

Subject: Objection to the Designation of the Peterkort Property in Washington County as Urban Reserves

DEPT OF

Objector Name: Joseph C Rayhawk
Objector Mailing Address: 15248 NW Germantown Road
Objector City, State, Zipcode: Portland, OR 98231
Objector Complete email Address: rjshelley@qwest.net
One Specific Date of Testimony: Metro Council, May 20, 2010

JUL 14 2010

LAND CONSERVATION
AND DEVELOPMENT

Signature:

Joseph C Rayhawk
Joseph C Rayhawk

7/13/2010
Date

Objection and Recommendation

I object to the late change of the Peterkort property in Washington County from Rural Reserves to Urban Reserves. I urge that LCDC reject the change based primarily on the property not meeting the Factor required for Urban Reserves and secondarily because making it Urban Reserves appears to be contrary to state land-use goals for water quality and habitat protection and possibly the Federal Clean Water Act and Endangered Species Act.

Background / Participation in the Process

My name is Joe Rayhawk. My wife and I own and live on a 34-acre farm immediately north of North Bethany in Multnomah County. We operate Abbey Creek Stables on the farm. The main stem of Abbey Creek, a tributary of Rock Creek, runs across our property. Our reach is slightly more than 1300 feet. The main stem of Abbey Creek is part of a habitat path between Forest Park and points west. Abbey Creek joins Rock Creek just upstream from the Peterkort property.

We voluntarily gave up use of part of our land near the creek in 2007 to help with water quality of Abbey and Rock Creek, placing the land near Abbey Creek into a federally funded ECREP project managed by West Multnomah Soil and Water Conservation District.

I have been active in urging Rural Reserves for all areas of the Abbey Creek watershed including my property. Based on option prices for land in North Bethany, this means foregoing a possible windfall profit of \$10 Million which is less than what the Peterkorts are hoping for but still is a large amount of money.

My review of the issues in early 2009 lead to several negative conclusions. One of these supplies my major motivation. Washington County, for more than a generation, has encouraged 'growth' by not requiring new developments to pay for the impact of the development on roads and schools. Among other things, this has lead to the roads between my property (and North Bethany) and where most jobs are being inadequate to handle the traffic load. Inadequate roads lead to excess accidents which cause injuries, maimings and even deaths. Inadequate schools lead to inadequate education, effectively damaging children for life. These factors are not necessarily within the purview of LCDC. Perhaps they should be.

I have testified about Reserves issues at multiple Multnomah County Citizens Advisory Meetings, to the Multnomah County Planning Commission and to the Multnomah County Board of Commissioners. These were mostly about issues within Multnomah County.

I testified at the large meeting of the Washington County committee held in the summer of 2009. Although concerned about many issues in the Washington County process, I limited my input to the area along Abbey Creek between my property and Rock Creek. I believed my knowledge of the nature of the wetlands here would help them understand that there was little or no buildable land. I was successful in the sense that the specific area, which had been shown as Urban Reserves on preliminary maps, has been designated as Rural Reserves.

I testified at Metro about the larger area near the Peterkort property. Specifically, the area encompassed by 185th, Germantown Road, Cornelius Pass Road and West Union. As mentioned in the Washington County documents, at one point last year, this was on the Reserves Map.

Objection to Urban Reserve for Peterkort Joe Rayhawk

Page 1 of 16

My testimony was motivated by concerns about the impacts on Rock Creek and Abbey Creek. I presented a map which is attached that shows the nature of the Creeks, wetlands, steep slopes and important farmland. Both Councilors Hosticka and Harrington expressed surprise and even said that this area should not be on the map. It was interesting that Councilor Harrington, as the Core-4 representative, was surprised by its presence. Apparently, someone with higher authority got it added to the map outside of the public Core-4 deliberations. Within a minute of the formal end of the meeting, both Mr Hosticka and Ms Harrington came over to me and discussed the details of the map.

While I advocated that most of the area qualified as Rural Reserves and should be so designated, I also testified that a smaller area on the west side of 185th extending from West Union to Springville should be designated as Urban Reserves to allow for widening of 185th. My goal here was that we need to get as much North Bethany traffic as possible onto 185th which is the only 5-lane arterial between North Bethany and the Sunset Highway which is the corridor to most jobs which are in Portland or south in Beaverton. The issue being that the other possible roads to the east are two-lane country roads already carrying too much traffic. Although I believe preserving the water quality and habitat to be important, human life trumps those in importance.

Again, I was successful, in that most of the area was designated Rural Reserves and the sub-area needed for human safety was designated as Urban Reserves. A map showing the area is supplied.

Between the publication of this set of designations and their first approval, Washington County petitioned LCDC to clarify the rules about Rural Reserves. Actually, they petitioned LCDC to weaken the rules. Among the issues which took up several hours of your time earlier this year were what the rules are with respect to roads and sewers through rural reserves. Although the issues were presented in the abstract, it appears that they may have been motivated by the short-term issues that have resulted in the late change of the designation of the Peterkort Property as Urban Reserves. It appears to me that you intend to tighten the rules rather than weaken them.

Your apparent direction may have been a significant reason for Washington County's change.

I testified at both Metro and Washington against the Peterkort change. In Washington County, I also testified in favor of their minor changes and specifically in favor of a change of a small section of Urban Reserves that was surrounded by Rural Reserves. Washington County appeared to believe that it made no sense to have an isolated piece of Urban Reserves because there was no way to develop it without negatively impact the surrounding Rural Reserves. This is in some opposition to what they advocate with respect to the Peterkort property.

The above shows that I have legal standing with respect to this objection. I would like to clarify that I chose to intrude on the processes of another county because the current plan will be damaging to the water quality and habitat paths of the creek system for which I have actively made sacrifices. Also, as will be discussed in reviewing the factors, I and approximately 100 land owners in Multnomah County have had restrictions placed on our development rights to protect the stream and habitat. The fact that there is a county line between us and where the harm will occur is not a relevant factor. Oh, those restrictions, whiled created by Multnomah County, are to meet various Metro and State land use goals. I supply a map showing the restricted area.

Subsequent to the LCDC meeting where it appeared that you would not do what Washington County requested, the issue of the Peterkort change became public. It appears that there are two reasons that Washington County changed the designation, neither of which is consistent with the rest of the Reserves Process.

First, development of the Northwest corner of North Bethany will require a bridge and road from that area to 185th. This is for North Bethany's Road A. The developer involved in this private land deal does not want to pay for the entire bridge and for the road all the way to 185th. Washington County appears to justify the change because development of the Peterkort property will add some Urban acres that could pay both for the road and for part of the bridge. As will be shown later, the development of the Peterkort property will have a large negative impact on the community, including effectively negating the value of acquisitions in the Abbey Creek Valley that a part of the 167 Million Dollar Metro Natural Areas Acquisition process. The existence of the bridge and the road is the responsibility of the developers who stand to make millions from developing the northwest corner of North Bethany. It is clearly not 'fair' to transfer the burden from the benefiting, party to the public.

Second, the Peterkorts cooperation is required for applications for permits for wetlands construction needed to mitigate wetlands destruction within North Bethany and for applications needed for a sewer line for North Bethany. In essence, the Peterkorts have blackmailed Washington County into ignoring both the current Factors and long-standing planning concepts of using streams and wetlands to buffer between Urban and Rural uses.

There is some smoke and mirrors in the Washington County documents about Peterkorts contributing lands for the wetlands and the roads. This should be viewed in clear light.

First, the amount that the county will be able to pay both for the wetlands and for the roads will be much less than what the 77 acres of Urban Reserves will be worth. Many of the acres in North Bethany were optioned at \$500,000 per acre. Some closest to Abbey Creek was optioned at \$600,00 per acre. These were deals done before the real estate crash of 2008. Before the crash, unirrigated farmland was valued at \$10,000 to \$19,000 per acre (per Northwest Farm Credit Services). Using \$20,000 to make the math simple, the 129 acres of the Peterkort property would have been worth \$380,000 in 2008.

All of the numbers are smaller now and will be for some time. Using the pre-2008 numbers and projecting that there might be as little as 30 buildable acres in the 77 acres of requested reserves, the Peterkort property would be worth \$15,000,000 or something like 39 times more than they would have been as Rural land. Again, the numbers will be smaller and even the ratio may be smaller, but the value of 77 acres of urbanizable property dwarfs that of 129 acres of Rural Reserves. As a minor detail, the value of the land 'donated' would be the same even if it too were moved into Urban Reserves because it is not buildable. It is wetlands and stream.

Again, development of North Bethany is a land deal between private parties. It does not make sense to decide that the factors do not matter for the convenience of the private parties. It also is not good public policy to give into what is effectively blackmail by one family while 100 land-owners in the same ecological system suffer restrictions that appear to be uncompensated 'takings'. The only compensation for the restrictions is the protection of ecological system which system will be damaged.

I object to the lateness of the change as a violation of the process. My testimony at Washington County before they voted to make the change was that they should only do the small property boundary changes, the isolated Urban Reserve change, and that they should not do any change to which anyone objected. In particular, there was not enough notice to interested parties that the process was being 'extended' beyond what most people thought was the last vote. The Peterkort change was presented, arguably buried, in a large set of changes. The Planning Commission, at a meeting which few people attended, voted to change a fair number of properties both to and from Urban Reserves. The Peterkort one appears to be the only controversial issue actually approved. Washington County Commissioner Roy Rogers stated at the first hearing that he thought it was too late in the process to be making these kind of changes.

I testified at the initial meeting of Metro where they voted to reject the change. Subsequent to that public meeting, it became apparent that there would be a second vote at a meeting at which public input was not allowed. It also became apparent that Metro Councilor Collette would be the swing vote which would go 4-3 one way or the other. As documented in the Oregonian, a two-hour closed-door meeting between Ms Collette, Council President David Bragdon (the only Council member with authority higher than Core-4 member Harrington), the current Chair of Washington County, Tom Brian and the Chair-elect, Andy Duyck. As a participant in the public process, I am offended about this meeting. I am concerned about why it took two hours. This issues are in fact fairly clear and all parties should have been familiar with them even just from the multiple testifiers at the first meeting. So, I am objecting to this issue being decided behind closed doors.

The following was recently published on the Metro website at URL:
<http://www.oregonmetro.gov/index.cfm/go/by.web/id=31826/level=4>

The designation vote was postponed June 3 because of councilors' misgivings over a 129-acre property that Washington County requested be switched from rural to urban. The five majority votes June 10 came after reassurances that plans crafted by Clean Water Services, the Washington County water treatment agency, will provide improved habitat connections, high quality wetland mitigation and essential road and sewer easements for the North Bethany development, allowing more complete development of the area and saving millions of

dollars.

As I will show in my arguments about the factors, much of these assurances from Washington County cannot be true if the Peterkort property is urbanized. It is worth noting that Clean Water Services and Washington County are legally required to accomplish the described good aspects in order to use the area as desired INDEPENDENTLY of whether the Peterkort property is or is not Urbanized. If the Peterkorts choose to go through with their threat of non-cooperation, they will pass up, perhaps permanently, several million dollars of possible income from selling the wetlands and right-of-way rights at fair market values.

I try to discuss only issues relevant to the FACTORS in the formal section because they are what you are supposed to be using as your primary criteria. Some of my discussion above was to offset arguments from Washington County that are not relevant. Also, all of the above is meant to document parts of the process in case the parts that appear questionable can be used to support a decision to reject the designation of the Peterkort as Urban Reserve.

To close this less formal discussion. My key issue is human safety. Adding 200-500 housing units north of the intersection of 185th and Springville is counter-productive to trying to contain the increase in traffic problems that North Bethany will cause. In particular, it will more than double the traffic using the intersection from the north. This will increase the time that traffic from North Bethany on Springville is delayed by red lights. So, more of the traffic will go east and use the more challenged and dangerous two-lane roads. Adding still more housing, two miles from the nearest corridor is irresponsible. Developing the Peterkort property should entail charges to improve the roads needed to support the traffic that it will generate. Of course, most this money is pre-assigned to be spent on Road A and its bridge.

areas classified as riparian or upland wildlife habitat.

Blue = Floodplain

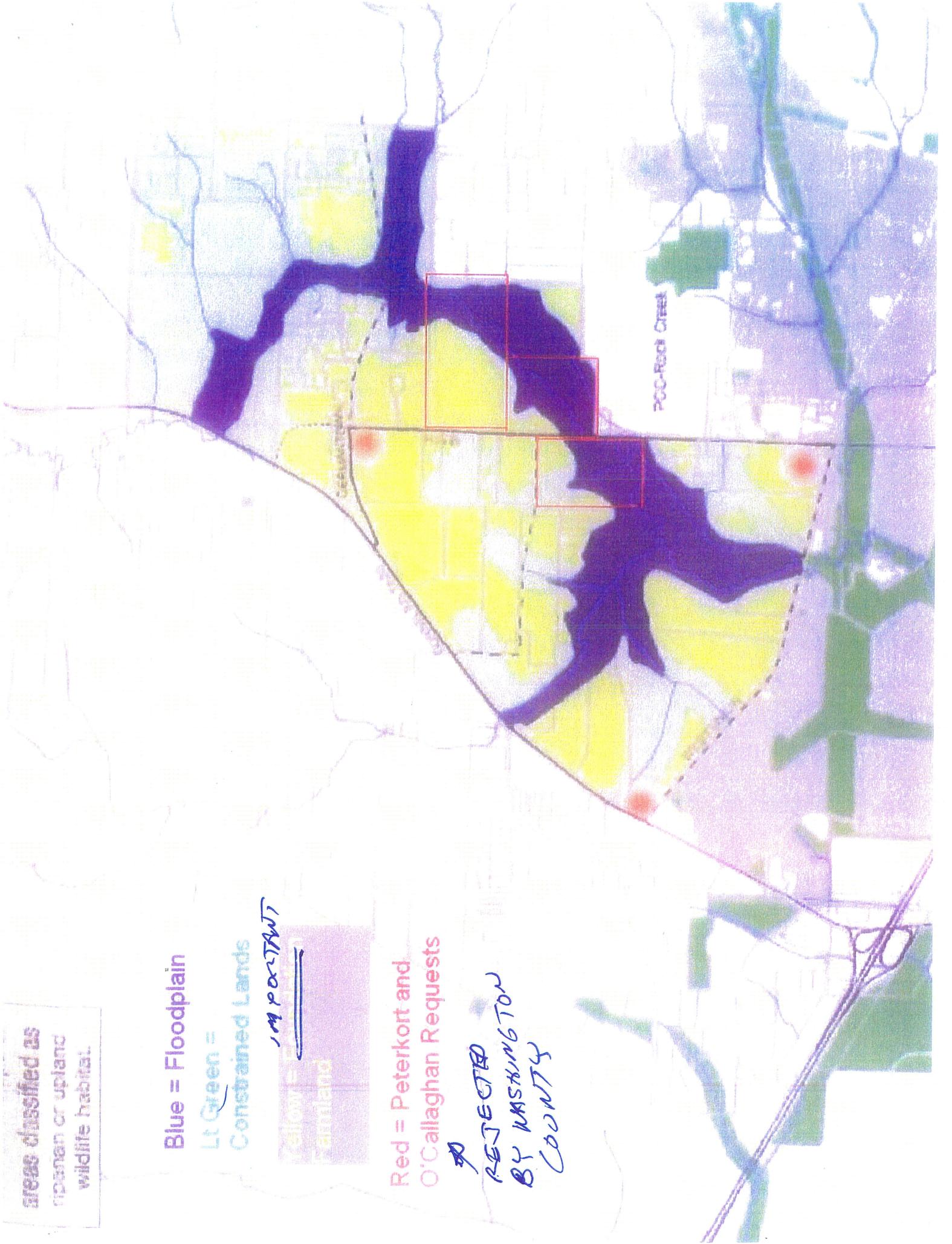
Lt Green = Constrained Lands

IMPORTANT

Yellow = ~~Ecology~~ Farmland

Red = Peterkort and O'Callaghan Requests

REJECTED BY WASHINGTON COUNTY



POC-Root Creek

Sagehen Creek

Rural Reserves on 2 sides

Cut off from other Urban Reserves by a 303(d) stream corridor (Federal Clean Water Act) which is also part of a Metro Natural Areas TIER I acquisition area

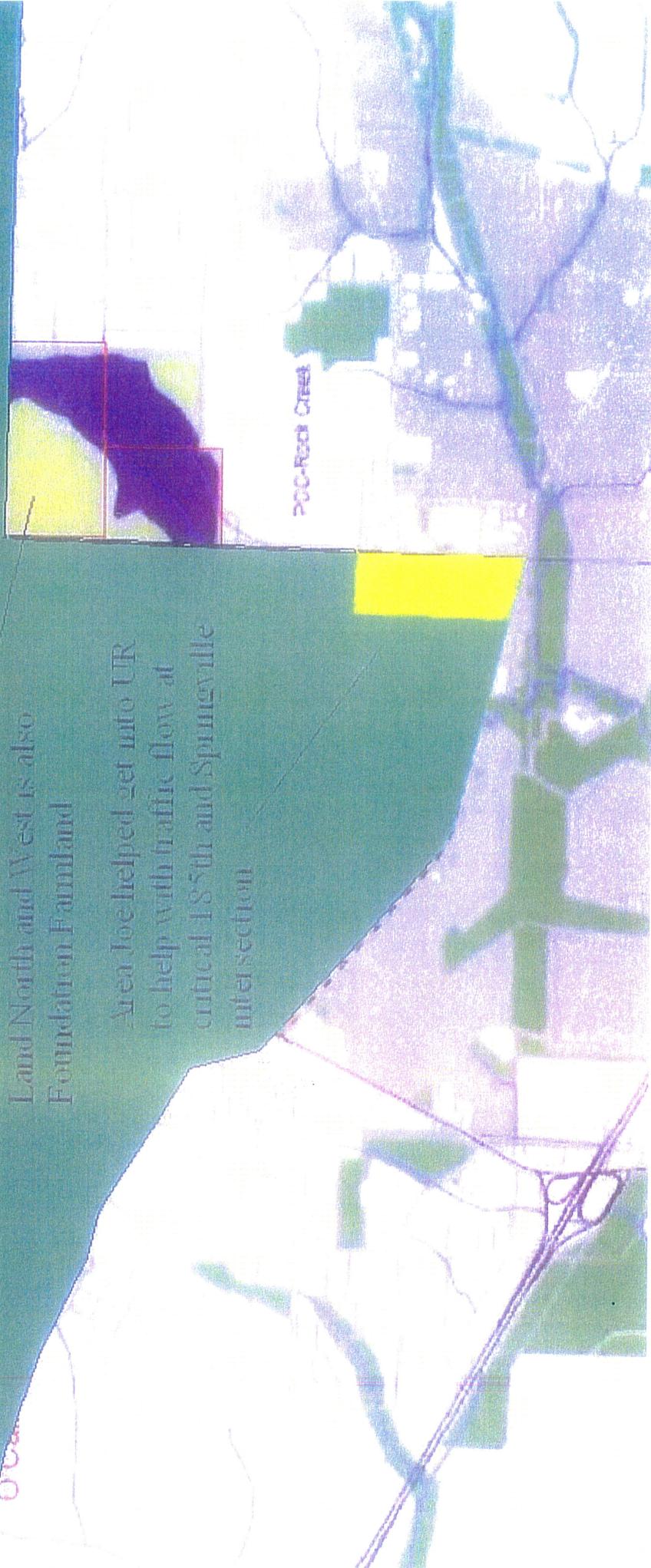
Does not meet Factors for Urban Reserves
Clearly meets Factors for Rural Reserves AND
Is clearly high priority for protection of Streams and Habitat

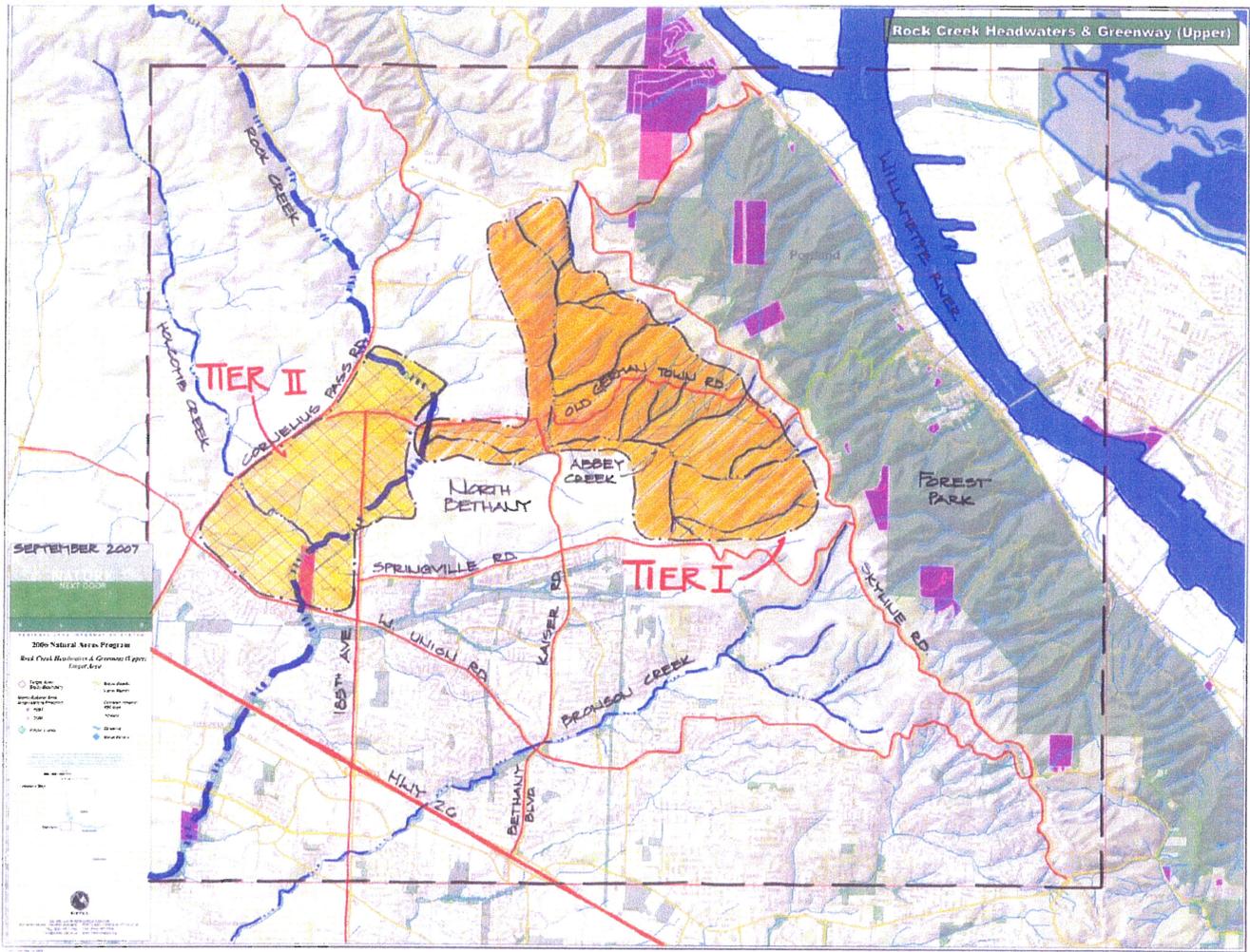
Yellow Area is Important Farmland

Land North and West is also
Foundation Farmland

Area Joe helped get into UR
to help with traffic flow at
critical US5th and Springville
intersection

The tributary here is also
covered by 303(d) status





Metro Natural Areas Rock Creek and Greenway Map

Original: URL: http://library.oregonmetro.gov/files/rock_creek_map_goals_and_objectives.pdf

This is the Map of the Rock Creek Tier I Goal area from the Metro Natural Areas Website.

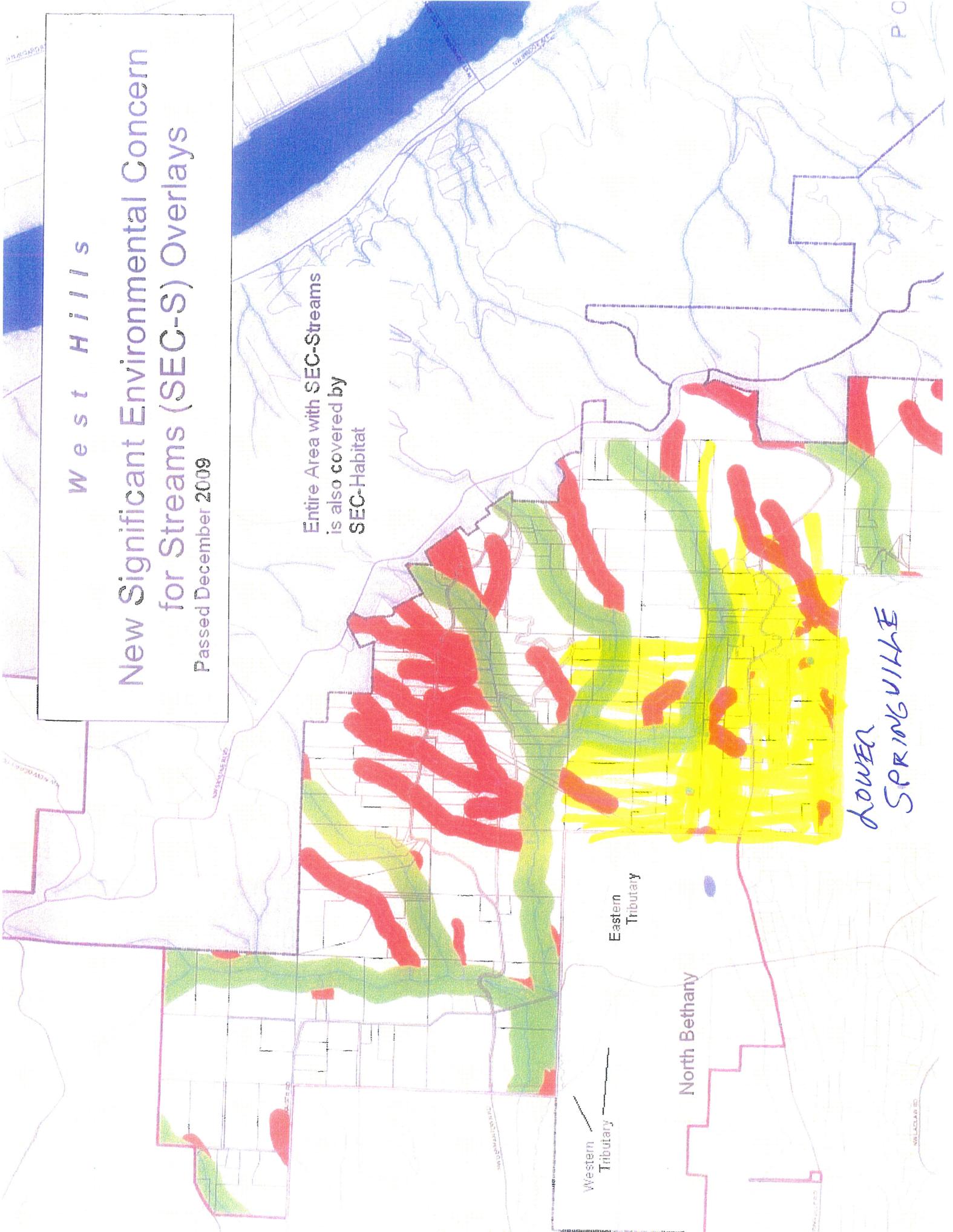
Although crudely drawn, the western edge of the Tier I area touches the Peterkort Property. Much of it is covered by the Tier II area.

West Hills

New Significant Environmental Concern
for Streams (SEC-S) Overlays

Passed December 2009

Entire Area with SEC-Streams
is also covered by
SEC-Habitat



Lower
Springville

PO

Formal Objections Using the Factors for Urban and Rural Reserves

This is an evaluation of the the Factors for Designating Urban and Rural Reserves as they apply to the Peterkort property. Parts of this review are unique due to my interest in protecting both the water quality and the wildlife habitat paths of Rock Creek and Abbey Creek and because of my knowledge of the area as a resident and as the owner of a quarter-mile of the reach of Abbey Creek and the wildlife habitat path near it.

The overall summary is that the Peterkort property does not meet the Urban Reserves Factors. Also, as has been admitted by Washington County and as originally approved by Metro and the three counties, the property qualifies for Rural Reserves.

Text in Bold is from the following page on the Metro site:

http://library.oregonmetro.gov/files/urban_and_rural_designation_factors.pdf

This lists the source as:

OAR 660, Division 27, Urban and Rural Reserves in the Portland Metropolitan Area
Adopted by LCDC January 24, 2008; Effective February 8, 2008

My comments which form the technical aspects of my objection are interspersed in non-Bold.

Many of the factors contain an 'and'. My conclusion is that such factors create two requirements, both of which have to be met. In testimony about other areas of contention in this process, the financially interested parties made arguments (many of which were not valid) that an area met one of the two requirements and then claimed that the Factor was met. I believe this is not correct. Let me argue by analogy: In order for a plane to work(as an airplane), you need at least an engine and wings. It does not matter how good an engine you have, if you do not have wings, you do not have an airplane.

Perhaps in some cases, such 'and's do not seem fundamental, and reliance on them might be construed as 'convenient'. I believe here they are in fact fundamental: The goal of the factor cannot be achieved without both requirements.

Factors for Designation of Lands as Urban Reserves*

**Considerations for land proposed for designation as urban reserve,
alone or in conjunction with land inside the UGB:**

**Infrastructure: Can be developed at urban densities in a way that makes efficient use of
existing and future public and private infrastructure investments;**

These 77 acres are surrounded by land designated to be Rural Reserve and by lands that are part a Federally-listed 303(d) stream, isolating the acres from all existing and planned urban services such as schools and shopping by more than 1/2 mile.

The closest planned grade schools in North Bethany are not designed to handle the extra load from 300 or more homes. Currently, Beaverton School District has no plans to add either Middle Schools or High Schools in the area. The two high schools north of Sunset Highway are already over capacity and

will get worse with the build-out of North Bethany. The local middle schools are at or over capacity as well. They will be over-capacity with the build-out of North Bethany. To be clear, there is no plan to use the large increase in land value in North Bethany to fund construction of needed middle schools. In summary, adding additional homes in Peterkort acres will exacerbate a bad situation. Also, Peterkort is not within walking distance of the North Bethany elementary schools and is more than two miles from the nearest middle school. A minor point: it will not be efficient for the buses that will be needed to transport middle school students from North Bethany to the schools to the southeast to extend their routes to pick up the relatively small number of children in Peterkort.

North Bethany planning includes a great deal of effort to define parks and trails and to locate stores in a way to make it possible to access and use them without driving. The Peterkort area is too small to support even its own grocery store much less other types of stores. So, this 'urban' level of service from private providers is not practical.

Because the Peterkort area is surrounded by Rural Reserves and by the 303(d) lands which need to be protected from urban impacts, it is not possible to provide parks and trails within walking distance of the proposed area.

The Peterkort property does not meet the Infrastructure Factor.

Development: Includes sufficient development capacity to support a healthy economy;

This has been discussed somewhat under the previous factor. The area is sufficiently isolated from other urban areas, that it should be considered absolutely stand-alone. As such, it is too small to support any of the businesses that might be described as being the center of an Urban Neighborhood.

As mentioned above, it is too small to support a grocery store. It is too small to support many other specialized businesses such as a restaurant, coffee shop, bookstores. A possibility, though obviously undesirable, would be something like a convenience store associated with a gas station. Unfortunately, because of its location, there is not enough traffic even 'going by' on 185th to support such a business.

To summarize, the area is too small to support a healthy urban economy by itself and is not located in a position to benefit from passing traffic.

The Peterkort property does not meet the Development Factor

Public facilities: Can be efficiently and cost-effectively served with public schools and other urban level public facilities and services by appropriate and financially capable service providers;

I addressed most of this previously. This is one of the factors that has an 'and' that appears to create two requirements.

I discussed in an earlier section that this area cannot be serviced by the existing or planned public schools efficiently. In addition actually adding student load will damage the already impacted performance of the school system.

There are current plans to bring build a part of the sewer system for North Bethany through the wetlands nearby. So, it may be practical to hook up Peterkort to it. Those plans include significant

impacts to the Rock Creek and parts of its tributary Abbey Creek, both of which are under Federal 303(d) protection under auspices of the Clean Water Act for thermal and other problems and under auspices of the Endangered Species Act for salmonids.

At this point (Mid-July 2010), it is not clear whether that sewer system will be available close to Peterkort. I expect the first decision with respect to this will be made before DLCD/LCDC meets to review this.

Under the concept of meeting both requirements, this area does not meet the Public Facilities Factor.

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

This was partially addressed in previous topics. Let us concentrate on special topics for this.

Walkable

It does not appear that there will be any places to which to walk within the Peterkort area other than other homes. Again, there will be no stores and no sizable park. All places to which one might want to go will be beyond walkable distance. North Bethany is substantially higher than the Peterkort property with the low land of Rock Creek in between. So, the effective distance is even more than what is apparent from a simple map. On a negative note, some of the potential park-like areas will be the wetlands and the creek. Actually, the presence of children is a threat to these areas.

Well-connected

The connection between Peterkort and North Bethany will be via North Bethany's Road-A Bridge. There are a number of potential problems with children using this to access the distant parks, stores (and schools) in North Bethany. In particular, bridges over Rock Creek on West Union (just south of here) and on Germantown Road (just north of here) have been scenes of bad accidents as they ice over before the rest of the roads. There was a fatal accident on Germantown Road the afternoon of the large Reserves meeting held by Washington County in the summer of 2009. Many of us were surprised that the accident was just east of the bridge, but it can be argued that a contributing cause was the curving of the road to line up with the bridge.

A key here is that the requirements for a road and bridge for vehicular traffic are not the same as for a road and bridge for pedestrian traffic. While it may be possible to design for both without serious compromises, it does not actually make sense because there will be almost no pedestrian traffic anyway.

Public Transit:

The Multnomah Citizens Advisory Committee was given technical information by TriMet concerning housing densities needed to support public transit.

- 1) For Bus service, density needs to be 18 housing units per acre within 1/4 mile of the bus line.
- 2) Light rail (MAX) service needs density of 24 housing units per acre with 1/2 mile of the transit line.

During 2009, Metro's High Capacity Transit plan deleted all lines north of the Sunset Highway except for an apartment complex just north of the highway and just west of 185th. These are approximately 2 miles from the Peterkort property.

During 2009, TriMet decreased the frequency of the bus service from the Sunset Transit Center to PCC.

The line runs along Springville just south of North Bethany. This decrease was despite the fact that PCC enrollment is at an all-time high as people take training to try to overcome the unemployment problems. The walking distance between the Peterkort property to the nearest stop on that bus line is more than 1/2 mile.

The vast majority of housing between the transit center and PCC is low density private homes. The current planning for North Bethany varies but is not likely to exceed 10 housing units per BUILDABLE acre. To clarify: The TriMet number of 18 is per actual acre not per buildable acre. In summary, based on technical input from the responsible service provider, Peterkort cannot be served economically by public service.

Said another way, Peterkort and the almost nearby areas are suburbs. Suburban residents do not ride buses.

Appropriate Service Providers:

In the April 2009 timeframe, Hillsboro removed much of this area from their 'aspirations'. They felt there would be too little tax-base to support the needed police and other services. Given that the Peterkort area is actually isolated from Hillsboro by Rural Reserves and is much 'smaller' than the area formally removed, it is reasonable to assume that the area cannot be cost-effectively served by a city.

This factor is a little confusing to me with respect to this, but a possible interpretation is that there is 'no appropriate service provider'. The Inter-Governmental Agreements between Metro and the three counties require that a CITY be identified to do planning (and implicitly to provide services) before an Urban Reserves area can be brought into the UGB. These Agreements might be seen as an implementation of this factor: An appropriate service provider (A CITY) must be identified to design a walkable and well-connected system of streets.

Washington County, in North Bethany, has had a very hard time trying to design an urban community and to craft ordinances for it.

The Washington County notes list that the area is on Beaverton Aspirations. It is highly unlikely that Beaverton will want to or be able to annex enough intermediate neighborhoods to even pretend to be 'contiguous' with this property. Beaverton has made very few annexations north of Sunset Highway in part because the citizens are not interested in being annexed. Currently, Beaverton City limits are isolated from the Peterkort property by about 2 miles.

I conclude that the property fails to meet Transportation Factor based on several requirements and does not meet the other requirement based on my several interpretations of its meaning. It is certainly more reasonable conclude that it does not rather than it does.

Natural systems: Can be designed to preserve and enhance natural ecological systems;

First, let me say to it is utterly absurd to think development is going to enhance the ecological system.

Second, developers with absolutely the best intentions and willing to spend a lot of extra money could not preserve the natural ecological system while setting an urban neighborhood on this site. Based on observations, especially of the North Bethany planning, I do not believe that the developers nor Washington County can be described as having the best intentions.

Reviewing details here will show that this is just not an appropriate place to build a suburban neighborhood.

First it is immediately west of Rock Creek and just below the confluence of Rock Creek and Abbey Creek. The confluence, and apparently part of the Peterkort property, are part of a Tier I Acquisition area of the Natural Areas Acquisition program of Metro which is funded by a \$167 Million bond approved by the citizens of the three counties to help preserve streams and habitat. The area is a significant chokepoint both because of the confluence and the narrowness of the wildlife habitat passages between Forest Park and points west that use the main stem of Abbey Creek

The entire drainage valley of Abbey Creek within Multnomah County is encumbered by overlays called Significant Environmental Concern-Stream and Significant Environmental Concern-Habitat. This is an area of about 3.5 square miles with about 100 landowners. These overlays were enacted to meet various Metro and State Planning Goals. With respect to the impact on the water quality of Rock Creek and to the impact on the wildlife passage, almost every one of the 100 parcels in the overlays would have less negative impact as a suburban neighborhood than Peterkort. The Peterkort is just in the wrong place.

As an aside, granting Peterkort Urban Reserve status and allowing development and while limiting the rights of the 100 landowners is just plain not fair. It also invites a lawsuit over the 'taking' of development rights from those 100 landowners. Oh yes, there are about 100 more such landowners in unincorporated Multnomah County, east of the Willamette River.

Let me concentrate on the water quality issues a little.

Part of the reason for Washington County trying add this to Urban Reserves is that they need something like 86 acres of wetlands to mitigate for wetlands being destroyed in North Bethany. They hope to get 'credit' for 56 acres of wetlands on and near the Peterkort property. The problem with this is that it will use up all the wetlands in this area. If there are any wetlands in the Urban Reserve part of the Peterkort property that are 'destroyed' by its development, they will need mitigation even further downstream.

The proposed and enhanced wetlands are designed to mitigate against damages caused by the urbanization of North Bethany. So, what wetlands will be used to mitigate for the actual impacts of urbanizing the UR part of the Peterkort area?

As is implied by Washington County's 'need' for these acres, there are very few places anywhere downstream on Rock Creek that can be used for wetlands mitigation. So, where will the wetlands to mitigate for the development of Peterkort be found?

A second part of this issue depends on how the Peterkort property is developed. It is a simple, but perhaps subtle, fact that replacing plants and woods with roads, houses and driveways will increase the volume and speed of storm run-off into the creek. The volume increases because plants and trees absorb water as part of their daily life cycle. This water is evaporated and even combined with carbon as part of the plants they grow.

The combination of increased volume and speed causes increased soil erosion. This gets us into, among other problems, damaging the creek bottoms with silt. Which gets us to protecting the endangered salmonids per the Federal Endangered Species Act and various state laws. Again, Rock

Creek is 303(d) listed for salmonids.

There are two separate issues here. One, it may not be possible to build Peterkort because of ESA rules. Second, because of its closeness to Rock Creek, it cannot be 'designed' to preserve and enhance the natural ecological system.

Washington County's notes describe the wetlands project as enhancing the confluence area. In reality the project is designed to mitigate the damage within North Bethany. It cannot be construed as enhancing the ecology of the area.

As a further issue, if the Peterkort property is developed as Low Density Residential, it would be expected that they would meet the same rules as for North Bethany. The current North Bethany rules do not require Low Density Residential to protect nearby wetlands or creeks from storm water runoff NOR from runoff of chemicals such as are used to make suburban lawns look nice.

Our area, as a rural area, has vast amount of nasty plants that try very hard to grow everywhere they can find. Among these are blackberries, of course. Blackberries in Oregon 'advance' about 15 feet a year if not 'fought'. A new invasive species is called garlic mustard. It is aggressive in how fast it spreads. It 'poisons' the ground around it to discourage other plants. It actually will displace blackberries. Finally, on this partial list, is stinging nettles.

All of these can be found along Rock Creek and Abbey Creek and probably on parts of the Peterkort property. Suppressing their annual invasion into the proposed neighborhood is likely to require both Weed-And-Feed products as well as more dangerous (to the creek 'residents') Roundup and Crossbow. To clarify: having a suburban neighborhood surrounded by breeding grounds for nasty and undesirable flora is almost certainly going to cause use of chemicals detrimental to local fauna.

Note: The state-sensitive species of Western Pond Turtles and Northern Red-Legged Frogs are present near Rock Creek and Abbey Creek. The preceding applies to them under the auspices of state laws and goals.

Now switching to larger fauna:

The argument has been made in various places, including Metro documents, that there needs to be a buffer between the lights, noises and smells of a human neighborhood and the habitat passages. There really is not enough room for such a buffer. Again, there would be a choke point between the Peterkort property and North Bethany. This is already a problem given current plans for North Bethany. It is just a lot worse proportionally with the Peterkort property because of its location.

The animals here include a herd of about 40 elk and numerous small deer families. These are part of the reason the area is a Tier I priority for the Metro Natural Areas program.

The preceding section, and most of the people who testified about the area, have concentrated on the 'nice' animals such as elk and deer.

But this is also a path for: coyotes, raccoons and bobcats. We also have hunting pairs of red-tailed hawks and large owls and many years, a breeding pair of eagles.

Our most recent sighting of bobcat on our property was in May, 2010 by a very startled horse rider. We hear a local pack of about 10 coyotes howling every few nights. They move up and down the valley

looking for food. Several of our neighbors are having trouble with raccoons visiting their property to take pet food and food from outdoor squirrel and bird feeders.

We had a total of 6 barn cats whose job it is/was to keep the mice and rats in check. In past years, we lost one cat to a coyote and one to a hawk. Barn cats are a whole lot more country-wise than house cats. It usually takes a team of coyotes to catch one of these cats.

We have expressed concerns about the presence of the little piece of suburbia discouraging the use of the passage by the 'nice' animals. I do not think a suburban neighborhood will OR SHOULD tolerate frequent visits by the hunting animals, even if just 'casing the joint' from the other side of a suburban fence. I do not know if there is a practical way to discourage such visits without driving all of the animals away from the Peterkort property. So, rather than the 'passive' discouragement of lights, noise and smell of humans, we should expect active suppression of the use of the passage.

I, unfortunately and sadly, want to make a kind of a worst case scenario argument. The sadness comes from it being a worst case scenario for the Kyron Horman missing child case.

My property and the Peterkort property are about 2 miles from Skyline School from which Kyron Horman went missing. We have had FBI agents and Search and Rescue on our property, searching all the buildings and along the creek for Kyron. We also had flyovers from the National Guard helicopters searching our woods and along the creeks using infrared.

It is unlikely that one of the above animals attacked Kyron near the school because there would have been a blood trail. As a side note, a cougar was spotted near the school about 3 years ago.

Kyron could have wandered into the woods and died from an accident or even just from hunger and exposure. Or, he could have been killed by a human predator and dumped in the woods. If so, the animal predators may have found the body as it started to decay and dragged it off to a more hidden site for safer eating. Although they would not comment or explain many of their actions, the search and rescue people fought their way into thickets and other such potential hiding places.

The police would not use amateur searchers. It is reasonable to assume that they did not want the site around the body disturbed and that they did not want amateurs coming face-to-face with a predator protecting its food.

Just in case: Many people seem to think that raccoons are cute and cuddly. This is not true that are basically top-predators, have serious teeth and seriously bad attitudes if cornered.

For many reasons, the Peterkort property does not satisfy the Natural System Factor.

Range of housing: Includes sufficient land suitable for a range of needed housing types;

I am not sure that there is actually enough land to meet the spirit of this rule. I think it can be argued that there is enough to meet the letter. Although if the requirement includes single-family residences, low-income residences and high-density/rental, it may be hard to achieve a 'range'.

Let me do a little estimating to give base numbers. Perhaps members of either DLCD and LCDC can project from these numbers. A big issue has to do with the percentage of buildable land within the 77
Objection to Urban Reserve for Peterkort Joe Rayhawk

acres. I have attended presentations by Washington County, Beaverton and Multnomah County that suggest that 50 percent is a good starting figure. However, that includes subtractions for parks and schools which I think are unlikely. A large physically unbuildable area, such as a wetland or some of the known steep areas might be dedicated as a park. Offsetting this is that a bigger than usual chunk of land will be used for Road A, both for the bridge and for the wide road.

So, it is reasonable to use 50% and therefore to assume that there are 38 buildable acres.

Based on what is in the North Bethany plans, the developers would prefer to build all R6 which would lead to 240 or so homes. However, current Metro rules aim for 10 Housing Units per buildable acre. This would suggest a target of 380 housing units and a mixture of high density (> 15) 2 and 3-story apartments along with the single-family houses.

My interpretation is that the developers find that having high density (especially high-rise) too close to the single family homes hurts sales and prices of the single-family homes. Factors such as this are beyond my ability as just a citizen to judge. Again, I hope that there is expertise on DLCD or LCDC to make a judgment. I do suspect that there are many other places in the 10,000+ acres of Urban Reserves within Washington County that are big enough to make this a non-issue.

In summary, I cannot tell whether or not the Peterkort property meets Range of Housing Factor. It seems more likely that it does not than that it does.

Natural landscape: Can be developed in a way that preserves important natural landscape features included in urban reserves; and

I am inclined to say this is almost a Does Not Apply issue, but I can see several ways to interpret it negatively

Let us look at the narrow issue which is the important landscape features that will be within the proposed Urban area. Portions of the important landscape features of Rock Creek (streams) are within the proposed area. This includes steep slopes that are legally part of the riparian bank of the stream. Also, part of the landscape is in use as the animal habitat trail. Developing on these pieces of the natural landscape features cannot be done and preserve them at the same time.

Let us look at the larger issue:

Rock Creek is a very challenged tributary of the the Tualatin River. Although the damage done globally by placing an Urban development on its banks will probably be hard to measure, it is nevertheless a fact that it will cause damage both to the creek and to the river. I am not sure that further degradation of the creek for its many miles through actual urbanized areas fits within the definition here.

BUT, it should!

Based on the narrow issue, I conclude that the area does not meet the Natural Landscape Factor. I admit to not understanding this issue well enough, but, part of that is that the slopes issues may not be knowable without on-the-ground delineation.

Adverse effects: Can be designed to avoid or minimize adverse effects on farm and forest practices, and adverse effects on important natural landscape features, on nearby land including land designated as rural reserves.

Again, this is a factor with an 'and' that creates multiple requirements.

Farm Practices

The Peterkort property is downstream from all significant farm and forest properties. Or, more accurately, the nearby farm land is effectively above the waters of Rock Creek.

So development of the Peterkort property for the most part should have no significant impact on farm practices with one small exception. A significant factor in many of the discussions during the Reserves review process concerned safety issues with farm equipment moving on the roads being used by urban or suburban drivers not expecting the slow traffic which can occupy more than just one lane. The main road near the Peterkort property is 185th which consists of a series of up and down hills. There are several points on this road where you cannot see what is over the hill.

On the good side, this does not happen between Springville and where Road A will connect with 185th. Hence, traffic along this section should not have impact on the farm practice of moving equipment between fields.

On the other hand, people coming from the north (perhaps from Portland on Germantown Road) will be going through the blind (vertical) curves. Currently, the farmers normally move the large combines at night so that there is less traffic and that their bright and flashing lights can be detected from over the hill.

Important Natural Landscape Features

The previous discussion in the Natural landscape section extends directly to the impacts that this will have on the nearby section of Rock Creek. Both the stream and habitat path are important landscape features. Again, Rock Creek is 303(d) listed both for water quality (Clean Water Act) and for salmonids (the Endangered Species Act). So, it is legally an important landscape feature.

The Peterkort property does not meet the requirements of the Adverse effects factor.

Conclusion with respect to Urban Reserves

The Peterkort property fails by significant 'margin' almost all factors needed to qualify as Urban Reserves. Using the detailed information I have provided, it seems likely that you will decide it fails the others that I, as just a citizen, cannot state unequivocally that it fails.

Factors for Designation of Lands as Rural Reserves

Washington County staff indicated this area qualified for Rural Reserve and that it was designated as such in the first version of the Reserves as voted by Metro and all three counties. The request to change it to Urban Reserves came after essentially everyone agreed that it qualified for Rural Reserves.

I want to review some of the Rural factors using my personal insights because it will reinforce some of the argument as to why it should not be in Urban Reserves. The summary of my notes here is that there are strong reasons why the Peterkort property should be in Rural Reserves. This is in fact a substantial argument against it being in Urban Reserves.

I will review only Section 3 as it is the relevant part.

(3) Natural Landscape Features: To designate land as rural reserves 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 decide on whether the lands proposed for designation are:

a) In an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3);

Actually, this is almost an amusing issue:

Since the entire area around it is designated Rural Reserves, it could be argued that it is no longer in an area potentially subject to urbanization. However, mathematically the area itself is in itself. Clearly, it is within an area potentially subject to urbanization.

I attended many of the Multnomah County Citizen's Advisory Committee meetings where this was a major issue for certain areas that did not seem subject to urbanization. The county lawyer provided an opinion that this was not a sufficient single reason to eliminate an area from consideration. In essence, if an area was of sufficient value based on the other factors, the committee was could recommend it. The committee did so for a number of areas and these were accepted by the Multnomah Planning Commission, the Board of Commissioners and are a part of the current plan.

b) Subject to natural disasters or hazards, e.g. floodplains, steep slopes, areas subject to landslides;

This cuts two ways

1) Small portion of the area to be made Urban Reserves appear to be floodplains and steep slopes.
2) Even avoiding those areas specifically, the increased stormwater runoff will damage the adjacent floodplains and are likely to cause increase erosion of the steep slopes which will increase the probability of land slides. Construction that involves removal of trees and dirt movement near the steep slopes can weaken the slopes' resistance to landslides. Landslides, even minor ones not involving movement of earth under the homes themselves, can lead to large increase in silt deposit in Rock Creek potentially damaging salmonid breeding.

c) Important fish, plant or wildlife habitat;

Obviously the two issues here are fish (including 303(d) listing of Rock Creek for salmonids) and wildlife habitat. The latter leading to designation of the area immediately around the Peterkort property as Tier I for the Metro Natural Acquisitions process.

The Washington County document suggests that bringing the Peterkort property into Urban Reserves may help with acquisition of Tier II properties. Clearly, it will put Tier I areas at risk. The wildlife habitat issue have led to Multnomah County overlaying over 3.5 square miles of the Abbey Creek valley with Significant Environmental Concern-Habitat restrictions per State and Metro land use goals.

While there is a large variety of wildlife, as mentioned above, it is worth noting that the area has western pond turtles and northern red-legged frogs which are listed by the state as sensitive species.

d) Necessary to protect water quality or quantity, such as streams, wetlands and riparian areas;

Again, this is clear from previous discussion as to why the Peterkort property does not meet Urban Factors. Rock Creek is 303(d) listed for Water Quality and has federal protection. Much of the 3.5 square miles of Multnomah County have 300 foot buffers on both sides of Abbey Creek and MANY of its tributaries in an effort to help protect water quality.

Placing a suburban neighborhood adjacent to Rock Creek immediately downstream from the confluence with Abbey Creek may literally offset all of the value of restricting the development rights of the 100 landowners in the Abbey Creek valley.

Clearly placing this in Rural Reserves is necessary to protect water quality.

e) Provide a sense of place for the region, such as buttes, bluffs, islands and extensive wetlands;

The wetlands along Abbey Creek and in the area of Peterkort are not extensive enough to provide a sense of place other than providing a path for the elk.

f) Can serve as a boundary or buffer, such as rivers, cliffs and floodplains, to reduce conflicts between urban and rural uses, or conflicts between urban and natural resource uses;

Clearly, the wetlands and Rock Creek were intended to serve as a buffer between North Bethany and the Rural Reserves areas that surround the Peterkort property. Complementing the general idea here is that the wetlands are 'wet' enough to discourage people from crossing them for most of the year. It is just too wet and muddy.

The Washington County document suggests that using wetlands and floodplains as buffers between urban and urban reserves is somehow a new or unusual practice. It has in fact been a significant factor in considerations about UGB expansions predating the Reserves process. In particular, it was used in part by Metro to decide what was and was not in the North Bethany. It was also referenced in court judgments about the North Bethany definition.

Literally, this clause codifies the concept of using the streams and wetlands as buffers between urban (North Bethany) and natural resources uses.

g) Provide for separation between cities; and

Objection to Urban Reserve for Peterkort Joe Rayhawk

The Peterkort property does not meet this factor. This appears to be a justification if the area does not meet the previous factors.

h) Provide easy access to recreational opportunities in rural areas, such as rural trails and parks.

The Peterkort property does not meet this factor. Again, this is a factor that appears should be used if the area does not otherwise qualify for Rural Reserves.

1 From

Date 7/13/10

Sender's Name Joe RAYHAWK

Phone 503 277-4081

Company

Address 15248 NW BEAUMONT DR

Dept./Floor/Suite/Room

City GAITHERSBURG

State OR ZIP 97231

2 Your Internal Billing Reference

3 To

Recipient's Name

Company DEPT OF LAND CONSERVATION AND DEVELOPMENT

Address 625 CAPITOL STREET NE

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address

City SALEM

State OR ZIP 97301

4a Express Package Service

Packages up to 150 lbs.

- FedEx Priority Overnight**
Next business morning. * FedEx Next Business Morning delivery to select locations.*
- FedEx Standard Overnight**
Next business morning. * FedEx Standard Overnight delivery to select locations.*
- FedEx 2Day**
Shipment will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx Express Saver**
Shipment will be delivered on Monday unless SATURDAY Delivery is selected.

4b Express Freight Service

Packages over 150 lbs.

- FedEx 1Day Freight**
Next business morning. * FedEx 1Day Freight Booking No. Delivery is selected.
- FedEx 2Day Freight**
Second business day. * Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- FedEx 3Day Freight**
Third business day. * Saturday Delivery NOT available.
- FedEx Tube**
- Other**

6 Special Handling and Delivery Signature Options

- Signature Required**
Signature required for delivery. * Signature required for delivery. * Signature required for delivery. * Signature required for delivery.
- Direct Signature**
Signature required for delivery. * Signature required for delivery. * Signature required for delivery.
- Indirect Signature**
Signature required for delivery. * Signature required for delivery. * Signature required for delivery.

7 Payment Bill to:

- Sender**
- Recipient**
- Third Party**
- Credit Card**
- Cash/Check**

Total Packages: 1
Total Weight: 1.00 lbs.
Total Declared Value: \$.00

Obtain recip. Acct. No.

Enter FedEx Acct. No. or Credit Card No. below.

Your liability is limited to \$100 unless you declare a higher value. See the current FedEx Service Guide for details.

606

56297-435 RIT 04/10

97301 OR-US PDX

8728 3232 0443

TRK# 0200

PRIORITY OVERNIGHT

86 SLEA

0443 07.14

FZ 639

1 A

Barcode

Detailed Results

[Printer-Friendly](#)

[Get Link](#)

[Help](#)

Enter tracking number

[Track](#)

Detailed Results	Notifications
------------------	---------------

Tracking no.: 872832320443

Select time format: [12H](#) | [24H](#)

[E-mail notifications](#)

Delivered



Delivered
Signed for by: H.AWLASEWICZ

Shipment Dates

Ship date [?](#) Jul 13, 2010
Delivery date [?](#) Jul 14, 2010 9:06 AM

Destination

SALEM, OR
[Signature Proof of Delivery](#) [?](#)

Shipment Facts

[Help](#)

Service type: Priority Envelope Delivered to: Receptionist/Front Desk

Shipment Travel History

[Help](#)

Select time zone:

All shipment travel activity is displayed in local time for the location

Date/Time	Activity	Location	Details
Jul 14, 2010 9:06 AM	Delivered	SALEM, OR	
Jul 14, 2010 8:09 AM	On FedEx vehicle for delivery	SALEM, OR	
Jul 14, 2010 7:17 AM	At local FedEx facility	SALEM, OR	
Jul 13, 2010 9:13 PM	Left FedEx origin facility	PORTLAND, OR	
Jul 13, 2010 8:34 PM	At local FedEx facility	PORTLAND, OR	
Jul 13, 2010 7:25 PM	At dest sort facility	PORTLAND, OR	
Jul 13, 2010 7:09 PM	Left FedEx origin facility	PORTLAND, OR	
Jul 13, 2010 1:47 PM	Picked up	HILLSBORO, OR	Tendered at FedEx Kinko's, now FedEx Office

FedEx Desktop: Tracking at your fingertips.
[Learn more](#)

Sign up for FedEx® Billing Online Plus to save paper, save time and enter for a chance to win
[Learn more](#)