bendemeer Area, the County determined the Bendemeer Area an exception to the requirements of Statewide Planning Goal 3, Agriculture, which Goal 3 is designed to preserve contiguous, large lot prime agricultural areas. LCDC acknowledged this exception to Goal 3. Consequently the County's Comprehensive Plan and state law recognizes that the subject property, as well as the Bendemeer Area within which the subject property is located, is an acknowledged exception to Goal 3, unsuited for Agriculture and set aside for residential and not Agricultural use. Sections of the County's Rural/Natural Resource element of the Washington County Comprehensive Plan and the County's Exception Statement Document, dated September 9, 1986 regarding the Bendemeer Area are in the record and describe the Bendemeer Area as an area that meets the definition of lands that are a "Physically Developed and Committed Area" and thus not suitable for agricultural protection.

ORS 197.298 establishes "Priority of land to be included within urban growth boundary". This statutory provision creates a priority system for identifying which land should first be considered for inclusion within an urban growth boundary (UGB), requiring designated urban reserves and "exception land" be the first places to be drawn from for UGB amendments. Rural Reserves established by administrative rule cannot be selected ignoring this important statutory priority as a UGB land source that exception lands enjoy.

This is especially true when land mere yards away away is zoned EFU but proposed for designation as Urban Reserve. It is impermissible to select nearby and distant Goal 3 "Agricultural Land" zoned EFU urban reserve but make perfectly acceptable exception land mere yards from a proposed "Urban Reserve" a "Rural Reserve." To do so would have the legal framework exactly backwards. If there is a specific area land need then the region must draw from the exception land in the area to designate as urban reserve. The region cannot ignore the available and nearby exception land and take in Goal 3 Agricultural Lands. If the region has land supply needs, it must take those needs from exception lands. Here, the proposal is to designate large swaths of EFU zoned land as "Urban Reserve" and the subject 10 acres of exception land as "Rural Reserve." This the region may not do. At a minimum the subject 10 acres must be left as "Undesignated."

SUBJECT PROPERTY'S AREA PROXIMATE TO INDUSTRIAL AND INSTITUTIONAL LANDS; PUBLIC FACILITIES FOR INDUSTRIAL USES ARE INSTALLED ACROSS THE STREET

The Bendemeer Area is located immediately north of the North Hillsboro Industrial Area, one of the largest contiguous industrial areas in the State of Oregon. Served by the Sunset Highway and two major interchanges at NW Cornelius Pass Road and Shute/Helvetia Road, this industrial area is home to Intel Corporation's largest employment center, housed on three major campuses in the North Hillsboro Industrial Area. Bendemeer is located less than 2 miles from Intel's Ronler Acres Campus, which is one of the largest and most capital intensive industrial sites in the world. Across West Union Road from Bendemeer is another Intel campus site, held by Intel for its future needs. Many other industrial users large and small call the North Hillsboro Industrial Area home. Larger industrial companies such as Genentech and Solar World, Radysis, Tri-Quint Semiconductor and FEI are located in this area as well as smaller companies such as Accumed, Pinnacle Exhibits, Beaverton Foods, Estrogen, West Coast Coffee Company, Parr Lumber and Columbia Industries. The Bendemeer Area is located directly adjacent to a highly successful employment area with excellent prospects for creating additional employment in the future.

The Hillsboro School District's Liberty High School is also located close by in the North Hillsboro Industrial Area and serves the Bendemeer Area as do two local elementary schools, Lennox and West Union, which are located in the adjacent Rock Creek neighborhood and in the agricultural area west of Helvetia Road, respectively. Urban water and sanitary sewer utilities are located (across the West Union from) adjacent to Bendemeer and are provided by the Tualatin Valley Water District and the City of Hillsboro and are shown on Exhibit E.

WASHINGTON COUNTY URBAN AND RURAL RESERVES TECHNICAL ANALYSIS

The Washington County Department of Land Use and Transportation Long Range Planning Division submitted a technical analysis to the Washington County Reserves Coordinating Committee on August 3, 2009, titled "Urban and Rural Reserves Planning in

Washington County / Staff Report Urban and Rural Reserves Recommendations". This draft report was supplemented by September 1<sup>st</sup> and September 23<sup>rd</sup>, 2009 Staff Reports. These reports were further supplemented by five appendices supporting and describing recommended Urban and Rural Reserves. These reports with their supplementary material, provided by Washington County cities and the public, provided the technical basis upon which the County based their Urban and Rural Reserve recommendations designating the Bendemeer Area as an Urban Reserve. A review of the August 3<sup>rd</sup> and September 23<sup>rd</sup> staff reports and appendices show why this conclusion was a logical assumption based upon the Urban and Rural Reserve Factors provided by Oregon Administrative Rule 660-027.

The Area within which the subject 10 acres of exception land exists ranked high as an eligible Urban Reserve on Map 2 primarily because of it is adjacent to the existing UGB and the associated existing urban utilities and their service providers. Map 4, depicts the Oregon Department of Forestry "Wildland Forest Inventory" describing the Area as "Low Density Residential/Commercial". Map 5 depicts the "Metro Natural Landscape Features Inventory". This map shows no major natural landscape features on the subject property or in the Bendemeer area. The County's Rural/Natural Resource Plan identifies a "Water Areas, Wetlands and Fish and Wildlife Habitat" along Holcomb Creek which runs through the east most 3 lots of the Bendemeer Area immediately west of Cornelius Pass Road, affecting less than 10 acres of the Area's 130 acres. This does not in any way affect the subject 10 acres.

Map 9 depicts the Area as highly suitable for an Urban Reserve designation. Maps 11, and 12 depict the Area ranking "Highly Suitable" for future sewer and water utility extensions. Map 13a, Transportation Connectivity Suitability, ranks the Area highest for transportation connectivity, relative to other areas. Map 18, Water Resources, show the subject 10 acres and its larger exception area is not within the Tualatin Valley Irrigation District Boundary, nor does it include properties with water rights. .

Maps 23 and 24, show the relative size of land parcel and ownership patterns within the area confirming the smaller lot sizes within the Bendemeer Area. Maps 25 and 26 describe Rural Residential Dwelling Density, also confirming the individual ownership of the small lots within the Bendemeer exception area.

Maps 27 and 28, Farm Analysis Tiers and Sub-Areas define the relative suitability of land for Rural Reserve designation and this deserves some scrutiny. Out of four tiers, with Tier 1 being the most suitable for being classified as a "Rural Reserve" and Tier 4 the least suitable for being classified as a "Rural Reserve", the Bendemeer Area was ranked near the bottom for rural reserve suitability – being put into Tier 3 in Sub-Area 14. Sub Area 14 is defined on page 33 of the August 3<sup>rd</sup>, 2009 Urban and Rural Reserve Staff Report, as having higher urbanization potential and lower agricultural productivity primarily because of the smaller parcels and higher dwelling unit density of the area. This "Tier" analysis erroneously presumed that an exception area could be classified as "Agricultural Lands." However, as noted below this is impossible: OAR 660-033-0020(1)(c) specifically excludes exception lands from the definition of

“Agricultural Lands.” On the other hand, many of the areas proposed to be designated as Urban Reserves, are areas currently designated Exclusive Farm Use by Washington County’s Rural/Natural Resource Plan and subject to Statewide Planning Goal 3 (Agriculture). Moreover, the Goal 3 Agricultural land proposed to be designated Urban Reserve in Area 8C and others nearby is located a stone’s throw to Bendemeer being situated on the northwest corner of 185<sup>th</sup> and West Union Rd. If one excludes exception lands from the Agricultural analyses and includes only “Agricultural Lands” as defined in state law, then it is clear the subject 10 acres would have been “Tier IV” (lowest suitability) for becoming a “Rural Reserve.” In this regard, Maps 19, 20 and 21 regarding agricultural suitability are only relevant for nonexception lands, given it is impossible for exception lands to be “Agricultural lands.”

Maps 30, 31, 32 and 33 describe Forest Analysis Tiers, Metro Natural Landscape Features Inventory, Important Natural Landscape Features (INLF) Overlay and Important Natural Landscape Features Composite Tiers, respectively. This has been updated by maps in the supplemental record and in both there are still no such resources listed for the subject property, significant or otherwise.

#### GROWTH ESTIMATES AND FUTURE LAND NEEDS

Pursuant to Oregon Administrative Rule (OAR) 660-027-0040 (2), land designated Urban Reserve in the Metro Region must be based on estimated population and employment growth. To comply with this rule Washington County prepared population and employment forecasts for the County. This was a rigorous forecast process which is explained generally in the September 23<sup>rd</sup> Staff Report on pages 14-16. Also a memorandum in the record from the Washington County Planning Directors to the Washington County Reserves Coordinating Committee, titled “Addendum to May 11<sup>th</sup> Staff Report on Land Needs Estimates for Urban Reserves- Corrections to technical analysis”, dated June 4, 2009 (hereinafter “Need Memorandum”). Land needs estimates are shown in Appendix 4-(A-1 and A-2) of this Need Memorandum. The conclusion of the County’s forecasting work estimated a 2060 demand for additional residential and non-residential urban land of somewhere between a low range of 27,722 gross acres and high range of 66,934 gross acres. The 2050 demand for residential and non-residential land was estimated to be within a range of 17,734 and 50,411 gross acres.

Metro’s “Urban and Rural Reserves 2009-2050/2060 Chief Operating Officer Recommendation”, dated September 15, 2009 recommends a much smaller urban land need estimate based on the expectation that the Region will be able to efficiently utilize existing zoning capacity through redevelopment supported by targeted urban infrastructure investment in the region’s downtowns, main streets and corridors. The Metro estimate of land need is based on the region’s 2040 growth strategy and assumes that between 19 percent and 29 percent of future residential growth and key employment opportunities would occur on the land newly added to the existing UGB resulting in a Metro estimated urban reserve land need of between 15,700 and 29,100 acres. The total Urban Reserve acreage proposed for inclusion in this process for the entire Metro region is 28,165 acres -- 1,165 acres short of the Metro high estimate of 29,000 acres.

Exhibits to the “Intergovernmental Agreement Between Metro and Washington County to Adopt Urban Reserves” describe the results of the Core 4 Urban and Rural Reserve deliberations, resulting in a 50 year Urban Reserve addition in Washington County of approximately 13,500 acres, far below the estimated land need supported by Washington County. The total Urban Reserve acreage proposed for the entire Metro region is 28,165 acres of urban reserves: Washington County having 13,500 acres; Clackamas County having approximately 13,700 acres and Multnomah County having 855 acres.

Given the range of assumed urban land to be needed over the next 50 years it would be consistent with both the Washington County and Metro land need estimates to designate the subject 10 acre “exception” parcel located directly adjacent to a highly successful industrial area as either urban reserves or “Undesignated”. However, in no case is it consistent with law including the County’s analysis of it to make the subject 10 acres a “Rural Reserve.”

#### URBAN AND RURAL RESERVE FACTORS

OAR 660-027-0050 and 0060 define the factors to be considered when determining whether an area within the Metro area should be classified as an Urban or Rural Reserve. Considering both Urban and Rural Reserve Factors, we believe that the Bendemeer Area is better suited for an Urban Reserve designation or left undesignated rather than being designated Rural Reserve. The Rural Reserve Factors express the intent to designate as Rural Reserves those lands most suitable for sustaining long-term agricultural and forestry operation on large blocks of land taking into account, parcelization, tenure and ownership patterns. As previously discussed, the subject property and indeed the 130 acre Bendemeer area within which it is situated is not consider “Agricultural Land” for long term agricultural (or forest) use as a matter of law. The subject 10 acres (and the Bendemeer area) is an acknowledged “exception area”, not subject to Statewide Planning Goal 3, Agriculture. Rather, the subject 10 acres is an acknowledged residential area, that is highly parcelized composed of small residential lots with many ownerships.

The subject property has no indentified significant natural resources and is not located nearby to any identified significant natural resources to allow it to be designated as a “Rural Reserve” on any sort of extraordinary basis.

The subject 10 acres if anything meets the Urban Reserve factors: it is adjacent to existing urban utilities inside the UGB, making it relatively easy to efficiently extend public utilities. Water and sewer service are available from the City of Hillsboro, Clean Water Services and the Tualatin Valley Water District, all agencies among the most financially capable service providers in the Metro Region. The area is currently served by the Hillsboro School District, one of the largest school districts in the State.

Moreover, the existing street network (including NW Bendemeer Road, NW Old Pass Road and NW 212<sup>th</sup> and 214<sup>th</sup> Place) provide a strong foundation for future traffic and pedestrian circulation. Sidewalks within Bendemeer already exist along Cornelius Pass Road and West Union Road adjacent to the existing Bendemeer commercial area. As the areas within the

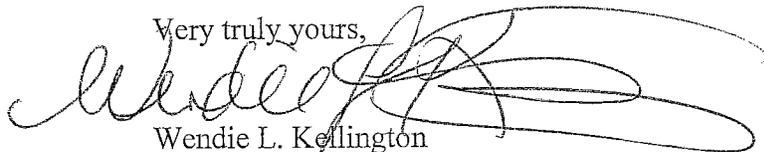
existing UGB develop, sidewalks will be constructed adjacent to and connect the Bendemeer area with existing development south of West Union Road. Sidewalks adjacent to Bendemeer currently exist on NW Century Boulevard at the intersection of NW Dick Road and West Union, on NW Mauzey Road located east of West Union Road across from the Bendemeer commercial center and on Cornelius Pass Road south of West Union. These sidewalks and streets within the UGB connect the subject 10 acres (and its Bendemeer area) directly to the residential and industrial employment areas within the adjacent UGB.

If Metro makes a policy choice not to make the subject 10 acres Urban Reserve, then it must simply leave it as "Undesignated." But there is no justification to make it a "Rural Reserve."

SUMMARY

The subject 10 acres is an acknowledged and designated "exception area". It is not subject to Goal 3 and as a matter of law does not contain "Agricultural Lands." It does not contain identified natural resources. It is located within a residential area containing a historical small lot pattern with varied ownerships. The subject property is well placed to provide additional housing capacity very close to a very highly developed employment area. Its location is so good for this purpose in fact that it was recommended for urban reserve designation by the County's professional staff and first planning commission recommendation. Adjacent utilities can be provided easily to the property and indeed the entire 130 acre exception area in which it is located and transportation access to the area can easily be connected to the adjacent employment area making easy access for pedestrians and bicyclists to get to work and schools. Thus, designating the subject property as "Urban Reserve" or leaving it as "Undesignated" are the only categories that could conceivably be consistent with law. However, in no way are we aware of any justification to make the subject property a "Rural Reserve." We request Metro remove the proposed Rural Reserve designation of the subject 10 acres.

Very truly yours,



Wendie L. Kellington

WLK:wlk  
Enclosures  
CC: Clients

- HOME
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- PLACES AND ACTIVITIES
- GARBAGE AND RECYCLING
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## Rex Burkholder

METRO COUNCIL DISTRICT 5 NEWS

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March 17, 2011 9:38 AM

### After marathon meeting, Washington County and Metro agree on reserves plan

Tuesday the 15th the Metro Council and the Washington County Commission worked hard to make history—setting clear boundaries to guide the next 50 years of growth in this region. (full coverage below). The process was long—including seven hours of heartfelt testimony by citizens—but it was also transparent, open and characterized by 12 leaders striving in good faith to ensure the future health and prosperity of our citizens. It was a proud moment that gives lie to those who paint government as venal and under the thumb of special interests. Thanks to Washington County Chair Andy Duyck, Metro President Tom Hughes and my colleagues on both boards.

—Rex Burkholder

*By Nick Christensen. This story was not subject to the approval of Metro staff or elected officials. Its content does not necessarily reflect the opinion of Metro staff or councilors.*

Reporting from Hillsboro

Urban and rural reserves live.

After a nine-hour meeting that at times resembled a cross between the board games Battleship and Clue, the Metro Council and Washington County Commission agreed on a plan for land reserves. The new urban and rural reserves proposal will be sent to the Land Conservation and Development Commission for consideration this summer.

In 2010, the commission remanded part of the reserves proposal back to Washington County and Metro chiefly because of concerns about urbanization north of Council Creek near Cornelius.

[See also: State board's partial remand puts UGB decision in flux \(Oct. 29, 2010\)](#)

The new proposal kept most of what was accepted by the commission. But part of the proposed urban reserve north of Cornelius was changed to undesignated. Areas near Highway 47 north of Forest Grove went from urban to undesignated, and a new undesignated parcel was designated southwest of Aloha.

The most controversial element of the proposal, however, was changing an undesignated area north of U.S. 26 and west of Helvetia Road from undesignated to urban.

Thus begins Reserves: The Game. After taking public testimony for about seven hours, the boards met in joint session to try and hammer out a compromise each would accept. The baseline was the so-called Duyck/Hughes map, first proposed by Washington County Chair Andy Duyck and Metro Council President Tom Hughes after weeks of negotiations.

[Click here to see the Duyck/Hughes map, before the changes agreed to at the March 15 meeting](#)

Up first were Metro councilors, each offering their own opinions on what the final map should look like. Many on the council expressed concern with the idea of designating urban reserves north of the Sunset Highway.

"Are we, by adding this change north of 26, putting at risk this whole process?" asked Councilor Rex Burkholder. "We have nothing to judge whether this would be supported by the (state land use) commission or not."

It was up to Washington County Commissioners to start guessing what would be the winning combination on the map. But instead of Miss Scarlet in the library with the candlestick, commissioners were left to figure out what would get three votes on their own board plus pass muster at Metro.

Commissioner Dick Schouten made the first guess – make the area north of 26 rural and accept the rest of the Duyck/Hughes map as is. That suggestion failed 4-1 out of concern it wouldn't give Washington County cities enough flexibility if the urban reserves do, one day, run out of suitable land.

Next up was Commissioner Roy Rogers, taking the southern portion of the area north of Cornelius and making it an urban reserve, with rural north of Hobbs Road and leaving the area north of the Sunset Highway as undesignated.

April 2, 2011 7:28 AM

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Rex Burkholder represents District 5, which includes Northwest Portland, North Portland, Northeast Portland, downtown Portland, a portion of Southwest Portland and a portion of Southeast Portland.

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COMMUNITY INVESTMENT STRATEGY

That motion didn't even get to a vote, after it was withdrawn by Rogers because of opposition on his own board.

"As much as I would like to see an urban reserve in Cornelius, I have a fear of LCDC throwing it back," said Washington County Commissioner Bob Terry.

Terry then moved to accept the Duyck/Hughes map as-is. That failed 3-2, prompting a break in the action.

A 10 minute recess brought intense negotiations around the Shirley Huffman Auditorium. Metro staff and a few councilors met in the back room for a briefing. Joining Hughes and Duyck on the dais were Hughes' successor as Hillsboro Mayor, Jerry Willey, and Duyck's predecessor as county chair, Tom Brian. Former Metro Councilor Rod Park worked the room.



Members of the Washington County Commission and Metro Council talk during a recess at the March 15 joint meeting. In the background, former Washington County Chair Tom Brian stands on the dais, talking to his successor, Andy Duyck.

The dealings brought the boards no closer to a consensus. With the Metro Council taking the lead in the session that followed, Councilor Carl Hosticka moved to accept most of the Duyck/Hughes map, but with some of the area nearest Cornelius left undesignated, as with all of the land north of Council Creek.

The Metro Council passed that 7-0, and at 6:22 pm, recessed.

Schouten moved to accept Metro's proposal, but adding no new urban reserves wasn't good enough for the Washington County commissioners.

"I am not comfortable with the current proposal, with no urban reserves in any of it at all," Terry said. "I think some of it should be urban reserves."

Schouten's motion failed 3-2, with Commissioner Greg Malinowski the only supporting vote.

The next proposal, from Terry, was the same as the Metro proposal, but included the area north of U.S. 26 as an urban reserve. That passed 3-2, with Schouten and Malinowski opposed.

At 6:37 p.m., the Washington County Commission recessed.

Metro Councilors expressed dismay that the proposal would have to include any urban reserves north of U.S. 26.

"I respect my colleagues' concern for changing any portion of Area D to urban reserve," said Councilor Kathryn Harrington, who was Metro's lead negotiator on reserves until this year. "I don't get to make this decision by myself. I don't get to make a proposal to LCDC by myself. I do it as a member of the Metro Council and the Metro Council does so in association with our three county partners."

But with Washington County seemingly unbending, the council voted 6-1 to approve a motion, put forth by Councilor Carlotta Collette, to designate areas east of Groveland Road, between U.S. 26 and West Union Road, as an urban reserve. Councilor Shirley Craddock cast the lone dissenting vote.

The Washington County Commission voted 3-2 to support the Metro Council proposal. The meeting concluded at 6:59 p.m., nine hours after it began.

The boards will have to vote on formal agreements next month, leading up to the anticipated review by the state land commission in August.

[Click here to learn more about urban and rural reserves](#)  
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Dan Olsen read the proposed ordinance by title.

Tom Tushner stated that Ordinance 738 is a revision of the County road standards. He explained that the road standards are used by the engineering community in the construction of capital improvements to the County's road-related infrastructure. Mr. Tushner indicated that Ordinance 738 contains housekeeping items and updates to the current Washington County Uniform Road Improvement Design Standards. He reviewed that road standards were last updated in 1998 and enumerated some of what the update will accomplish:

- Incorporate new graphics for typical sections
- Incorporate changes in materials, processes and technologies
- Provide clarifications of interpretations of standards encountered in the last 13 years
- Incorporate design standard changes that have taken place since 1998
- Encourage low-impact development approaches
- Set standards for roadways, pedestrian and bike facilities
- Add standards for both landscaping and illumination

Mr. Tushner informed the Board that the proposed standards have been widely circulated. He recommended that the Board adopt Ordinance 738, replacing Ordinance 524.

The public hearing was opened.

No public testimony was offered.

The public hearing was closed.

It was moved to adopt Ordinance No. 738.

Motion – Rogers

2<sup>nd</sup> – Malinowski

Vote – Terry

Vote – 5-0

Roll Call: All Aye

Commissioner Schouten stated that this is largely a housekeeping ordinance that does contain fairly detailed technical information. He said that there are some pieces in the ordinance that the Board needs to revisit at some point as it re-looks at the Transportation System Plan. Commissioner Schouten's understanding was that the Board will have the chance in the future to get into the policy implications, road design width, and other issues.

Andrew Singelakis confirmed that broader changes would come in through the Transportation System Plan update and be implemented later. He said that this ordinance is really intended to be housekeeping and to provide better graphics in the document.

Chairman Duyck commented that he appreciated that this is what the ordinance consisted of. He said that he looked through it to see whether this would add a lot of cost to the County's transportation projects and did not see that would be the case. Chairman Duyck noted that the ordinance mostly codifies standard practices.

Mr. Singelakis agreed with the Chair's assessment.

Commissioner Terry added that it appears that we are already doing some of what is in the ordinance now.

Commissioner Schouten asked if the ordinance reflects work done by Greg Miller.

Mr. Singelakis affirmed that this is the case. He announced that Greg Miller, who is retiring March 1, 2011 due to health reasons, was the primary author of this ordinance and wants it to move forward.

#### 4. LAND USE AND TRANSPORTATION

##### 4.a.

##### RO 11-12

Consider a Revision to Resolution and Order 10-118 to Extend the Deadline for Metro's Adoption of the Supplemental Intergovernmental Agreement Concerning Urban and Rural Reserves (All Rural CPOs and CPOs 9, 12F, 12C, 4B, 5 and 6)

Chairman Duyck offered to provide a history of this item for the benefit of new Board members. He reviewed that the Board adopted an IGA with Metro last summer and a subsequent ordinance put those changes into code. Chairman Duyck recalled that the IGA then went before LCDC, who remanded portions of it back to the County. He said that in adopting a subsequent IGA (which had a deadline of February 15, 2011), Metro had concerns about that IGA. Chairman Duyck stated that those concerns have not yet been resolved. He explained that the purpose of the extension is to give time to work with Metro to resolve them.

Brent Curtis said that the original Resolution and Order, which staff is asking the Board to amend today, was adopted by the Board on December 14, 2010. He stated that at the same time, the Board directed staff to file an ordinance which would conform our land use plan to the substance of the IGA. Mr. Curtis reported that staff has filed an ordinance and provided notice. He said that there will be a Planning Commission hearing on March 2, 2011 and a hearing before the Board on March 15, 2011.

Mr. Curtis stated that if the ultimate IGA between Metro and Washington County gets formulated in the next month, it may be different than this IGA and staff will have to

amend the IGA and engross the ordinance. He said that it is exactly parallel to what happened last year when the Board and Metro worked together to come up with Reserves.

Mr. Curtis clarified that this particular item today simply extends the deadline for the IGA from February 15 to March 15, 2011. He said that a parallel action that has already been put into motion has an ordinance going in front of the Planning Commission on March 2<sup>nd</sup> and the Board on March 15<sup>th</sup>. Mr. Curtis summarized that these all deal with Reserves and the oral remand that LCDC provided in October of last year.

Chairman Duyck asked if there is still time to engross the ordinance and meet the deadlines if the IGA is modified.

Mr. Curtis responded that staff is working with Metro on not only the substance of the IGA but also on the process. He said that depending on nuances about hearing times, locations, etc., we may end up taking a few more weeks than originally anticipated. Mr. Curtis stated that as a general matter, we believe that several extra weeks are very tolerable and would be consistent with moving the item forward to LCDC. He said that staff is continuing to explore and ensure that those options would meet LCDC's needs as well.

Chairman Duyck's understanding was that even if we adopt a new IGA and new ordinances, there is still time before LCDC takes it up—which gives us a little flexibility. He said that they are talking about doing it after the Legislative Session, which puts it sometime into August.

Mr. Curtis reviewed that the original timeframe in the original resolution had us being done with the IGA and ordinance by early April and then sending to LCDC. He said that LCDC would then have a number of months to consider it between the middle of April and early August. Mr. Curtis stated that if we happened to take several more weeks, we think that will still be consistent. He said that once the Board takes its action in terms of the IGA, both Metro and Washington County have to have similar actions; it's an IGA that has to have the singular content that both agree to. Mr. Curtis stated that we then conform our plan and Metro conforms their plan, following which we send it to LCDC. He specified that this is what LCDC evaluates. Mr. Curtis said that when we get to April and consider the land use ordinances and engross land use ordinances to conform to the ultimate agreement between Metro and Washington County, that will put in place the sentiment of Metro and Washington County (as well as the other two counties) and will go to LCDC for review. He stated that it is between now and whatever the schedule dictates in April that the Board and Metro will arrive at a response to the oral remand LCDC provided last year.

Commissioner Schouten asked when the Planning Commission meetings are held.

Brent Curtis responded that the Planning Commission typically meets twice a month; they meet in the afternoon on the first Wednesday of the month and they meet in the evening on the third Wednesday of the month.

Commissioner Schouten ascertained that the Planning Commission's meeting on March 2<sup>nd</sup> will be in the afternoon.

Mr. Curtis affirmed that the meeting has a 1:30 p.m. public hearing time on that date.

Commissioner Schouten asked if the Board will meet in the morning or evening on March 15, 2011.

Mr. Curtis replied that that will be a 10:00 a.m. meeting.

Commissioner Schouten asked how soon prior to March 2<sup>nd</sup> the public would have the ability to see the Planning Commission materials. He also wanted to know what the materials would consist of.

Mr. Curtis stated that the subject of the March 2<sup>nd</sup> Planning Commission hearing is the ordinance. He said that it conforms our land use plan to the substance of the IGA that the Board adopted on December 14, 2010. Mr. Curtis stated that the substance of the Board's hearing on March 15<sup>th</sup> is the same. He indicated that the map has been known since December 14, 2010 and is out there. Mr. Curtis remarked that the subject of today's meeting is to extend the deadline that was placed in the original amendment to the IGA, to provide another month for Metro and Washington County to work on this. He indicated that this lets Metro and Washington County see if, first, Metro agrees with the Board's original December 14<sup>th</sup> decision and, if it does not, potentially the Board could arrive at a new understanding of mutual agreement about the content of an IGA in this subsequent month.

Mr. Curtis stated that assuming the Board adopts this today, another month will be provided for Metro and Washington County to work together. He noted that we do not know exactly when that agreement will come together and felt that Chairman Duyck is in a better position to speculate about that. Mr. Curtis summarized that we do not know the substance of a decision and we cannot provide that to the public because it has not been arrived at by the parties (Metro Council and Washington County Board). He said that if it is a different map than adopted on December 14<sup>th</sup>, then staff will have to amend this IGA again in regard to substance and will have to engross Ordinance 740.

Chairman Duyck regarded the action item before the Board today as more of a courtesy to Metro. He said that we have to keep in mind that we have a new Metro Council and Metro is in the process of replacing one Councilor who has resigned. Chairman Duyck summarized that the Council is in flux and needs additional time; he felt that the Board should provide that time out of courtesy. He said that it is conceivable that, if the IGA was amended, it would come before the Board at the first meeting in March—the same

meeting where the Board would likely be taking action to engross the ordinance. Chairman Duyck observed that this does not give people a lot of time to see it but noted that we are under that time sequence that we are trying to stay on track with. He reported that the County is still talking with Metro. Chairman Duyck anticipated that Metro will probably make a proposal this week and, if it is acceptable, we will be able to roll it out to the public as soon as possible.

Commissioner Schouten stated that all indications are that Metro will not support the maps that came out of the December 14<sup>th</sup> meeting. He felt that the public is interested in seeing the new maps.

Commissioner Malinowski said he has always had concerns about the lack of public ability to help shape the decision on December 14, 2010. He admitted that people did have their say. Commissioner Malinowski's thought was that December 14<sup>th</sup> action was taken because time was of the essence as we tried to get something to Metro. He reflected that there was not time to involve the public. Commissioner Malinowski said that since it has turned out that Metro has not gotten to it, we did have more time. His concern going forward was that if Metro and the Board come to a deal, by the time we ask the public what they think, it will be a "yes or no and thanks for coming" kind of thing rather than a "okay let's shave this off and add this on". Commissioner Malinowski stated that if the public can be involved, they should be involved as we are actually cutting the maps and not just after the fact. He was not sure why we do not need to involve the public more.

Chairman Duyck summarized that the action today is whether the Board extends more time for Metro to make this decision.

It was moved to approve the date change to Resolution and Order 10-118 as described in the agenda item and to authorize the Chair to sign a new Resolution and Order memorializing the change.

Motion – Rogers  
2<sup>nd</sup> – Terry  
Vote – 4-0-1  
(Abstain – Malinowski)

Commissioner Rogers said that it is only fair to allow Metro to look at making changes. He recognized that this has been a very difficult process. Commissioner Rogers noted that this will be the third time that the Board has seen this. He respected the Metro Councilors and their opinions. Commissioner Rogers was very much in favor of extending the time. He wondered if this is adequate time and hoped that it is.

#### **OFFICE OF COMMUNITY DEVELOPMENT**

l.f.  
MO 11-24

Approve Lifeworks NW Request to Assume the CDBG Obligations of A Child's Place Public Facility Under Modified Terms of the CDBG Project Agreement and Trust Deed

It was moved to authorize the County Administrator to execute an amendment to the 2004 CDBG Project Agreement with A Child's Place to provide that the lien and restriction on the property will expire on June 30, 2015 and to authorize the County Administrator to execute an Assignment, Assumption and Consent Agreement allowing Lifeworks NW to assume the obligations of A Child's Place under the 1994 and 2004 CDBG award, as amended.

Motion – Rogers  
2<sup>nd</sup> – Schouten  
Vote – 4-0

Commissioner Terry was away from the dais at time of vote.

Commissioner Schouten was delighted for another organization to come in and provide services to children—something a little different at the site—and to be able to take advantage of the unique fixtures/appliances there geared toward use by small children. He stated that this allows us to be able to maintain value and to protect the private and public investments that were made there. Commissioner Schouten was pleased that we were able to find another purchaser and provider of services there.

5. ORAL COMMUNICATION (5 MINUTE OPPORTUNITY)

None.

6. BOARD ANNOUNCEMENTS

None.

7. ADJOURNMENT: 10:40 a.m.

Motion – Terry  
2<sup>nd</sup> – Schouten  
Vote – 5-0

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# Kathryn Harrington

METRO COUNCIL DISTRICT 4 NEWS  
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March 10, 2011 4:55 PM

## Highlights of the revised Washington County reserves proposal

On Feb. 22, Metro Council President Tom Hughes and Washington County Chair Andy Duyck unveiled a revised proposal for urban and rural reserves in Washington County. This proposal was offered in response to direction provided by the Oregon Land Conservation and Development Commission (LCDC) last October, asking the two governments to revise the map they submitted for review and approval. (At the same time LCDC accepted proposed urban and rural reserve maps for Clackamas and Multnomah counties without changes.)



Specifically, LCDC rejected a proposed urban reserve north of Cornelius, 623 acres in size, citing its value to the agricultural community in northern Washington County. LCDC also asked Metro and Washington County to re-evaluate a proposed urban reserve north of Forest Grove and determine whether it meets established factors for designation as an urban reserve.

Because of the exclusion of the urban reserve north of Cornelius and the uncertainty over the amount of land that would be included as urban reserve, LCDC did not approve the proposed rural reserves in the county. This left Metro and Washington County with the flexibility to find appropriate and suitable urban reserves elsewhere in the county if the two governments chose to replace all or a part of the Cornelius urban reserve. LCDC instructed that the total amount of urban reserves in Washington County could not exceed the total amount from the map proposed last fall (13,884 acres).

Staff and elected officials from Metro and Washington County have worked to revise the map to follow LCDC's instructions and provide sufficient urban reserves to meet future growth needs while maintaining protections for valuable farm and forest lands. Since LCDC was supportive of the urban reserves proposed for Washington County, aside from the two areas north of Cornelius and Forest Grove, the revised map now under consideration includes all of the other original urban reserve areas proposed for Washington County. These urban reserve areas were designated after extensive analysis and public review over a period of more than two years.

Download the map that illustrates changes to the Washington County reserves proposal [PDF]

The new reserves map for Washington County features the following changes to last fall's proposal:



- Of the 623 acres of urban reserves proposed north of Cornelius (formerly labeled as "Urban Reserve 71"), 426 acres are now proposed as rural reserve that will be excluded from urban development for 50 years. The remaining 197 acres on the eastern side of this former urban reserve are proposed to be included as "undesigned" land that is neither urban nor rural reserve. This area includes what is known as "exception land" (lower-quality farmland), has existing non-farm uses, and generally consists of smaller parcels owned by multiple owners. As undesignated land, it would be of lower priority for future urban growth boundary expansions, as state law requires the Metro Council to look to urban reserve lands first. If the Metro Council wishes to expand the urban growth boundary onto undesignated land, it must demonstrate that undesignated land serves growth needs that cannot be met inside the urban growth boundary or on designated urban reserves across the region.
- In the proposed 508-acre urban reserve north of Forest Grove (Urban Reserve 7B), only 28 acres, between Council Creek and Highway 47, were removed and proposed to become undesignated land, while the rest of the proposed urban reserve remains intact. This addresses the primary area of concern expressed by LCDC about providing urban reserve land north of Council Creek and allowing the creek to serve as a natural buffer between farmland and future urban growth. This retains the remainder of the urban reserve area to meet future housing and employment needs.
- A new urban reserve of 585 acres is proposed on previously undesignated land

April 2, 2011 7:23 AM

KATHRYN HARRINGTON HOME

ABOUT

CONTACT



Kathryn Harrington represents District 4, which includes Northern Washington County, Cornelius, Hillsboro, Forest Grove, Northwest Beaverton, Aloha, Bonny Slope, Bethany, Raleigh Hills, West Slope, Cedar Mill and Cedar Hills.

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north of and adjacent to Highway 26, south of Northwest West Union Road, and adjacent to previously designated Urban Reserves 8A and 8B. This land, with its flat topography and connections to existing transportation routes, provides a suitable alternative for future employment and housing to make up for the previously identified reserves north of Cornelius. Leaders from the City of Hillsboro and Washington County have also indicated that they have the willingness and financial capacity to provide essential public services to serve future growth in this area.

- A 383-acre undesignated area is proposed south of Southwest Rosedale Road and north of Southwest Farmington Road, adjacent to proposed Urban Reserve 6A. This land was previously proposed as rural reserve but is proposed as undesignated land to provide additional flexibility, if it should ever be needed, for urban development south of Hillsboro and west of Beaverton.

If these changes are adopted, along with the other urban and rural reserves proposed for Washington County, there will be a total of 13,745 acres of urban reserves and 151,372 acres of rural reserves in Washington County. (Note: these acreage totals are slightly different from what was announced in February. These revised numbers reflect refinements to the boundaries of urban and rural reserves to account for street right-of-ways, floodplains and alignment of tax lots.)

The proposed urban and rural reserves map for Washington County, and the contractual language between Metro and Washington County that administers the urban and rural reserves, must be approved by both the Metro Council and the Washington County Board of Commissioners. This agreement will be considered at a public meeting to be held on Tuesday, March 15, beginning at 10 a.m. in the auditorium of the Charles D. Cameron Public Services Building in Hillsboro. Public comment is welcome and encouraged on this reserves proposal through March 15.

Read more about how to provide comment on the Washington County reserves proposal

Following adoption of the intergovernmental agreement, the Washington County Board of Commissioners will adopt an ordinance that formally designates the rural reserves, and the Metro Council will adopt an ordinance that formally designates the urban reserves. These land use actions are expected to be completed before the end of April. The revised urban and rural reserves map for Washington County is expected to be reviewed and acknowledged by LCDC before the end of the summer, after which the Metro Council may consider targeted expansions of the urban growth boundary into urban reserves in any of the three counties as needed.

Read more about urban and rural reserves  
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# Kathryn Harrington

METRO COUNCIL DISTRICT 4 NEWS

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March 10, 2011 4:57 PM

## Remember to weigh in on Washington County reserves proposal

Metro and Washington County welcome your feedback and input on the revised urban and rural reserves proposal for Washington County. This proposal will be discussed by the Metro Council and the Washington County Board of Commissioners at a public hearing next Tuesday, March 15, beginning at 10 a.m. at the Charles D. Cameron Public Services Building in Hillsboro (155 N First Ave.).

Learn more about the revised urban and rural reserves proposal for Washington County

Learn more about what's changed on the map from last year, and why

If you cannot attend Tuesday's hearing, there are many other ways to share your views on the proposal:

- Send comments via e-mail to reserves@oregonmetro.gov. Comments received by 5 p.m. on Friday, March 11 will be included in a public comment report that will be provided to Metro Councilors and Washington County Commissioners before the March 15 hearing and included in the public record.

- Call 503-813-7577 to leave a voice-mail message for the elected officials with views and perspectives on the revised urban and rural reserves proposal.

- Call or write directly to members of the Metro Council and the Washington County Board of Commissioners with comments and views on the reserves proposal.

Find out how to reach individual Metro Councilors directly

Find out how to reach individual Washington County Commissioners directly

After Tuesday's hearing, there will continue to be ways to offer your comments:

- The Washington County Board of Commissioners will consider and vote on changes to the county's comprehensive land use plans that would formally designate rural reserves. This action is expected to be completed before the end of March.

- The Metro Council will consider and vote on changes to Metro's ordinances that would formally designate urban reserves. This action is also expected to take place at a public hearing to be held on Thursday, April 21.

- The Boards of Commissioners of Clackamas and Multnomah counties will adopt a revised set of findings that support the complete urban and rural reserves proposal for all three counties. These actions, which will also take place in public meetings, are also anticipated by the end of April.

- Once a revised joint set of findings is adopted by the four governments, that set of findings and the proposed Washington County reserves map will be sent to be reviewed and considered by the Land Conservation and Development Commission by the end of the summer.

Learn more about urban and rural reserves

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April 2, 2011 7:26 AM

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Kathryn Harrington represents District 4, which includes Northern Washington County, Cornelius, Hillsboro, Forest Grove, Northwest Beaverton, Aloha, Bonny Slope, Belhary, Raleigh Hills, West Slope, Cedar Mill and Cedar Hills.

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## Update on urban and rural reserves

PLANNING AND CONSERVATION > REGIONAL PLANNING AND POLICY > URBAN AND RURAL RESERVES > UPDATE

The Oregon Land Conservation and Development Commission approved urban and rural reserves designated in Clackamas and Multnomah counties. Learn more about efforts to complete urban and rural reserves in Washington County.

What is the status of urban and rural reserves?

Updated March 21, 2011

On March 15, the Metro Council and the Washington County Board of Commissioners reached agreement on a proposal to designate urban and rural reserves in Washington County. The agreement between the two governments calls for the establishment of approximately 13,500 acres of urban reserves and more than 151,000 acres of rural reserves. If acknowledged by the Oregon Land Conservation and Development Commission (LCDC), these areas would be added to the urban and rural reserves already designated in Clackamas and Multnomah counties, for a total of more than 28,000 acres of urban reserve and nearly 267,000 acres of rural reserve across the region.

The new urban and rural reserves map for Washington County removes a 623-acre urban reserve north of Cornelius that was rejected by LCDC in October 2010. In its place, the map creates an "undesignated" area (neither urban nor rural reserve) of approximately 360 acres north of the undesignated area. The new agreement also changes a portion of an urban reserve, north of Forest Grove, to undesignated land, creates a new undesignated area out of previously rural reserve land south of SW Rosedale Road and west of SW Farmington Road, and adds a new urban reserve of approximately 352 acres in previously undesignated land north of Highway 26, south of NW West Union Road and east of NW Groveland Rd., while retaining some areas as undesignated land.

The urban and rural reserve maps for Clackamas and Multnomah counties were acknowledged by LCDC last October and have not changed.

Download the proposed urban and rural reserves map for Washington County

Download the adopted reserves agreement between Metro and Washington County

What comes next, and how can I get involved?

The Metro Council and the Washington County Board of Commissioners will adopt land use ordinances to implement the agreement:

- The Washington County Board of Commissioners will consider and vote on Ordinance no. 740 that will amend the county's land use ordinances and comprehensive plan to account for the new urban and rural reserves map and formally designate rural reserves. The county is planning to hold public hearings in late March and April on the ordinance. Learn more about Washington County's Ordinance no. 740 and upcoming public hearings
- The Metro Council will consider and vote on an ordinance that changes the Urban Growth Management Functional Plan to formally designate the new urban reserves. A public hearing on this ordinance will be held on Thursday, April 21, beginning at 2 p.m. at Metro Regional Center, located at 600 NE Grand Ave. in Portland. Learn more about the Metro Council meeting on April 21
- The Boards of Commissioners of Clackamas and Multnomah counties will also adopt a revised set of findings that support the complete urban and rural reserves proposal for all three counties. These actions are expected by the end of April.
- Once a revised joint set of findings is adopted by the four governments, that set of findings and the proposed Washington County reserves map will be sent to LCDC for review and acknowledgment. It is expected that LCDC will hold a public hearing on the Washington County reserves proposal in August.

What about the urban growth boundary?

The Metro Council is working to ensure the region is planning ahead for population and employment growth. While much of this region's anticipated growth is expected to happen in downtowns and main streets, there may be a need for targeted urban growth boundary expansions to accommodate future homes and jobs. If an urban growth boundary expansion is needed, the Metro Council intends to locate those expansions in urban reserve areas because these are the places most likely to develop into great communities.

In December 2010, the Metro Council adopted a set of policies that will focus more growth and public investments in existing communities already inside the urban growth boundary. The Metro Council has agreed to delay any decisions about whether to expand the urban growth boundary until Fall 2011, after all of the urban reserve areas are finalized.

Read more about new policies to enhance the capacity of the urban growth boundary

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RELATED DOCUMENTS

- Map of proposed urban and rural reserves in Washington County  
1.2M Adobe Acrobat PDF | Published March 17, 2011
- Map of proposed urban and rural reserves in Washington County, illustrating changes from 2010 proposal  
1.2M Adobe Acrobat PDF | Published March 17, 2011
- Washington County reserves agreement, adopted March 15, 2011  
1.3M Adobe Acrobat PDF | Published March 21, 2011
- Clackamas County reserves agreement, adopted in March 2010  
568K Adobe Acrobat PDF | Published March 3, 2010
- Multnomah County reserves agreement, adopted in March 2010  
248K Adobe Acrobat PDF | Published March 17, 2010
- Map of urban and rural reserves in Clackamas County (acknowledged by LCDC)  
703K Adobe Acrobat PDF | Published February 25, 2010
- Map of urban and rural reserves in Multnomah County (acknowledged by LCDC)  
758K Adobe Acrobat PDF | Published February 25, 2010
- Descriptions of changes to proposed Washington County reserves map  
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- [Washington County urban and rural reserves web site](#)

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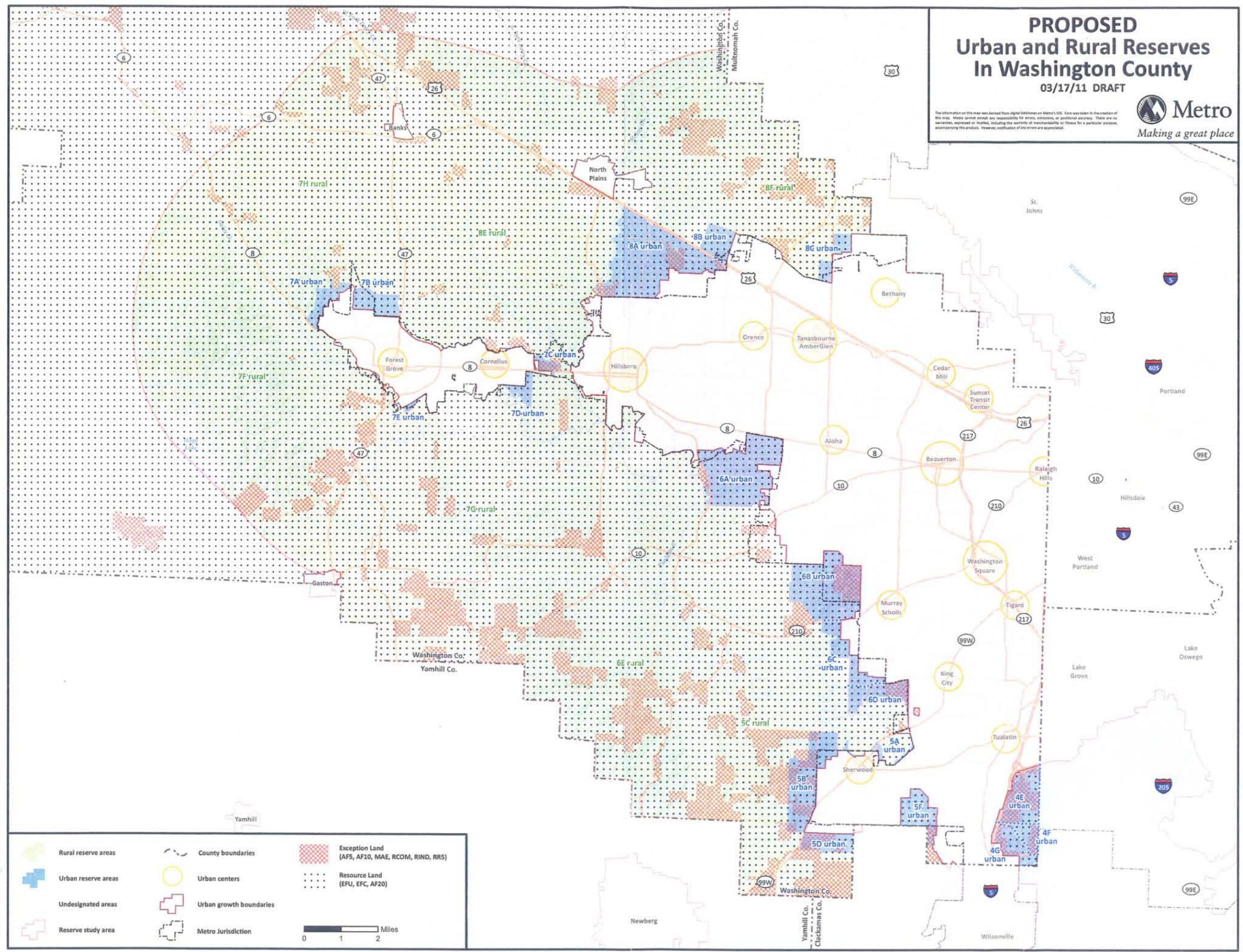


# PROPOSED Urban and Rural Reserves In Washington County

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	Rural reserve areas		County boundaries		Exception Land (AF5, AF10, MAE, RCOM, RIND, RR5)
	Urban reserve areas		Urban centers		Resource Land (EFU, EFC, AF20)
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# Washington County planning commission vote on urban reserves irks County Commission Chairman Andy Duyck

Published: Thursday, March 03, 2011, 3:35 PM Updated: Wednesday, March 09, 2011, 11:43 AM

By Dana Tims, The Oregonian

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Washington County's attempts to pinpoint where growth should and shouldn't occur over the next 50 years just got a lot more complicated -- and contentious.

In a vote certain to be noticed by other elected officials around the region, the county's planning commission Wednesday recommended that a substantial piece of land north of Cornelius be opened up for future development.



Courtesy Washington County

Washington County Commission Chairman Andy Duyck

The rub? The targeted acreage has already been declared off limits to urban development by the state Land Conservation and Development Commission.

In fact, the county's initial proposal to allow development on the 624-acre Cornelius tract was the main reason the state agency remanded Washington County's entire urban and rural reserves plan last October.

Further, it's since been taken off the table by Washington County's commissioners themselves, who ostensibly oversee the all-volunteer planning commission.

County Commission Chairman Andy Duyck, while saying he values the planning commission's work, said this was an issue that the latter body should have avoided entirely.

"They can have hearings, but they don't have to take ownership on this like we do," he said. "They don't have to make it work with other jurisdictions to get the votes. On something like this, they truly are just a rubber stamp."

Duyck said he would have preferred that the planning commission not vote on the county's larger urban and rural reserve proposal at all.

"What this does is throw doubt into the process," he said. "If we can't get our own planning commission to understand the importance of moving ahead on this now, we're going to have a lot more problems going down the road."

Marc San Soucie, planning commission chairman, said he spoke with Duyck Thursday morning. He described the conversation as cordial and light.

While acknowledging the regional implications of the vote -- both Multnomah and Clackamas counties essentially "divorced" Washington County in late 2009 over the very issue of including the controversial Cornelius piece as an urban reserve -- he nonetheless defended the planning commission's actions.

"I'm as aware as anyone that this could be viewed by some people as being a problem or obstacle to the board in that the planning commission didn't agree with their proposal," San Soucie said.

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"But the role of the planning commission in all of this is so slender, it's hard for me to interpret it as an obstacle to anything."

Planning commissioners, responding to emotional pleas from a handful of Cornelius residents, voted to approve 350 acres of the original 624-acre parcel for future urban-style development. That proposal continues to draw opposition from groups such as **Save Helvetia**, **1,000 Friends of Oregon** and the Washington County Farm Bureau.

Just how many ripples the vote will cause in the run up to a **March 15 joint meeting** between Washington County and the **Metro Council** is unclear.

At that meeting, the two agencies will hold a public hearing and vote on a revised proposed urban and rural reserves agreement issued Feb. 22 by Duyck and **Tom Hughes**, Metro Council president.

Once that is concluded, Washington County's commissioners will hear testimony on **Ordinance 740**, which, if passed, will serve as the enacting ordinance for the newly signed intergovernmental agreement between the county and Metro.

The county will likely continue the hearing until March 29, at which time a final vote will be taken.

After that, matters are still up in the air. The urban and rural reserve plans drawn up by Multnomah and Clackamas counties have already sailed past the state land agency without objection.

However, regionwide cooperation is still needed before a process now three years in the making can be completed.

Although the respective counties have been negotiating their own intergovernmental agreements with Metro since the "divorce" of 2009, all four governments, under state law, must still adopt a joint set of findings for final submission to and approval by LCDC.

Although all of the Cornelius land has already been removed by Washington County's commissioners from their revised proposal, it's still possible that either of the other two counties, along with various citizens' groups, could object to the county's plans now of wanting to designate considerable acreage north of U.S. 26 for future urban growth.

And if that happens?

"Personally, I'm getting political fatigue from what's been a regional merry-go-round," Duyck said. "I'm getting to the point that, if we don't see an end to it, there's no point bringing up plans that are dead on arrival."

If the system for designating where growth does and doesn't take place for the next half century actually collapses, the county would then revert to the "old style" of targeting new land for development, Duyck said. That involved primarily using soil types to decide where to expand, with so-called "foundation farmland" soils being the last to be tapped and marginal or "exception" lands and soils being the first.

"That's not where I would like to go," he said. "But that may be the only choice left us."  
**Dana Tims**

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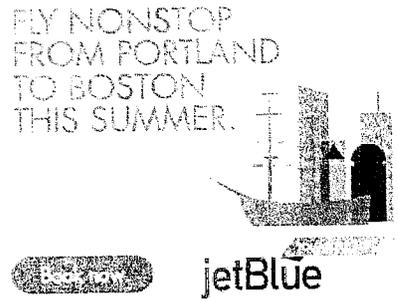
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INFORMATION REGARDING URBAN AND RURAL  
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WASHINGTON COUNTY RESPONSE TO LCDC ACTION  
PROPOSED SUPPLEMENTAL IGA AND MAP

The Washington County Board of Commissioners will consider adoption of a supplemental Urban and Rural Reserves Intergovernmental Agreement (IGA) with Metro on Tuesday, December 14, 6:30 p.m., Charles D. Cameron Public Services Building, 155 N. First Avenue, Hillsboro, Shirley Huffman Auditorium.

The supplement to the IGA is in response to the Land Conservation and Development Commissions (LCDC) October 29, 2010 decision. That decision directed the County to remove the Urban Reserve designation on lands north of Council Creek, near the City of Cornelius and to provide additional findings for the Urban Reserves north and east of Council Creek, north of the City of Forest Grove. The decision also provided the County and Metro an opportunity to reconsider rural reserves in Washington County to comply with the LCDC decision.

Washington County has used the substantial record of research and analysis, and record of public comment, to develop proposals in the Supplemental IGA that are responsive to the LCDC decision. The County has reviewed options and conferred with numerous, but not all, interested parties in considering its response.

The supplemental IGA proposes to replace the reduced Urban Reserves acreage north of the City of Cornelius (lands suitable for employment) with other lands in an amount not to exceed the reduced UR acreage and that are also suitable for employment. The Supplemental IGA also proposes to change a limited amount of acreage from Rural Reserves to Undesignated as discussed during the LCDC deliberations.

The Board will consider adoption of this supplement to the IGA through a Resolution & Order (R&O) at its December 14 meeting. The IGA and R&O are not "land use actions." The R&O also will include a process leading to adoption of Comprehensive Plan amendments by March 31, 2011. IF the Supplemental IGA is adopted by the County and Metro, the Comprehensive Plan amendments will be considered through a land use ordinance process, which will include notice of hearings and public testimony.

Adoption of a new reserves ordinance in Washington County would be accompanied by a similar consideration for adoption by Metro to the Regional Framework Plan. Findings supporting both the County's ordinance and Metro's decision would then be forwarded to LCDC for their review early next summer.

The County's, Metro's and LCDC's processes will have opportunity for public testimony prior to a final decision.

Updates, schedules and background information are available on the website:  
[www.co.washington.or.us/reserves](http://www.co.washington.or.us/reserves)  
or contact Mike Dahlstrom, Program Educator, 503 846-8101,  
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