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March 15, 2011

Metro President Tom Hughes
Metro Council Members
600 NE Grand Ave
Portland, OR 97232

Washington County Commission Chair Andy Duyck
Commission Members
155 North First Ave.
Hillsboro, OR 97124

Re: Urban and Rural Reserves

Dear President Hughes and Chair Duyck and Council and Commission members:

1000 Friends of Oregon has participated in every step of the urban and rural reserves process, from the initial crafting of the legislation through rulemaking to the Reserves Steering Committee process and ultimate designation of reserves. We did so for the same basic objectives underlying the concept of urban and rural reserves (ORS 195.139):

- To bring long-term certainty for the protection for farm, forest, and natural resource areas. In particular, the reserves statute requires “long-term protection of *large blocks of land* with the *characteristics necessary* to maintain their viability.”
- To provide “greater certainty for commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.”

The statute specifically emphasizes the protection of key lands with important characteristics for farm, forest, and natural resource areas. In contrast, for urban reserves, the statute focuses on the certainty of knowing where future urbanization will take place; it does not specify that those lands have any specific inherent qualities.

The Reserves Rule, OAR 660-027-0005, re-states and expands on this purpose, and emphasizes the importance of balancing urban and rural reserves:



Celebrating Thirty-five Years of Innovation

“Urban reserves ... are intended to facilitate long-term planning for urbanization in the Portland metropolitan area and to provide greater certainty to the agricultural and forest industries, to other industries and commerce, to private landowners and to the public and private service providers about the *location* of future expansions of the Metro Urban Growth Boundary. Rural reserves ... are intended to provide 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. 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 landscape features that define the region for its residents.*”

The proposal before you fails to meet the requirements of protecting specific key farm, forest, and natural areas, and it fails to meet the balancing requirement, when viewed either in Washington County or region-wide. It also fails to meet the explicit requirements of the Land Conservation and Development Commission’s directive.

We believe you have two viable options before you:

- Follow the directive of LCDC and remove all the lands north of Council Creek from urban reserves and re-designate them as rural reserves, north of Cornelius and Forest Grove; or
- Follow the directive of the State Agency letter of October 14, 2009, which the state agencies have twice re-confirmed was still their position - in a subsequent letter of January 2010 and before the LCDC in October 2010: designate rural reserves north of Council Creek, and in area 8A (northwest of Hillsboro and south of Hwy. 26), use the boundaries of Meek Road and Waibel Creek as edges and buffers to define the urban reserve area and separate it from the rural reserve area.

While 1000 Friends of Oregon has advocated for a designation similar to that in the state agency letter, both options have been offered by the state and seem the clearest path to moving this decision on.

The proposal before you will not do that, and will lead to protracted hearings and appeals, for the following reasons.

Areas North of Council Creek

- LCDC directed that the urban reserve lands north of Council Creek, north of Cornelius (Area 7I), be removed from urban reserves designation, in large part because, as one Commissioner put it, it not only qualifies as rural reserves, it does not qualify as an urban reserve. It is a poor area for urbanization, it is foundation farm land, the Creek and floodplain provide an excellent natural barrier between urban and rural uses, and it is a “gateway to a huge amount of foundation farm land.”
- Council Creek and the area north of it qualify as Rural Reserves for *two* reasons – agriculture and natural resources. None of it qualifies to be in the “undesigned” category, and that certainly was not the view expressed by any LCDC Commissioner.
- Splitting area 7I between rural reserves and undesigned does not meet the law or the concerns expressed by LCDC.
- LCDC directed that the region to re-examine the area north of Council Creek, north of Forest Grove for rural reserve designation (Area 7B). The Commission’s discussion clearly was about the approximately 240 acres north of the east/west branch of Council Creek;

representatives from Forest Grove present at the LCDC meeting even gave that information to the Commission when asked to clarify the amount of the 7B that lies north of Council Creek. The 28 acres re-designated to rural in this proposal is not responsive to this direction.

- For reasons already in the record and presented to you today, Council Creek and its riparian area forms a natural buffer here as well between urban and rural uses. In fact, there was discussion by LCDC about how much of what was said about Area 7I applies here as well, and that Council Creek seems to be the *only* boundary that makes sense north of Forest Grove. With it, there are still approximately 200 acres in urban reserves in area 7B alone. And those acres are *excellent Foundation* farm land, but the agricultural community recognizes that some flexibility for future urbanization may be needed here, and south of Council Creek makes sense.

As demonstrated by the testimony of the Washington County Farm Bureau and Save Helvetia, and by the record here, in addition to the other areas designated as urban reserves, there are extensive vacant and under-developed lands inside the UGB in Washington County, including in Hillsboro and Cornelius, as well as in the uncontested urban reserves, to meet any alleged land need for future urbanization.

For example, currently and according to Metro and Cornelius, over 10% of the land in the current city limits is vacant - more than 125 acres. This does not include redevelopable land, empty warehouses, and vacant storefronts. For example, there is at least *another* 30+ acres of land, zoned industrial, that has full urban services in the Cornelius Holladay Street industrial park, which has had a “For Sale” sign up for years. The primary economic activity going on there is agriculture-related industry, which is precisely the sort of industry that Cornelius can and should encourage and grow – because the agricultural industry is growing in value, in the Metro region and statewide.

There are also over 50 acres of land that Metro added to Cornelius, on the north side of town (but still south of Council Creek) almost 7 years ago for industrial use. That land is still being farmed and has not even been annexed to the City. According to the family farming the land, as of at least 2009, they had not been approached by anyone offering to purchase it, for any use, nor has the city approached them to even annex the land. When there is so much vacant and underdeveloped land inside the city, with publicly funded already in place, it is not only unfair to existing private land owners and financially unwise to the public to skip over that land, but it is also contrary to law.

Adding More Land

The proposal before you attempts to “make up” for any lands removed from urban reserve designation by changing 585 acres from undesignated to urban reserve north of Hwy. 26, and 383 acres from rural reserve to undesignated south of Rosedale Road.

This also is not responsive to LCDC’s directive.

- The Commission said the region could, but did not have to, consider whether to add additional urban reserves or undesignated after designating the area north of Council Creek as rural reserves. In doing so, several LCDC Commissioners made the following observations:
 - The region should look to agricultural lands that are categorized as conflicted, to re-designate as undesignated or urban.
 - There is quite a bit of “flexibility” in Metro’s projections as to the rate and amount of growth and the time projection; Metro could simply shorten the time frame to

something less than 50 years or chose a different amount of growth within the range.

- While there was surprise expressed regarding the amount of rural reserves designated in Washington County far from any urbanization threat, the Commission did not express any direction that Foundation farm land actually threatened by urbanization and originally designated as rural reserves should be changed to urban or undesignated by this remand.
- There is nothing in the Commission’s directive or law requiring that only lands in Washington County be looked to for additional urban reserves or undesignated lands. The “balancing” test required by rule is looking at reserves in their “entirety,” considering the “region.”¹ This has not been done.

Throughout this process, 1000 Friends and others repeatedly brought up the issue of looking at the reserves process regionally – as required by law and certainly as intended by the legislature and this Commission. We were assured that this would be done at the Metro level. Yet what we have and are seeing again is a mere amalgamation of the wish lists of certain local governments. That is not consistent with the letter or spirit of the law.

- Some have stated that the reason the 585 acres north of Hwy. 26 have been re-designated to urban reserves is because those lands are “making up” for the lands north of Council Creek, which were intended to be for industrial use. That is contrary to the law, and to statements made by local officials during the reserves process.

Assuming that certain urban reserve lands will be used for certain purposes mistakes the reserves process for the UGB process. When expanding a UGB, a local government is adding land for a particular and current unmet need for housing, commercial or industrial uses, institutional uses, etc... Not so with urban reserves – that are specifically for needs 20 to 30 years beyond the current 20-year UGB, a time horizon for which it would be absurd to nail down actual uses now. And that is how Metro has set up its reserves-to-UGB process. If and when there is a need for additional land inside the UGB, Metro will evaluate various reserve areas and concept plans done for those areas to see which best meets the region’s needs at that time. And, in fact, when asked several times at MTAC meetings whether the Evergreen urban reserve area (8A) would be reserved for future industrial uses, Hillsboro Mayor Willey and then-Washington county Chair Tom Brian said no, they would not commit at this time to promising that area would be reserved for industrial use. So, the notion that there was some binding commitment that any lands – including those north of Council Creek – would be held for up to a 50-year time frame for any one use and therefore must be “made up” with other lands that will be used for industrial use is contrary to all past statements made in this process.

Land that would otherwise *not* qualify for urban reserves designation because it qualifies as rural reserves cannot be designated as urban reserves ahead of other non-foundation lands based on an assumed future use. This has been previously stated by LCDC and affirmed the courts.

¹ 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 landscape features that define the region for its residents.” OAR 660-027-0005(2)

- Like the land north of Hwy. 26, the 383 acres proposed for undesignated status south of the South Hillsboro urban reserves, down to Farmington Road is Foundation farm land. To the best of our recollection, it has *never* been in discussions as a possible urban reserve or undesignated area in any of the many proposals over the past few years.

In fact, the current urban reserve area – from Hillsboro south to Rosedale Road, represents an enormous compromise by the agricultural community. The nine state agency letter noted that compromise – the Oregon Department of Agriculture recommended that the urban reserve extend only to Butternut Creek (a natural boundary), but agreed to go along with the other state agencies to use Rosedale Rd. as the southern boundary – if needed. The Washington County Farm Bureau and the Agriculture/Natural Resources Coalition stated that if there was truly a need for large lots for future urban use, then the former St. Mary’s site and the land south to Butternut Creek should be considered for urban reserves, but no farther south. When the final decision came before LCDC, the agricultural community compromised again – by focusing its concerns on the areas north of Council Creek and north and west of Waibel Creek in Area 8A. It decided to not comment on the very large area south of Hillsboro. Now, this area is proposed to expand even more, through converting it from rural reserves to undesignated and/or urban reserves.

This area meets every rural reserves criterion and does not meet the criteria for an urban reserve, as evidenced by its original designation by Metro and Washington County as rural reserve. Its re-designation causes us to further question the integrity of this process, and also of the entire urban reserve area south of Hillsboro. The agriculture community was already uneasy with the designation of the areas south of Hillsboro, but recognized the need for urban land and saw that this trade-off was needed. Inclusion of this new area will magnify that unease and the adverse impact of this now-very large swath of urban reserves and undesignated lands, extending into the historic Scholls farming area, a vibrant agricultural area. If this new area is included, 1000 Friends will object to inclusion of all the Foundation farm land south of Hillsboro being designated as urban reserves or undesignated.

- Adding these two areas aggravates the lack of balance already present in this decision. Metro originally designated 28,615 acres as urban reserves. 11,911 of those acres are identified as Foundation farm land by the Oregon Department of Agriculture. **Almost all of the Foundation farm land designated for urban reserves is in Washington County – 9730 acres, or 82% of all the Foundation farm land in the entire decision.** In contrast, Metro designated very little Foundation farm land as urban reserves in Clackamas and Multnomah counties. For example, in Clackamas County, the *inverse* of Washington County is the case – 84% of the urban reserves are on lands indentified as “Conflicted” by the ODA.

Much has been made of the so-called need for “large lots” for future industrial use. Aside from the problems described above, this is not even internally consistent.

There are many conclusory statements made about the “one that got away” – some unnamed, implied as high tech business that would be new to the area, bringing many jobs, if only there were large expanses of raw land available, in western Washington County.

There is no longer a “cluster” of high tech industries confined to Washington County. There are a variety of high tech companies and suppliers throughout the state, including Corvallis, Medford, Gresham, Bend, Wilsonville, Milersburg, Eugene, and others. And they are locating inside existing UGBs and, in many cases, using existing buildings. As the attachment from Metro shows, *all* the solar-related businesses that have located in Oregon have done so on 20 acres or less, unless they were using an existing building that came with excess acreage.

As described in Metro's Urban Growth Report, the region has added new large industrial employers at the rate of about *2 new employers/per decade*. Hillsboro alone currently has 1000 *net* acres for industrial use, including 3 vacant sites of 100+ acres and 3 more in the 50-100 acre size. Some of these sites have been vacant for years, and some await not only a user but also infrastructure.

The only industry with a 100+ year track record of using large lots, and with investors (farmers) now looking to purchase and lease additional lots, is agriculture. There is nothing speculative about this; the agricultural community, including multi-generation farming families and new farmers, has described their efforts to find additional lands, and their objections to taking some of the lands they now farm out of the rural land supply. So if the region is looking for an industry that is already growing and needs more land and larger lots, agriculture is it.

Agriculture is Oregon's #2 industry, and it is growing, statewide and in the region. Clackamas County is #4 in the state in agricultural production value, and Washington County in #6. Multnomah County is #1 in food processing – the *only* industry in the state that consistently grew throughout the recession.² Yesterday's *Oregonian* reported on its interview with Tim McCabe, the Director of the Business Oregon, the state's economic development agency, stated:

“Don't tie the [business energy tax credits] to specific industry, he [McCabe] says. Among the companies he suggests might move here with the right incentives would be clothing manufacturing and *food processors*. 'I would change it.' He says [the business energy tax credit]. 'Make it a broader-based incentive that's tied to wages and to jobs.'”

Agriculture is here – it is not an industry that might come here, or that can be outsourced. *1 out of 8 jobs in this state is agriculture-related*, and the industry is directly and indirectly linked to about \$22 billion in sales of goods and services, accounting for 15% of the statewide total of sales involving all industry sectors. Agriculture is a traded-sector – 40% is exported out of the country, bringing new dollars into the state.³ And those figures have been increasing almost steadily for two decades, which is not a story any other industry can tell. Why trade the lands crucial to an industry that is thriving and is not leaving for employment uses that are speculative?

Conclusion

We recommend that you designate the entire area north of Council Creek (areas 7I and northern portion of 7B) as rural reserves, consistent with LCDC's direction. There is no legal or practical reason to “make up” this acreage anywhere, and certainly not by only looking to Washington County.

We also ask that you trim urban reserve area 8A back to the area that the state agency letter said was consistent with the law: at Waibel Creek.

² 2011 State of Oregon Agriculture Report , Oregon Board of Agriculture

³ Oregon Department of Agriculture, February 2011:

<http://ruralstudies.oregonstate.edu/sites/default/files/pub/pdf/OregonAgEconomyAnUpdate.pdf>

Both these actions are consistent with the state’s prior directions and are therefore very likely to be approved. They are also consistent with Metro’s obligations under the reserves statute and rule, and with Metro’s projections:

- When designating reserves under this process, Metro must designate urban reserves for a period 20 to 30 years beyond the current 20-year UGB, or for a total of 40-50 years. The decision sent back to you by LCDC provided land for the upper limit of that time span (30 years) and the upper limits of the population and hence land need forecast – 28,615 acres of urban reserves.
- The state has already recommended that Metro act conservatively and designate lands for *less* than the full 50-year time period.

The nine state agencies recommended as follows:

“The state agencies **strongly support using the lower end of the planning period authorized for reserves – e.g. forty years.** We are facing a time of extraordinary uncertainty in how our communities and industries will evolve. A receding demographic peak, rapid globalization, immigration, climate change, and changes in energy pricing all may require that we be able to adapt more rapidly than we have in the past in terms of how we live, work and travel. Reserves require a balancing between the advantages of providing long-term certainty (for landowners, local governments, public and private investment) and the disadvantages of inflexibility if conditions change in unexpected ways.

“Given the global and local uncertainties facing us (as reflected, in part, by the large ranges in Metro’s population and employment forecasts) we believe the region should strike a balance that tends towards the risk management/flexibility end of the scale rather than locking up most of the land on the periphery of the UGB for 50 years. One way of providing flexibility is to set reserves for a forty-year period, and simultaneously plan to revisit whether additional reserves should be designated well before that forty-year period expires (a twenty to twenty-five year ‘check-in’).”

Thank you for consideration of our comments.

Mary Kyle McCurdy
Policy Director
Staff Attorney