



# Oregon

Theodore R. Kulongoski, Governor

Department of Agriculture

635 Capitol Street NE  
Salem, OR 97301-2532

DEPT OF

JUL 14 2010

LAND CONSERVATION  
AND DEVELOPMENT



July 14, 2010

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

Dear Mr. Whitman and Mr. French:

The Oregon Board of Agriculture and the Oregon Department of Agriculture (ODA) hereby files the objections discussed below to the decisions by Metro and Washington County to adopt urban and rural reserves (Metro Ordinance No. 10-1238A and Washington County Ordinance 733).

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ODA participated in the process first as a member of the Reserve Steering Committee (RSC) and second as a party to letters providing comment from nine state agencies.<sup>1</sup> Director Coba is an ex officio member of the Board of Agriculture and in this role represents the position of the board. The board has followed the reserves process from its inception and has provided comments to Director Coba and staff as the process evolved. Additionally, ODA conducted analysis and developed a report entitled *Identification and Assessment of the Long-Term Commercial Viability of Metro region Agricultural Lands, January 2007*, which was the basis for much of the discussion relating to agricultural lands in the region and is referenced by name in the Land Conservation and Development Commission Administrative Rule that deals with the reserves process (OAR 660 Division 27).

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<sup>1</sup> Letter dated October 14, 2009 addressed to the RSC and the Core 4, Page 1370 of Metro index of submitted materials (here after referred to as the state agency letter); Letter dated January 22, 2010 addressed to the Core 4 members, Page 1630 of Metro Index of Submitted Materials.

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

OAR 660-027-0005(2) states:

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

The final decision fails to achieve this balance. Thousands of acres of rural land were designated as rural reserves and then used to argue a balance between the designation of urban and rural reserves. This despite situations where there were no justification provided that the subject lands are truly under any threat of urbanization. The state agencies commented on this issue in their October 14, 2009 letter (see pages 6, 12 and 13).<sup>2</sup> While many of these lands are foundation agricultural lands, they are neither under any documented threat of urbanization nor are located within three-miles of the metro urban growth, thus qualifying under the safe harbor provisions in the rule. This is most evident south of Hillsboro on Chehalem Mountain and the Tualatin Valley agricultural lands running parallel to the Mountain, the Hagg Lake area, the Gales Creek area and areas located west and north of Banks and north and east of North Plains/Helvetia. These “nonthreatened” lands should not be considered as a balance to the designation of key blocks of foundation agricultural land as urban reserves or left undesignated for protection as rural reserves.

Compounding this unbalance is the amount, location and quality of some agricultural lands designated as urban reserve by Metro or left undesignated by both Metro and Washington County. 28,615 acres were ultimately designated as urban reserves by Metro. 11,911 acres of this total are identified by ODA as Foundation Agricultural Land. The great majority of this acreage, 82%, is located in Washington County. Most of the “undesignated” lands located around the perimeter of the Washington County segments of the Metro urban growth boundary (UGB) and neighboring cities (e.g. North Plains) are also Foundation Agricultural Lands. All of these Washington County lands are also under threat of urbanization, yet most of the lands under threat have been designated as urban reserve or left undesignated.

An analysis of the final Metro reserves map shows that 63.5 percent of the lands located adjacent to the UGB located in Washington County (includes Forest Grove and Cornelius) has been designated by Metro as urban reserve (55%) or left as “undesignated” lands (8.5%) with no protection from future designation as additional urban reserve land. If one removes the Forest Grove/Cornelius UGB, 67.1 percent of the lands has been designated by Metro as urban reserve (61%) or left as “undesignated” land (6.1%).

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<sup>2</sup> State Agency Letter, October 14, 2009.

The remedy is a remand with instructions to designate rural reserves that meet both the quality standards and the threat factors established by the rule and to adjust the amount of urban reserves lands to better achieve a balance that protects quality agricultural lands that truly require protection from urbanization. This would include the change of certain proposed urban reserves (see objections below) to rural reserves consistent with the rural reserve factors. The decrease of urban reserve acreage would still result in a total urban reserve within the 40-50 year range recommended in the urban growth report and the recommendation of the Metro COO, Michael Jordan.<sup>3</sup> Planning for a 40-year planning period as called for by the nine state agencies<sup>4</sup> could also remedy the situation in terms the total acreage required to meet the identified need.

Additional acreage not designated as Foundation Agricultural Land that could “substitute” for the subject urban reserves and undesignated lands is located southwest of Borland Road, southeast of Oregon City, in the Clackamas Heights area, east and west of Wilsonville, and between Wilsonville and Sherwood.

**Objection 2: General Analysis Issues; the analysis and designation of key Washington County agricultural lands as Urban Reserves and failure to designate qualified agricultural lands as Rural Reserves is flawed.**

Specific area objections follow below after the general discussion. These include the urban reserves proposed north of Council Creek and Cornelius; in the Evergreen Road area located north of Waibel Creek and south of U.S. Highway 26 and the “undesignated” lands around the towns of North Plains and Banks.

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

ORS 195.141(3)(a) and OAR 660-027-0060(2)(a) require that the designation of lands as rural reserves should be based on whether the land is “potentially subject to urbanization.” A factor used by the county to measure if lands are “subject to urbanization” many times downgraded the agricultural “rating” even when the ODA analysis and report determined the lands to be Foundation Agricultural Lands. A great deal of Foundation Agricultural Land shares an edge with the existing metro area urban growth boundary. The ODA analysis, including the mapping of Foundation Agricultural Lands, did take into account and factored in the implications of

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<sup>3</sup> Pages 597 and 604 of the Metro Index of Submitted Materials (here after referred to as the Metro COO Recommendation).

<sup>4</sup> State Agency Letter dated October 14, 2009; Letter dated January 22, 2010 addressed to the Core 4 members, Page 1630 of Metro Index of Submitted Materials.

urbanization on the long-term viability of this agricultural land. Washington County mapped those areas subject to high, medium, or low threat from urbanization.<sup>5</sup> Little of the land designated as rural reserves in Washington County seems to be actually under threat from urbanization over the next 40-50 years (also see discussion above). The analysis shows that most of the rural reserves lands are under “low” or “medium” threat from urbanization. In contrast, all lands designated as urban reserves in Washington County are subject to “high” threat from urbanization and, as noted above, most of those are Foundation Agricultural Land.

ORS 195.141(3)(b), and (d) and OAR 660-027-0060(2)(b) and (d) afford that those lands “capable of sustaining long term agricultural operations” and that are “suitable to sustain long-term agricultural operations” are suitable for rural reserves designation. The analysis conducted by ODA in determining which region lands are best suited for long-term commercial agriculture resulted in the designation of Foundation Agricultural Lands.<sup>6</sup> All of the lands in question below are Foundation Agricultural Lands and qualify under this factor.

ORS 195.141(3)(c) and OAR 660-027-0060(2)(c) establish a factor requiring consideration of “available water *where needed*.” The analysis by the County and decision by Metro give too much weight to whether or not lands are located within the Tualatin Valley Irrigation District (TVID) and its associated infrastructure. Many high-value crops are grown in the region without irrigation. And there are numerous examples of irrigation occurring from surface and ground water sources not associated with the TVID. Examples of irrigated land in areas the county has identified with a lesser value such as northwest and north of North Plains and in the Jackson School Road area.

While on the issue of water supply, it is important to note that the County indicates that they rank lands within water-restricted areas lower. Because agricultural lands within such areas maintain existing water rights, they in reality are more important as they in fact do have water in an otherwise restricted area where new water availability is severely limited. Such lands should be protected as rural reserves when under threat of urbanization.

ORS 195.141(3)(d)(A) and OAR 660-027-0060(2)(d)(A) deal with the importance of whether there is a “large block of agricultural land” in designating rural reserves. The analysis and decision seems to equate “large block” with large “parcels,” and “parcelization” with “ownership.” The County considered an area to be “parcelized” if the majority of tax lots were 35 acres or less.<sup>7</sup> As was stated in the state agency letter, this 35-acre threshold is not a reasonable threshold for determining parcelization and it does not reflect the nature of farming operations in the region. Many farms are comprised of constituent parcels including parcels owned, rented and/or leased by a farmer. It is also important to note that parcelization was taken

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<sup>5</sup> Washington County Report, p. 22, and Map 16:  
<http://www.co.washington.or.us/LUT/PlanningProjects/reserves/wcrcc-urban-and-rural-reserves-recommendations.cfm>

<sup>6</sup> *Identification and Assessment of the Long-Term Commercial Viability of Metro region Agricultural Lands*, January 2007, Oregon Department of Agriculture.

<sup>7</sup> Washington County Report, p. 26; Wash. Co. Rec. starting at p. 2493.

into account by ODA in determining which lands qualified as Foundation Agricultural Lands. All of the subject lands objected to below is Foundation Agricultural Land. Furthermore, the County analysis becomes even more flawed when it equates residential density as a factor without making any determination as to if the subject dwellings were authorized as dwellings in conjunction with farm use or as nonfarm dwellings that may be approved only after an analysis of impacts to surrounding farming operations has indicated no adverse impacts to agricultural operations. The legal issue is whether a small parcel is too small to be farmed by itself or as part of a larger operation *and* if it is located in an area that is largely agricultural in nature, or whether it is isolated in an area that is already broken up with smaller developed parcels. The issue is surrounding conflicts, not the parcel size or even pattern. This is emphasized further by factors (d)(B), (C), and (D), which elaborate on what is meant by a “large block.

It is important to note that the Metro decision is selective in its application of the “parcelization” factor. Some of the most important areas of Foundation Agricultural Land are in large blocks which contain large ownerships and parcels, yet they have been designated as urban reserves, examples include north of Council Creek, north and west of Hillsboro, south of Butternut Creek (south Hillsboro), and north of Highway 26.<sup>8</sup>

ORS 195.141(3)(d)(D) and OAR 660-027-0060(2)(d)(D) require consideration of the “sufficiency of agricultural infrastructure in the area.” This factor is not adequately addressed. The only discussion relating to infrastructure relates to information provided by the agricultural community which expressed concern about protecting the agricultural land remaining in the area in order to support a “critical mass” of operations needed to support agricultural infrastructure. It is important to note that ODA considered the availability of agricultural infrastructure in conducting their analysis of the long-term viability of the regions agricultural land.<sup>9</sup>

OAR 660-027-0050(8) requires that when identification and selection of lands for urban reserve designation, consideration must include analysis if the proposed urban area “can be designed to avoid or minimize adverse effects on farm and forest practices.” In the circumstances where this factor was addressed, conclusionary statements such as “this area can be designed to avoid or minimize potential adverse effects on surrounding farms and adjoining natural landscape features is the norm. No evidence or discussion is provided as to how adequate protection is provided. This factor has not been adequately addressed.

The remedy for these deficiencies is a remand of the Washington County portion of the decision.

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<sup>8</sup> Washington County Report, App. 1, Map 24.

<sup>9</sup> *Identification and Assessment of the Long-Term Commercial Viability of Metro region Agricultural Lands*, January 2007, Oregon Department of Agriculture, page 11.

## **Specific Area Objections**

### **Objection 3: Designation of agricultural land north of Council Creek (Urban Reserve Area 7I) as an Urban Reserve is inconsistent with the Reserves Statute and Rules.**

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

The integrity of this area is at risk by the proposed urbanization of the subject area. Council Creek currently provides an excellent and definable edge and buffer between urban lands and the block of agricultural land located to the north. The protrusion of urban land into this area as proposed creates an additional two urban edges for agricultural operations to deal with. These edges provide no real buffer to adjacent agricultural lands. Nothing but a conclusionary statement that development in this area could be designed to avoid or minimize adverse impacts to surrounding farms is provided to address impacts to area agricultural operations and OAR 660-027-0050(8) (See discussion above).

Additionally, such an urban protrusion out and into agricultural lands has long-term implications on surrounding agricultural lands. The extension of urban services such as roads, sewer and water lines north into this area can do nothing but put pressure to ultimately urbanize and infill the notches of rural land remaining to the west and east. And any such extensions of roads to the northern edge of this area could promote further extension north to U.S. Highway 26 with implications to the larger agricultural area.

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

### **Objection 4: Designation of agricultural land north of Waibel Creek and Meek Road (Urban Reserve Area 8A) as an Urban Reserve is inconsistent with the Reserves Statute and Rules.**

The area discussion within this objection is a subarea of Urban Reserve Area 8A. It can be best described as the northern portion of the subject urban reserve bounded on the north by U.S. Highway 26, the south by Meek Road and Waibel Creek and the west by McKay Creek.

This area qualifies for designation as a rural reserve. It is Foundation Agricultural Land and meets every single factor for designation as a rural reserve. Soils in this area are some of the best in the region. Irrigation is provided by groundwater sources. Excellent edges are provided by Waibel Creek and Meek Road. Adjacent nonfarm and urban land uses are low-density residential and large lot industrial which tend to be more compatible with common agricultural practices. It is also under serious threat of urbanization as indicated by the designation of the area by Metro as an urban reserve and the history and progression of urban growth and of urban growth boundary expansions to the south and east and to the north of U.S. Highway 26.

Expansion into this area has serious implications, especially when combined with “undesigned” lands located along U.S. Highway 26, to promote the ultimate conversion of all lands located south of Highway 26 and east of McKay Creek. Combined with the “undesigned” lands located south of North Plains, urbanization of the subject lands would put pressure on and could lead to the ultimate conversion of all lands located south of Highway 26 and east of Glencoe Road. The urbanization of the Jackson Road interchange could also put pressure to urbanize lands located north of Highway 26.

As previously discussed, and consistent with the lack of evidence in the designation of Urban Reserve Area 7I, nothing but a conclusionary statement that development in this area could be designed to avoid or minimize adverse impacts to surrounding farms is provided to address impacts to area agricultural operations and OAR 660-027-0050(8).

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

**Objection 5: The “Undesigned” lands located south of North Plains and west of and adjacent to Helvetia Road should be designated Rural Reserve.**

The decision to not designate agricultural lands located south of North Plains and U.S. Highway 26 and lands located north of U.S. Highway 26 and west of Helvetia Road fails to protect lands that qualify for protection as rural reserve land. Both of these areas are Foundation Agricultural Land and include large, commercially viable farming operations. Both areas are contiguous to and part of larger blocks of agricultural land that have been designated rural reserve. Both areas are under threat of urbanization evidenced by their location adjacent to existing UGBs and past history, including actions by the City of North Plains in the past to expand south of U.S. Highway 26. The state agencies recommended that both of these areas be part of a much larger rural reserve areas to protect the valuable agricultural lands in each area. In the case of the North Plains area, the state agencies remarked that rural reserves to the south are needed “in order to steer urbanization for North plains north of Highway 26.” In the case of the Helvetia area, the state agencies point to the need for a rural reserve designation to “form a hard edge to the boundary in this important agricultural region.”<sup>10</sup>

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<sup>10</sup> State Agency Letter, October 14, 2009, pages 19 and 20,

Left “undesigned, these lands become in effect protrusions, if not islands, of potential urban land which would have implications on agricultural operations both within and adjacent to the subject lands. First as “undesigned” lands, these lands in effect become next in line for urbanization and in fact, could move up in line should they be designated by future actions as urban reserves, current law does not limit the addition of new rural reserves from land not protected as a rural reserve. Second, because these lands could be urbanized sooner, speculative forces could render the speculative value of the land much higher then if protected for agricultural use making it difficult at best for farmers to rent, lease or acquire the subject lands. Speculation and high land values also tend to preclude current farmers from developing agricultural infrastructure and developing high-value crops, such as perennials, that require a long time to mature and realize income for the farmer. Finally, urbanization of these areas has implications to adjacent agricultural operations. It is also important to point out that the “undesigned status” does not provide the added protection from plan amendments and zoning changes that is afforded by a rural reserve designation.

The remedy is to remand these areas with direction to designate them as rural reserve.

Sincerely,



Bob Levy, Chair  
Oregon Board of Agriculture



Katy Coba, Director  
Oregon Department of Agriculture

Cc: Metro  
Washington County  
Multnomah County  
Clackamas County