

**IN THE COURT OF APPEALS OF THE STATE OF OREGON**

BARKERS FIVE, LLC; SANDY BAKER; CITY OF TUALATIN;  
CITY OF WEST LINN; CAROL CHESAREK; CHERRY AMABISCA;  
SAVE HELVETIA; ROBERT BAILEY; 1000 FRIENDS OF OREGON;  
DAVE VANASCHE; BOB VANDERZANDEN; LARRY DUYCK;  
SPRINGVILLE INVESTORS, LLC; KATHERINE BLUMENKRON;  
DAVID BLUMENKRON; METROPOLITAN LAND GROUP; CHRIS  
MALETIS; TOM MALETIS; EXIT 282A DEVELOPMENT COMPANY,  
LLC; LFGC, LLC; ELIZABETH GRASER LINDSEY;  
and SUSAN MCKENNA,  
Petitioners,

v.

LAND CONSERVATION AND DEVELOPMENT COMMISSION;  
METRO; WASHINGTON COUNTY; CLACKAMAS COUNTY;  
MULTNOMAH COUNTY; STATE OF OREGON;  
and CITY OF HILLSBORO,  
Respondents.

Land Conservation and Development Commission  
No. 12ACK001819  
Court of Appeals No. A152351

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**RESPONDENT WASHINGTON COUNTY'S  
ANSWERING BRIEF**

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EXPEDITED PROCEEDING UNDER ORS 197.651

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## STATEMENT OF THE CASE

### I. Nature of the Proceedings and Relief Sought

Petitioners<sup>1</sup> seek judicial review of the Land Conservation and Development Commission's ("LCDC") final Order in the Matter of Review of the Designation of Urban Reserves by Metro and Rural Reserves by Clackamas County, Multnomah County and Washington County, Compliance Acknowledgment Order 12-ACK-001819. JER-1-156. Petitioners seek remand or reversal of the Order.

This Answering Brief (Answer) addresses the assignments of error raised by the three petitioners with interests Washington County: 1000 Friends of Oregon, Dave Vanasche, Bob Vanderzanden and Larry Duyck (1000 Friends); Save Helvetia and Robert Bailey (Save Helvetia); and the First Assignment of Error by Carol Chesarek and Cherry Amabisca (Chesarek).

For answer to all other assignments of error presented in this appeal, Washington County adopts the Answering Briefs of all other respondents in this appeal. ORAP 5.77. Appendix 1.

### II. Nature of the Judgment

Respondent Washington County ("County") accepts petitioner 1000 Friends of Oregon's statement of the nature of the judgment.



### **III. Date of Final Order and Timeliness of Appeal**

DLCD issued its Order on August 14, 2012. Petitioners filed timely petitions for review under ORS 197.651(3).

### **IV. Appellate Jurisdiction**

This Court has jurisdiction pursuant to ORS 197.651.

### **V. Questions Presented on Appeal**

Did LCDC apply the proper standard of review to determine whether the County and Metro's reserve designations complied with their obligations under the law?

Did LCDC apply the correct legal standard when it determined that the County and Metro's designations are supported by substantial evidence?

### **VI. Summary of Argument<sup>2</sup>**

LCDC's Order demonstrates that the agency properly reviewed the County and Metro's reserve designations to determine 1) whether the County and Metro considered and applied the rules and 2) whether the County and Metro adopted findings which explain the reasoning supporting the designations. LCDC's standard of review is not a reconsideration or reweighing of evidence to arrive at a particular designation for the areas under

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<sup>1</sup> The County's response brief refers to petitioners collectively unless otherwise indicated.

<sup>2</sup> County adopts the answering briefs of respondents LCDC, Metro, Clackamas County, Multnomah County, and City of Hillsboro, pursuant to ORAP 5.77.

consideration. The record as a whole supports the conclusion that LCDC applied the correct legal standards.

## VII. Statement of Facts

The County accepts the Summary of Facts set forth in the opening brief filed by petitioner 1000 Friends. In addition, the County submits the following additional facts.

In 2009, Metro and the three counties – Clackamas, Multnomah, and Washington – began work to identify suitable candidates for its urban and rural study area, an area that totaled 404,000 acres. R-D(8)(2953)<sup>3</sup>. The work of half a dozen committees, many of them comprised of representatives from Metro, the three county jurisdictions, interest groups, and community members, resulted in initially proposed designations of 28,256 urban and 266,628 rural acres of reserves across the region. R-D(8)(2953, 2988, 2990); JER-317. Of the Foundation Agricultural Lands (FAL) identified in the Washington County study area, approximately 7.4% were designated urban reserves while 92.6% were designated rural reserves. JER-317. Following re-designation, the amount of urban reserves was reduced by an additional 299 acres. JER-92.

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<sup>3</sup> References throughout this brief are as follows: “JER-“ refers to the Joint Excerpt of Record; “SER-“ refers to the Supplemental Excerpt of Record; “R-“ refers to documents contained in the Record. Except for references to the Record, page numbers immediately follow behind the dashed mark. For references to the Record, the “R-“ is followed by the Attachment letter, volume number, and page number(s). R-D(8)(2949-2950) refers to Record Attachment D, volume 8, pages 2949-2950.

## VIII. Statutory Scheme, Legal Standard, and Standard of Review

### A. Statutory Scheme

ORS 195.137 - .145 sets forth the law concerning urban and rural reserves. For purposes of addressing the assignments of error, the relevant administrative rules under consideration are in OAR 660-027-0005 *et seq.*

### B. Legal Standard

The reserve statutes require local governments to strike a balance between urban development and protection of agricultural/forestry industries and natural landscape features. ORS 195.139. The rules implementing the reserves statute identify a myriad of considerations with the overall goal of a balance between the two diametrically opposed sides in a manner 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.” OAR 660-027-0005(2). No single factor is determinative, but the local governments must demonstrate that they considered each factor. *JER-25, 27, 29-30; 1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 409-410, 26 P.3d 151 (2001) (factors not independent approval criteria); *City of West Linn v. Land Conservation and Development Commission (West Linn)*, 201 Or App 419, 434; 119 P3d 285, (2005).

C. Standard of Review

LCDC's Order may be upheld if this court is satisfied that 1) LCDC identified substantial evidence in the record that demonstrates Washington County and Metro considered and applied the factors and criteria to the lands within the reserves study, adopting findings explaining the reasons behind the designations, and 2) LCDC's acceptance of the local governments' designations is supported by substantial reasoning based on the record as a whole.

**RESPONSES TO ASSIGNMENTS OF ERROR**

I. Response to Petitioner 1000 Friends Assignments of Error<sup>4</sup>

A. First Assignment of Error

Substantial Evidence in the Record Demonstrates that the County and Metro Satisfied the Requirement to Consider the Reserve Factors

Friends' main thrust is directed at the analysis and findings that resulted in urban designation for Foundation Agricultural Land (FAL)<sup>5</sup> in County's reserve study area. Friends highlights the reserves process regarding Area 8A and 8B as an example of overall deficiencies. (Friends at 19, 21, 39, 44). Friends complains about the political nature of the process, the lack of so-called

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<sup>4</sup> This section provides the County's response to assignments of error presented in the brief filed by 1000 Friends of Oregon, David Vanasche, Bob Vanderzanden and Larry Duyck (collectively "Friends").

<sup>5</sup> "Foundation Agricultural Lands" means those lands mapped as Foundation Agricultural Lands in the January 2007 Oregon Department of Agriculture report entitled "Identification and Assessment of the Long-Term Viability of Metro Region Agricultural Lands." OAR 660-027-0010.

qualitative analysis based on the physical characteristics of urban designated FAL, and unfettered discretion to designate land. These issues are not listed as reserve factors so have no direct bearing on whether LCDC's Order is correct.

Friends' only argument of substance is whether the County's reserve designations satisfied the law in terms of substantial evidence demonstrating its treatment of the reserves factors and whether the designations are supported by substantial reasoning. Contrary to Friends' contention, the record is replete with examples of where the County fully considered and applied the factors.

The County presented its reserves analysis in "Urban and Rural Reserves Planning in Washington County", Washington County Reserves Coordinating Committee Urban and Rural Reserves Recommendations submitted to the Reserves Steering Committee, 9/23/09. (R-D(8)(2942-3819). The entire County reserves analysis was distilled into these recommendations. The report is supplemented with 37 maps illustrating the various considerations in the reserves study; Pre-Qualified Concept Plans submitted by eleven cities within the County; and eleven issue papers written by County staff to respond to the complex issues concerning the application of reserves factors. (R-D(8)(2949-2950). The County's response to objections dated August 13, 2010 also provides justifications for its designations. JER-11.

On October 29, 2010, LCDC remanded the County's designation of urban reserves for additional consideration and findings based on its rejection of

Area 7I and remand for additional findings for Area 7B. In response to the remand, additional evidence was submitted to support the County's urban reserve designations in light of specific findings made with regard to Areas 7I and 7B. This evidence consisted of correspondence from Metro identifying portions of the record responsive to objections dated June 24, 2011; this information supplemented the record from the County and Metro's previous submittal. JER-14. These records provide ample evidence of the reasons the County and Metro designated the County's lands as it did. The adopted reserves findings culminated in Washington County Ordinance No. 740 and Metro Ordinance No. 11-1255.

LCDC's record for the initial and subsequent submittals was not only based on County and Metro findings, but also LCDC staff responses to objections dated September 28, 2010 and July 28, 2011. JER-10; JER-13. The record as a whole provides support for LCDC's Order.

The County Fully Complied with the Reserve Rules Requiring  
Consideration of its Factors

OAR 660-027-0040(8) requires the County to apply the OAR 660-027-0050 factors in designating urban reserves. The urban reserves decision required the County to *consider* eight factors.<sup>6</sup> The ultimate decision is not

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<sup>6</sup> 660-027-0050 reads: Urban Reserve Factors: When identifying and selecting lands for designation as urban reserves under this division, Metro *shall base its decision on consideration...* (emphasis added).

based on an unyielding application of the factors, but requires consideration of all the factors. That is the strict construction of the two rules; Friends cannot interject words that are not in the rules. The record is clear that the County's urban and rural reserve recommendations considered all of the factors set forth by OAR 660-027-0050. JER-373-413; JER-877-927; R-D(8)(2952-3819).

By way of history, when the legislature enacted SB 1011, it created a flexible process whereby the County is required to "consider" a list of non-exclusive "factors" in designating urban and rural reserves. ORS 191.141(3); ORS 195.145(5). The applicable rules are OAR 660-027-0050 and 660-027-060. These rules are not mandatory approval criteria requiring findings that each standard must be met as Friends suggests.

The County was not required to apply the factors set out at OAR 660-027-0050 and -0060 in the same manner as OAR 660-027-0005(2), the "best achieves" criterion. The objective of OAR 660-027-0005(2) "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." This balance must be captured by Metro's findings and conclusions pursuant to OAR 660-027-0040(11) when FAL is designated as urban reserve.

Friends argues that the County and Metro used a quantitative approach rather than a qualitative approach. This approach presumably defeats the “best achieves” criteria because the County’s analysis could never capture the rules’ emphasis on the quality of land under consideration. (Friends at 18). This argument flies in the face of the County’s 800-plus page recommendation that provided the foundation for the reserve designations. (R-D(8)(2952-3819). LCDC correctly applied the law in determining that the County and Metro’s designations were supported by substantial evidence, both in the recommendations and the subsequent discussions on remand.

Friends’ Preference for an Alternative Method of Determining Urban Designations Does not Preclude the County and Metro’s Land Analysis

According to Friends, a qualitative approach would have trumped the urban reserve factors by giving effect to the rules’ purported emphasis on protecting FAL. As stated previously, nothing about the County and Metro’s interpretation and application of the rules circumvented Oregon’s land use principles.

Friends also contends that Metro made no findings with regard to 8A in terms of the reserves factors or a comparative analysis for FAL, including comparison with “other lands” as required by OAR 660-027-0040(11). Friends use Area 8A and 8B as an example of error that applies to all FAL designated urban reserve.



Friends argues that no findings were made addressing the rural reserve factors for Area 8A. LCDC recognizes that these factors were applied in a large document that addressed the rural reserve factors to all of the areas. The Order cited to one of the most crucial findings, a graph that addressed these factors and applied them to this subarea. (R-D(8)(2978-2979). This graph represents a summary of the extensive findings that the County made in applying the rural reserve factors. (R-D(8)(2970-2995). LCDC cites these findings in its Order. JER-136. These findings, and the findings addressing Area 8A, are detailed in a series of 37 maps that address factors such as soil capacity, water availability, and parcel size – all components of the rural reserve factors. (R-D(8)(2996-3034). Map 27 reflects the graph LCDC cited; this map specifically focuses on Area 8A and lists this particular area as Tier 3. (R-D(8)(3024). Tier 1 indicates the best suitability for rural reserve based on an analysis of subject to urbanization, parcelization, productivity, and dwelling density, in descending order of suitability. (R-D(8)(2977-2980). These findings were further supported by detailed findings in Issue Paper No. 9a titled “Justification for Rural Reserves Designation for the Area North of Highway 26 per the Following Rural Reserve Factors under OAR 660-027-0060. (R-D(8)(3804-3809). Finally, further detailed findings were submitted to LCDC for area 8A in a Memorandum dated October 27, 2010 that specifically addressed the rural reserve factors. SER-22-24.

LCDC properly concluded that the record contains substantial evidence that the County and Metro considered and applied the factors pursuant to Division 27 rules and adopted findings explaining the urban and rural designations.

B. Second Assignment of Error

The County incorporates the preceding discussions regarding Friends' incomplete statement of the standard of review and the County's evidence in the record.

The County's Analysis of its Lands Under Study is Not Unlawful

In its second assignment of error, Friends finds fault with the method of analysis the County used to make its reserves recommendations. (Friends at 23). This "alternate agricultural analysis" is unfortunately misunderstood by Friends. The analysis did not replace the factors; it enhanced the level of detail so that the County could make more refined determinations as it applied the factors. Thus, the analysis was more rigorous, and not irrelevant, inaccurate, or contrary to the factors as Friends states.

Friends argues that the County cannot further refine the factors stating that the factors are "unambiguous." (Friends at 24). While providing no legal basis for this argument, common sense tells us that the terms "large block of agricultural or other resource land"; "adjacent land use pattern"; "sufficiency of agricultural . . . infrastructure" cry out for further refinement. If the County

failed to further elaborate on these terms in its findings, Friends likely would have made the opposite argument. The County's deeper analysis was required for proper application of these factors. Under Friends' analysis, there would be no possible method of determining which FAL should be rural reserve and these inherently ambiguous terms would be applied on an *ad hoc* basis with "large block" potentially meaning one thing to one decision maker and a completely different thing to another. The County's analysis simply provides additional details on how an area does or does not meet the factors. It did not change or alter any of the factors as Friends suggest.

LCDC's Order accurately reflects that the County's detailed analysis addressed all of the factors in OAR 660-027-0060(2)(a) – (d). JER- 94.

Under Friends' analysis, no FAL should be rural reserve if lesser quality lands – as defined by the ODA - exist. Based on the sheer volume of the FAL adjacent to the County UGB, some of this land had to give way to rural reserve designation in order to achieve the required balance. Friends' overemphasis of FAL disregards ORS 195.139(1):

The Legislative Assembly finds that:

- (1) Long-range planning for population and employment growth by local governments can offer greater certainty for:
  - (a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and
  - (b) 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.
- (c) State planning laws must support and facilitate long-range planning to provide this greater certainty.

While debate concerning the value of agriculture vs. urbanization is part of the reserves process, the legislative findings emphasize that the point of long-range planning is to prepare for population and employment growth.

Throughout the entire designation process, it was evident that the overarching principle to protect FAL was not lost on the County. Nonetheless, the County was legally bound to apply, weigh, and balance the urban reserve factors to the FAL under study to determine which County areas were best suited to urban or rural designations. The extent of FAL under consideration justified further refinement of the FAL to explore other qualities not noted in the Department of Agriculture (“ODA”) report.

The Qualitative Analysis Urged by Friends is a Competing Interpretation and Not an Accurate Statement of What is Required by the Rules

Moreover, Friends’ assertion that County only looked at quantitative characteristics flagrantly misstates the facts. Indeed, Friends argues on the one hand that County failed to look at individual characteristics of the FAL land and, on the other hand, criticizes the County’s use of an analysis that scrutinized FAL in greater detail. Friends cannot have it both ways.

Friends admit that “[t]he reserves statute and rule are based on the quality of land for its urban or rural suitability.” (Friends at 18). In an effort to discern

other qualitative factors, the County could not simply end the agricultural land analysis by segregating the farmland into Conflicted, Important, and Foundation classifications as set out in the ODA's study. (R-D(8)(2971). Because so much of the County is comprised of FAL, these three determinants were a starting point, not the end of the analysis.

The County's Agricultural lands analysis utilized both the US Department of Agriculture's (USDA) "Soil Survey of Washington County, Oregon" in addition to the Oregon Department of Agriculture's (ODA) soil map. The USDA report enabled the County to take into account more detailed information relative to productivity. Both maps provided a more comprehensive approach to assessing FAL soil. SER-1, SER-2.

Ultimately, some amount of FAL required urban reserve designation if overall balance was to be achieved in the region. The fact that higher priority agricultural land also rates highly on the urban factors scale does not make the County's urban designation legally flawed. The County's Issue Paper No. 3 titled "Helvetia Area Soils Analysis" provides findings on the merits of different areas consisting of FAL. (R-D(8)(3788-3790). The County provided substantial evidence that the areas selected as urban reserves most closely satisfied the factors.

Friends finds fault with County's process, lauding Clackamas and Multnomah counties use of the "Safe Harbor" provisions in OAR 660-027-

0060(4). This rule allows a county to support rural reserve designation without applying the urban and rural factors if Foundation or Important Agricultural Lands are within three miles of an urban growth boundary (“ UGB”). Friends utterly fails to understand that the other two counties used the Safe Harbor because the two designations “Foundation” or “Important” were adequate to characterize the lands under study by those counties. Unfortunately, these categories were too approximate to accurately and realistically reflect the nature of surveyed agricultural lands in Washington County. SER-1, SER-2; R-D(8)(2971)). Naturally, the County’s mechanism looks different than that employed by Clackamas and Multnomah counties. Friends makes much of the fact that those counties’ reserves were approved by LCDC during the first submittal, yet Friends fail to include the fact that the Safe Harbor provision does not require independent analysis, so these counties’ designations were never at risk for reversal or remand. Urban reserves designated under Safe Harbor provisions are a given.

Friends argues that the County’s approach to evaluating land within its study area is largely prohibited by *D.S. Parklane Development, Inc. v. Metro*, 165 Or App 1, 994 P2d 1205 (2000) and *1000 Friends of Oregon v. Metro (Ryland Homes)*, 174 Or App 406, 26 P3d 151 (2001). Friends’ reliance on *Parklane* and *Ryland* is misplaced for a number of reasons.

The only reason the Court in *Parklane* took issue with the “URSA-matic” data was because there was no showing that the data “was responsive to the consideration required by subsection (2) of the rule.” *Parklane*, 165 Or App at 24). Here, there is ample evidence in the record that the further refinements the County made were directly related to the factors. (R-D(8)(2952-3819). In *Parklane*, the court went to say that the rules require a “balancing of all the factors rather than a mechanical reliance on any one factor.” *Parklane at 24*. LCDC correctly found that there is ample evidence in the record that the County properly balanced the factors. JER-94-95.

Friends extends the premise in *Ryland* to this case, arguing that findings must explain how factors lead to a certain conclusion. (Friends at 11). While that may be true of Goal 14 locational factors in the context of an UGB amendment, that is not the case here. The statutes and rules pertaining to the UGB amendment are different than those that apply to LCDC’s review of the County’s designations.

The County’s Application of OAR 660-027-0060(2)(a) – (d) Supports  
Urban Designation for Particular FAL

Friends takes issue with the County’s application of OAR 660-027-0060(2) (a)-(d). Under the provisions of OAR 660-027-0060(2)(a), counties must consider whether land is “potentially subject to urbanization.” Friends argues that the County’s application of this rule results in the anomaly of

protection for land that is not subject to urbanization and the failure to protect prime farmland subject to a high threat of urbanization.

As noted previously, FAL comprises much of the County's lands.

Unsurprisingly, some measure of FAL was designated as urban reserve in order to satisfy *both* urban and rural reserve factors. LCDC found that the County's analysis of candidate reserves land took into account threat of urbanization by looking at proximity to a UGB and land values. JER-94. These met the standard of consideration and adequate factual basis for purposes of the reserves analysis. Although Friends' preference is for a different analysis than the one applied by the County, this in itself is not a basis for reversal or remand since the County's application of the reserve rules are supported by substantial evidence.

Friends also contends that the County failed to properly consider 660-027-0060(2)(b) because of a purported emphasis on viticulture. This argument focuses on only one aspect of the County's agricultural analysis to determine whether lands are "capable of sustaining long term agricultural operations." Friends ignores the other layers of information in the overall recommendation, e.g. soil capability, water resources, agricultural capability, agricultural lands inventory, etc. These different considerations are illustrated by the 37 maps included in the County's reserves recommendation. (R-D(8)(2996-3034).



The third rural reserve factor, 660-0027-0060(2)(c) requires consideration of whether lands have “suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations.” Friends disagrees with the County attributing a higher value to farmland with irrigation as opposed to farmland without this resource. (Friends at 33). Since the time period for reserves is for the next 40 – 50 years, it is completely reasonable to consider water supply in the long term for future agricultural viability. LCDC agreed. JER-94-95.

Friends also takes issue with the soil suitability study relied upon by the County to assist in further analyzing soil quality. (Friends at 37). Contrary to Friends’ assertion, LCDC directly addressed the soil component in OAR 660-027-0060(2)(c) in its Order. JER-101. While Friends’ interpretation of the rule is plausible, the fact that the County and Metro came to a different interpretation of how the rule is applied is not the basis for remand or reversal as long as all the factors are considered. Here, the County considered both the ODA soil analysis and the Huddleston report. (R-D(8)(3805; 3788-3790). The rule does not prohibit the County from relying on additional evidence to support its designations.

The last rural reserve factor, 660-0027-0060(2)(d) , requires the County to address whether lands “[a]re suitable to sustain long-term agricultural or

forestry operations, taking into account large-block farm or forest operations, land use patterns, and infrastructure supporting these industries. Friends' arguments against the County's conclusions boil down to disagreement in how concepts such as large-block, parcelization, and ownership patterns should be interpreted. Conclusions and findings that are contrary to their particular interpretation remain valid in terms of the propriety of LCDC's Order.

## II. Response to Save Helvetia Assignments of Error<sup>7</sup>

### A. First Assignment of Error

In its first assignment of error, Helvetia argues that the findings and conclusions in LCDC's Order are not supported by the County's application of the reserve rules. Helvetia claims that there was no regard given to acreage at issue or unique physical attributes, conflicts between adjacent uses and boundaries, consideration of the alternatives, or discussion concerning how the designations achieved the balance required by the rule. (Helvetia at 13). The extensive studies and ultimate findings adopted by the County and Metro belie these assertions. Moreover, the County is not required to analyze lands in the same manner preferred by Helvetia. As described in other portions of this brief, the County and Metro is entitled to deference to interpret and apply the reserve rules.

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<sup>7</sup> This section provides the County's response to assignments of error presented in the brief filed by Save Helvetia and Robert Bailey (collectively, "Helvetia").

Here, the County applied and weighed the factors time and time again between the start of the reserves process to the last ordinance adopting the reserves. Substantial evidence supports the County's urban reserve designations with regard to FAL in general and to Area 8A and 8B specifically. SER-22-24; R-D(8)(3788-3790; 3804-3816; ).

Helvetia erroneously compares the reserves factors to criteria. (Helvetia at 19). Helvetia questions how FAL designated as urban reserves satisfy the "best achieves" criteria and that LCDC fails to explain how the designations satisfy that criteria. Again, the scope of LCDC's review concerns whether the County and Metro applied the reserves rules adequately, not a reconsideration or reweighing of the factors.

Helvetia also contends that the County and Metro's application of the reserve rules do not jibe with the priority scheme set forth in ORS 197.298 and Goal 14. (Helvetia at 9). Save Helvetia cites to *1000 Friends v. Metro (Ryland)*, 174 Or App 40, 26 P3d 151 (2001) for additional support of this argument.

Unfortunately, Helvetia's reasoning behind its arguments does not apply to the present reserves designation. Helvetia selectively quotes from *Ryland* and misconstrues the standard. That case involved an UGB amendment and uses a different standard reflected in different statutes and rules.

Additionally, the UGB Goal 14 rules relied upon in this case has been amended. In those amendments, LCDC removed the requirement that the

governing body proposing a “change in the boundary separating urbanizable lands from rural land shall follow the procedures and requirements as set forth in the Land Use Planning goal (Goal 2) for goal exceptions.” Goal 14 Amendments Effective April 28, 2006. This exception process was central to the alternatives analysis. Furthermore, the Metro rules at issue in that case which fueled the discussion of alternatives has been removed from the Metro Code and do not apply here.

Petitioner recognizes this where they state that “LCDC makes no Goal 14 findings presumably, because no expansion of the urban growth boundary is proposed.” (Helvetia at 13, Fn 8). The statutes governing UGB (ORS 195) and Goal 14 do not apply as this Order does not take property into the UGB.

LCDC’s Order recognized this increased flexibility as it discussed the *Ryland* case. The Order notes that in the *Ryland* case the “UGB amendment process requires a more stringent evaluation of the factors.” JER-27. The Order goes on to cite, *Citizens Against Irresponsible Growth v. Metro*, 179 Or App 12, 17, 38 P3d 956 (2002) and states “[i]n other words, as to any one area, the designating governmental body does not have to determine that the area complies or meets every factor.”

Only for FAL is there a requirement to compare one area against another. The comparison requirement is found in the Goal 14 rule. Boundary Location Alternatives Analysis; OAR 660-024-0060 (There is no express requirement in

Goal 14 to compare areas under consideration with one another.) It would have been easy enough for the Agency to borrow this language in drafting the reserves rule. It did not. The reserve rule does not establish a general comparison requirement. Instead, there is a particular, express requirement only to compare FAL with non-FAL when considering designation of FAL as urban reserves. OAR 660-027-0040(11). Thus, if as Helvetia suggests, there is a general requirement to compare all lands designated urban reserve, this specific language would be redundant.

All that is required is that LCDC evaluate the various selected areas in terms of each factor and then explain why a particular area was selected as urban reserve or rural reserve. JER-27. Outside of the FAL, the rule does not require a direct comparison of one area versus another area. LCDC made this clear where it found that [except for FAL] LCDC does not review the decision to determine whether an area would be *better* as a rural reserve than as an urban reserve, or even whether Metro was right in its designations. [emphasis in original] JER-29. If LCDC was required to compare one area against another it would have to determine whether Metro was right in its designations. Furthermore, as LCDC's Order states, a comparative analysis to other lands is only required for FAL. Only in that situation must Metro determine why "it chose the Foundation Agricultural Land for designation as urban reserves

*rather than* other land considered under this division.” [emphasis in original].

JER-30.

Similarly, Helvetia is mistaken where they state that “[n]o discretion is conferred upon the decision . . .”. (Helvetia at 14). The amendments to the Urban Reserve Statute and corresponding rules provided great discretion for the decision makers. The law provides “factors” and not “criteria.” JER-32.

LCDC’s Order correctly characterized the discretion granted to Metro and the Counties:

The administrative rules and the applicable statutes grant substantial discretion to Metro and the counties in deciding which lands to designate as urban and rural reserves and, as long as Metro can demonstrate that it considered the factors, there is no requirement for Metro to show that an area is better suited as an urban reserve than as a rural reserve before it designates any land as urban reserves. JER-30.

This is demonstrated where the rule provides ultimate discretion where local governments applies the “best achieves” standard. OAR 660-027-0005(2).

Helvetia’s Arguments Are an Alternative Interpretation of the Reserve Rules and do not Affect the Validity of the County and Metro’s Reserve Designations

Helvetia points to Area 8B’s designation as urban reserve as lacking substantial reasoning to conclude this land meets urban reserve factors. Helvetia argues that LCDC failed to make findings identifying the characteristics that constitute the balance and failed to explain the impact on overall livability is

error. (Helvetia at 26). This is an erroneous application of LCDC's standard of review.

In terms of 8B, Helvetia's demand to analyze an 88 acre parcel of land in terms of site specifics when the County had to analyze 171,000 acres is ridiculous. The legislature did not saddle local governments with a parcel by parcel evaluation of the type Helvetia envisions.

Helvetia argues that the process did not take into account the value of the land to the agricultural community or the impact on the future viability of agriculture locally and within the region. Instead, only the urban reserve factors received consideration and that substantial compliance of this type is unlawful according to *Marion County v. Federation for Sound Planning*, 64 Or App 226, 668 P2d 406 (1983). This case is inapposite since it deals with acknowledgment of a county's comprehensive plan and certain goal violations which occurred during the process. *Federation* has no bearing on this case of first impression.

#### B. Second Assignment of Error

The County incorporates the preceding discussion regarding Friends' incomplete statement of the standard of review in its first assignment of error.

#### The County and Metro Applied the Reserve Rules on Both a Regional and Sub-Regional Basis

In its second assignment of error, Helvetia essentially argues that the County unlawfully applied the reserves factors on a county-wide as opposed to regional basis. The result of a sub-regional application of factors resulted in

FAL designated as urban reserve. As an example, Helvetia states that Area 8A and 8SBR would have received rural reserve designation had they been located in Clackamas or Multnomah counties. (Helvetia at 31).

Helvetia claims the Order fails to require the County to consider “other lands” and is otherwise deficient in explaining how the designations meet the “best achieves” objective. Helvetia construes the rule regarding “other land” to look at a region-wide availability of lesser-priority land.

To begin with, Helvetia cannot provide a statutory or rule reference that construes “other lands” to mean regional lands. This is simply an alternative interpretation Helvetia seeks to champion. Second, such an interpretation would lead to diminished growth opportunities for Washington County as so much of its land base is FAL. The County would in effect be held hostage by virtue of its soil classification. The legislature could not have intended this result when it required the County and Metro to balance the competing interests. Helvetia’s concept of looking at “other land” to place growth elsewhere simply does not give effect to the urban reserve factors. LCDC’s Order devotes nine pages to documenting the record which shows consideration of both urban and rural reserve factors for Area 8B and the balancing by the County and Metro. JER-137-146. Furthermore,

In consideration of the concerns raised by the Farm Bureau as well as like-minded stakeholders, interest groups and community members, the Core 4 recommended a reduction of approximately 40 percent (34,200 acres to 13,561 acres) to the



WCRC's urban reserve recommendation. These adjustments represented the Core 4's judgment in balancing the need for future urban lands with the values placed on 'Foundation' agricultural lands and lands that contain valuable natural landscape features to be preserved from urban encroachment." JER-137.

Helvetia also takes issue with undesignated land in general and the amount of undesignated land in particular, citing to a portion of the rules that state Metro and a county "shall" designate rural and urban reserves. According to Helvetia, counties do not have discretion to leave land undesignated. (Helvetia at 37). But this contention is not supported by the reserves rules. LCDC correctly determined it was within the County's and Metro's discretion to leave land undesignated, particularly in light of the need for flexibility to plan for potential growth within the next 40-50 years and that the lands were not the highest priority for rural reserves. JER-103.

Helvetia also argues that LCDC made no findings explaining how the County's high value farmland was designated urban reserve when other counties protected their high value farmland. The County was uniquely tasked with applying, weighing, and balancing FAL against the rural and urban factors.

Again, Helvetia chooses to ignore LCDC's findings based on the County's and Metro's reserves methodology because it does not fit with their idea of reserves analysis. However, the County and Metro's consideration of undesignated lands and the subsequent findings adopted by both ordinances support LCDC's Order. JER-317; JER-846-922.

### III. Response to Chesarek Assignments of Error<sup>8</sup>

#### A. First Assignment of Error

The County herein adopts the preceding discussion regarding 1000 Friends' incomplete statement of the standard of review in its First Assignment of Error to the extent it is responsive to Chesarek's description of the standard of review.

What Chesarek's argument boils down to is that LCDC's Order including this area into the urban reserve is not supported by substantial evidence. As described earlier, all that is required is that this Court finds that LCDC applied the proper substantial evidence standard in reviewing the decision of Metro and the counties. Ample citations to the record support the County and Metro's decision that this area meets the urban reserve factors. As has been pointed out in LCDC's Order, the fact that Chesarek would have come to a different conclusion does not mean the factors were not considered and that somehow the Order is defective.

The Peterkort property is merely part of a larger area known as the North Urban Reserve Area. JER-485; R-D(8)(3062-3065). The detailed findings in that larger area also directly address the all the Urban Reserve Rule Factors and support the findings for including this smaller portion of it. This is all part to the

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<sup>8</sup> This section provides the County's response to assignments of error presented in the brief filed by Carol Chesarek and Cherry Amabisca (collectively, "Chesarek").

City of Beaverton's Pre-Qualifying Concept Plan. JER-148; R-D(8)(3044-3065). The area was further refined as Urban Reserve 8C-Bethany West with separate findings adopted to justify its inclusion in the Urban Reserve. JER-508-511. Finally, Metro, the County and LCDC adopted findings that exclusively addressed the Peterkort property. JER-147-150; JER-485-487. SER-3-6.

Chesarek's main opposition to the urban reserve designation appears to be based on perceived favoritism towards the Peterkorts. (Chesarek at 13, 17). The centerpiece of Chesarek's argument lies within what it identifies as "four key points" supporting urban reserve designation for the Peterkort property. (Chesarek at 13). These "key points" are transportation, sewer system connectivity, wetlands mitigation, and enhancement of natural areas. These "key points" and Chesarek's objections will be addressed under the relevant urban reserve factors discussed below.

For a small area (approximately 129 acres) in the hundreds of thousands of acres considered, LCDC devoted four pages addressing its findings supporting its inclusion in the urban reserve. JER-147-150. Those findings included many citations to the record for support. The following discussion demonstrates evidence showing compliance with the eight urban reserve factors.

1. OAR 660-027-0050(1): Can be developed at urban densities in a way that makes efficient use of existing and futures public and private infrastructure.

LCDC Order adopted adequate finding to address this issue. LCDC found “that additional urban land to the immediate west of the North Bethany Community Planning Area is necessary for the provision of sanitary sewer and storm drainage and to assist in the funding for primary road link to SW 185th Avenue.” JER-148. In making its findings, LCDC referred to the County’s analysis where it stated:

As noted above, the Peterkort site provides the only practicable location for siting a gravity flow sewer line for the provision of sanitary sewer services to a portion of the North Bethany planning area. This site also provides the only reasonable route for an alternative transportation system link between this community and surrounding areas. Future development of this site would not only utilize the public and private investments currently being made in North Bethany, but would ultimately aid in funding long-term infrastructure construction and maintenance. It is expected that future development of the Peterkort site would be designed to complement the North Bethany Community at urban densities that optimize both private and public infrastructure investments. The developable portion of the Peterkort property would be designed to connect to the North Bethany community and the surrounding community via a future road connection (Road 'A') and could be served by the planned sewer line. JER-486.

In further support of this, Metro and the County found that the inclusion of this land:

“provides urban land for public ROW and supports the develop of key transportation system link serving the future development of North Bethany Community.” JER-485.

LCDC relied upon these findings. JER-148. The record elaborates on this road improvement and states that “the connection of Road A from the northwestern corner of the North Bethany planning area through the Peterkort site to NW 185<sup>th</sup> Avenue is critical to the traffic flow and buildout of this planned community.” SER-7.

Similarly: Metro and the County found that:

“optimal alignment for primary gravity flow sewer line to serve North Bethany crosses the Peterkort property.” JER-485. Again, the LCDC cited this to support their findings. JER-148. This determination was supported by a staff issue paper related to “sewer system connectivity” which goes into great detail about a potential sewer system. SER-7. Finally, staff’s issue paper was supported by a letter from the General Manager of Clean Water Service stating that “inclusion of the property will save our ratepayers at least \$2 million in capital costs by allow for gravity sewer service to North Bethany . . .” SER 10.

In response to this overwhelming evidence that this land meets this factor, Chesarek points out that only 77 acres is developable because of riparian areas and wetland. This argument does not address the factor. The preservation of this natural feature helps this land meet the requirements of factors (7) and (8) of the rule as discussed below. The only other argument Chesarek makes under this factor is that there is no evidence that the County can finance this infrastructure. This has no relation to the factor and will be addressed if and when this property is ever included into the UGB.

LCDC addressed this objection and correctly found:

“Regarding the first objection, OAR 660-027-0050 does not require that Metro compare the cost of installing facilities for both urban and rural designations, or that Metro demonstrate how local governments will finance future road and infrastructure improvements.” JER-148.

These findings also respond to Chesarek’s general objections in her brief under the heading Metro’s Four “Key Points”. Chesarek object that the urban reserve designation is not necessary to support a road or sewer easement and that they can be built on EFU lands. This objection does not address the factor. The factor is whether the proposed urban land can be developed at densities so it “makes efficient use” of the infrastructure. OAR 660-027-0050(1). Even if it was relevant, construction of new roads and sewer lines in EFU land are constrained by the statutes and rules. ORS 215.213(1)(j)-(m) and (x); OAR 660-033-0120 and OAR 660-033-0130(16).

Chesarek go on to argue that urban development on this property will increase infrastructure costs and these costs have to be “weighed against possible funding benefits” and that these financial benefits to North Bethany are not criterion. (Chesarek at 14). Again, this is not the standard and if it was, the level of detail required would assure no land was brought in and thwart the purpose of the statute. The standard is “efficient use” of infrastructure and it does not require a weighing against completely conjectural future financial

benefits. As described above, the Peterkort property can be efficiently served and adding this land will aid in serving adjacent lands as well.

2. Includes sufficient development capacity to support a healthy economy.

The County and Metro made specific finding addressing this section which were adopted by LCDC. JER-486; JER-148. The County found that combined with other buildable lands, that there will be sufficient development capacity to support a health economy. As well, “the area could be likely developed as the sixth neighborhood of North Bethany, featuring a walkable community centered around parks and mixed use areas.” JER-486. The findings recognize that this property “has long been recognized as important to the successful implementation of the North Bethany Community Plan. SER-5. Chesarek’s response is that these findings are not specific enough. For lands that are not even in the UGB yet, the fact that the County is considering this the “sixth” neighborhood in this community of distinction is sufficient specificity.

For the Northern Urban Reserve Area the record contains findings that:

“It is expected that the North Urban Reserve Area will primarily develop with residential uses to support industries and employment areas developing in Hillsboro directly to the south and west and existing industries within the City of Beaverton to the southeast. Land within this expansion area is generally not suitable for industrial employment since contiguous land outside of natural resource lands is not large enough for many industrial uses and the area lacks proximity to airports and railways of significant size. Service industry employment is anticipated to be the main job provider in this area. The North Urban Reserve Area is expected to contain approximately 30 acres of mixed use zoned land,

which will provide neighborhood center services to surrounding residential uses.” SER-18.

In response to these findings, Chesarek’s only argument is that they are too vague. That is not the standard. It is evidence that a reasonable person would rely upon and these findings clearly meet that standard.

3. 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.

Metro and County made the following findings:

This site has been included in facilities planning discussions during development of the North Bethany Plan. The Beaverton School District has made commitments for needed facilities in this area and has included discussion and consideration of potential urban reserves based growth impacts in the recent development of the 2010 update of their Long Range Facilities Plan. The Rock Creek Campus of Portland Community College is immediately adjacent to the southern boundary of this site. Other well-established facilities and services being extended to the North Bethany Community would also be expected to serve this site. JER-486.

LCDC adopted this finding in its Order. JER-148. Also, as stated above under the first factor, this land is crucial and will be served by urban road and sewer infrastructure. The record also shows that water is readily available to the property. SER-15.

In response to these findings, Chesarek argues that it is not clear whether a school can be built on the property. Again, this is not the standard. The standard requires only that it be served by schools. The record demonstrates that it can be so served. Chesarek argues that some of property is in a different school district but does not cite to that statement anywhere in the record or to any similar



statement in the record that the property cannot be served. The fact that the school district is willing to serve this property and that it is adjacent to a community college are adequate findings for this portion of this factor.

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

Metro and the County found:

“The Peterkort site will be served by a collector road (Road ‘A’) extending along the northern portion of the site to connect the North Bethany community to SW 185th Avenue to the west. The northeastern edge of this property directly abuts planned connections to both on and off-street pedestrian facilities linking to planned neighborhood parks in North Bethany. This site offers a major opportunity to link trails in the broader Bethany area along the Rock Creek corridor. Public transit service is currently available immediately south of the site with multiple lines providing connections to Westside Light Rail Transit.” JER-486-487.

LCDC adopted this finding in its Order. JER-148. The record, as demonstrated above for Factor 1, states that the property is already planned to be served by Road “A”. The record also contains the statement from the property owners that “they expect to transfer ownership of stream corridors acreage to the public domain” and that this would “provide agencies the ability to create public green space, preserve and enhance wetlands, and create public trail, parks and other public amenities.” SER-3.

Chesarek seem to concede this factor: “LCDC’s approval of Metro factor 4 finding might be plausible if taken in isolation . . .” (Chesarek at 21). The only caveat Chesarek makes is that this factor is not met because other factors are

not met. Again, this is not the standard. Interpreting the standards as Chesarek suggests would impose an impossible requirement that all urban reserves properties would not only have to meet individual factors but prove that satisfaction of one factor would not be impinged by the satisfaction of another factor. LCDC's findings address this interpretation where its states:

The objectors also argue that the decision fails to evaluate alternative courses of action related to wetland and public facility issues. As noted above, OAR 660-027-0050 requires that Metro base its identification and selection of lands for designation as urban reserve, alone or in conjunction with land inside the UGB, by considering eight factors. The record indicates that Metro has considered these factors. OAR 660-027-0050 does not require that Metro perform a comparative analysis of wetland mitigation sites, the location of roads, or sewer lines, . ." JER-149.

In any case, the findings strongly support that this factor and the other factors are met.

5. Can be designed to preserve and enhance natural and ecological systems.

There is more than substantial evidence in the record that demonstrates this factor is met. In addressing this factor LCDC's Order found:

In order to address a number of concerns raised in relation to the wetlands and floodplains on the Peterkort property, as well as with the "West Union" portions of Area 8C, a Special Concept Plan Area overall was added to Washington County Ordinance No. 733 (Special Concept Plan Area C). The special plan overlay requires application of the "Integrating Habitats" approach to planning and development of these lands." JER-148.

The above finding was based on evidence in the record that states:

Limited opportunities for wetlands mitigation are available in this area of the county. Therefore, a key focus of adding the Peterkort site to the

urban area is the opportunity to improve and enhance the currently degraded wetlands along Rock Creek. The entirety of Urban Reserve Area 8C would be subject to certain requirements identified in the county's Rural/Natural Resource Plan Policy 29. This area, called out as Special Concept Plan Area C, would require the implementation of Metro's "Integrating Habitats" program in the concept and community planning of the reserve area. The "Integrating Habitats" program utilizes design principles to improve water quality and provide wildlife habitat. JER-487; JER-723.

The decision is further supported by a finding from a County staff issue paper that directly addressed this factor and described in detail “wetland mitigation” and Enhancement of Natural Areas Program Target Areas. SER-6.

**“3. Wetlands mitigation:** The sewer plan identifies roughly 46 acres of valuable opportunities on the Peterkort property which can be used to mitigate wetland impacts caused by public infrastructure development in North Bethany (in order of priority: sewer, storm, transportation, parks, and private development). Other concerns related to wetland impacts in North Bethany include:

- a. Clean Water Services has estimated that a total of up to 89 acres of land will be needed for mitigation of impacted wetlands by infrastructure construction within the North Bethany planning area.
- b. State agencies prefer mitigation as close as possible to the site of impact; other mitigation possibilities in the vicinity are extremely limited and may not be cost effective.
- c. Preliminary estimates of the value of wetlands easements on the Peterkort site total approximately \$610,000.

This is further supported by testimony in the record from the minutes of the hearing on County Ordinance 733 discussing the Peterkort property, wherein the testimony of Brent Curtis, Washington County Planning Director, was taken:

“He reported that there are high quality wetlands and some more marginal wetlands. Mr. Curtis said that associated with providing

the urban services in North Bethany, some mitigation will have to be done offsite because there are not a lot of opportunities onsite. He stated that the best opportunities for that were on the Peterkort property within the floodplain. Mr. Curtis went on to say 'that that connects with a Metro property that is downstream. He said that there are upstream opportunities that Metro has prioritized for greenspaces investment. Mr. Curtis stated that there are environmental impacts that are associated with and can be enhanced for that corridor.” SER-21.

Chesarek argue that there is no evidence of the ability to improve or enhance other natural ecological systems. The findings cited above contradict that contention. Furthermore, Clean Water Services (“CWS”) and the property owner both submitted detailed testimony in support of this factor including the owner’s statement of willingness to “transfer ownership of stream corridor acreage to public domain” . . . “which would preserve and enhance wetlands.” The donated acreage is an expected 50 acres. SER -15; SER-10.

Chesarek argue that there is evidence in the record showing that the Rock Creek riparian area and floodplain that runs through this property is a wildlife corridor and provide critical habitat for a number of species. First, from the evidence cited above, it appears that much of the Rock Creek riparian area and flood plain will be protected by Metro, CWS, and potentially donated to public ownership. Second, evidence in the record shows that CWS intends to upgrade Rock Creek’s “currently degraded natural area near the confluence of Holcomb and Rock Creeks, thereby improving habitat . . .” SER-12. Third, the evidence

shows that wildlife consideration was factored in by means of adopting the “Integrating Habitats” program described above.

Under Chesarek’s 4 “Key Points” argument, Metro cannot rely on the “Integrating Habitats” program to meet this factor because it does not add any new protections that are not already imposed on the property through Metro’s Title 13. (Chesarek at 14). She is incorrect. Metro’s Title 13 restrictions do not apply to either rural or urban reserves until the property is brought into the UGB. Urban Growth Management Functional Plan, Title 13, 3.07.1370.B.

Although Chesarek may disagree with those findings, LCDC addressed this issue where it found:

“Nor do the rules require that Metro determine which designation is more compatible for wetland mitigation and which designation provides better protection of wildlife. While objectors may disagree with the analysis and conclusion, they have not established the analysis of the factors and conclusions Metro reached violate the rule.” JER-148-149.

Chesarek’s brief again fails to demonstrate that LCDC’s analysis violates the rule.

6. Includes sufficient land suitable for a range of needed housing types.

Metro and the County made explicit finding addressing this factor:

“The Peterkort site will provide added opportunities to meet local housing needs. The 80 acres of buildable land on the site can be developed with a variety of different housing types which would be expected to complement those already planned in the North Bethany area. Considering that employment growth in Washington County has been historically very strong, and that the area remains

attractive to new business and holds potential for significant growth, housing demand in this area will continue to grow.” JER-487.

LCDC adopted this finding as well as the following finding noted below. JER-148.

“The North Urban Reserve Area has the capacity to accommodate approximately 5,828 dwelling units with at least 30 of those dwelling units within mixed use neighborhood centers allowing high density residential. Outside of mixed used designations, the remaining acreage is planned to develop with an average 10 units to the acre from low to medium densities.” Beaverton Prequalifying Concept Plan. SER-20.

The only argument Chesarek makes under this factor is that the findings are vague. This area, included with other areas inside the UGB meet this factor with sufficient specificity as it discusses high density, mixed use development, and low to medium densities.

7. Can be developed in a way that preserves important natural landscape features included in urban reserves.

The County and Metro made the following finding that was adopted by LCDC.

As previously noted, this site is traversed by Rock Creek and its associated floodplain which is included on the Metro Regional Natural Landscape Features Map. Rock Creek and its associated wetlands are considered an important target area for long-term water quality improvements in the Tualatin River Basin and provide vital habitat linkage for sensitive species. Together with the other lands in Urban Reserve Area 8C, this site will be subject to a special planning overlay (Special Concept Plan Area C) designed to address the important values of this riparian corridor by requiring appropriate protection and enhancement through the

use of progressive and environmentally sensitive development practices. JER-487; JER-148.

The arguments described above under factor 5 adequately address the finding required under this factor. The main natural feature in this area is Rock Creek. The property owner testified concerning his willingness to donate 50 acres of riparian lands to preserve this feature.

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

Metro and the County adopted the following specific findings for the Peterkort area:

Concept and community level planning in conformance with established county plan policies can establish a site design which will avoid or minimize adverse impacts on farm practices and natural landscape features in the area. As noted above, Urban Reserve Area 8C will include a planning overlay specifically targeting special protection for the identified natural landscape features in the area. It is important to note that even without this special plan policy, the existing regulatory framework in urban Washington County would require significant levels of protection and enhancement of the Rock Creek corridor at the time of development of surrounding lands. JER-487; JER-148.

LCDC also adopted the more general finding (JER-148) for area as found the Beaverton PQCP which provides:

Land uses outside the boundaries of the North Urban Reserve Area vary. Suburban level development exists south of West Union Road and east of 185th Avenue. North and east of the Washington County/Multnomah County lines within Multnomah County the land uses are farm, forestry and rural residential, currently under consideration for urban reserve designation by Multnomah County. Lands west of Cornelius Pass Road are also farm, forestry and

rural residential; however these lands are also under consideration for urban reserves. Forestry and farm lands in and around the North Urban Reserve Area are considered to be Tier 3 as aggregated by Washington County. It is arguable that the most northern portion of the North Urban Reserve Area is not viable for urban development. This portion, northeast of the northern fork of Rock Creek, north of Germantown Road, includes nonconstrained lands that are carved up by constrained lands. The constrained lands provide a buffer to mixed forest use land to the north. SER-20- 21.

Additionally, as described above under factors 5 and 7, natural landscape features, the Rock Creek corridor, will be adequately protected. Thus, there is substantial evidence in the record as found by LCDC that demonstrates compliance with this factor.

In conclusion, the Court should find that LCDC adequately applied the substantial evidence test to the facts before it in the record. If this Court reviews the evidence, the above demonstrates that the County and Metro had substantial evidence that the Peterkort property met the urban reserve factors.

#### B. Second and Third Assignment of Error

The County adopts LCDC's Response brief as its response to these assignments of error.



## CONCLUSION

For the foregoing reasons, this Court should uphold LCDC's Compliance Acknowledgment Order 12-ACK-001819 with regard to Metro and Washington County's urban and rural reserve designations.

DATED: December 11, 2012

*s/Alan A. Rappleyea*

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**CERTIFICATE OF COMPLIANCE  
WITH WORD-COUNT LIMITATION AND TYPE SIZE REQUIREMENTS**

I certify that this brief complies with the word-count limitation in ORAP 5.05(2)(b), and the word-count of this brief is 9,618 words.

I certify that the size of this brief is not smaller than 14 point for both the text of the brief and footnotes as required by ORAP 5.05(4)(f).

DATED this 11th day of December, 2012.

OFFICE OF WASHINGTON COUNTY COUNSEL

/s/ Alan A. Rappleyea

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County Counsel  
alan\_rappleyea@co.washington.or.us  
Of Attorneys for Washington County

s/Jacquilyn Saito-Moore

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**Washington County**

# Soil Capability Classes

**Soil Classification**

CLASS	Soil Classification
I	[Dark Gray Swatch]
II	[Medium-Dark Gray Swatch]
III	[Medium Gray Swatch]
IV	[Light Gray Swatch]
VI	[Medium-Light Gray Swatch]
VII	[Lightest Gray Swatch]
VIII	[White Swatch]

..... Urban Growth Boundary  
 \_\_\_\_\_ County Boundary

Disclaimer:  
 The information on this map was derived from digital databases on Washington County's Geographic Information System (GIS). Care was taken in the creation of this map; however, Washington County cannot accept any responsibility for errors, omissions, or professional product. Notification of any errors will be appreciated.

Washington County Long Range Planning Division  
 155 North First Avenue, Suite 330 MS 14  
 Hillsboro, OR 97124  
 ph (503) 848-3519  
 fax (503) 846-4412  
 lutplan@co.washington.or.us

**Map 19**



# Washington County Agricultural Lands Inventory

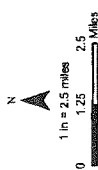
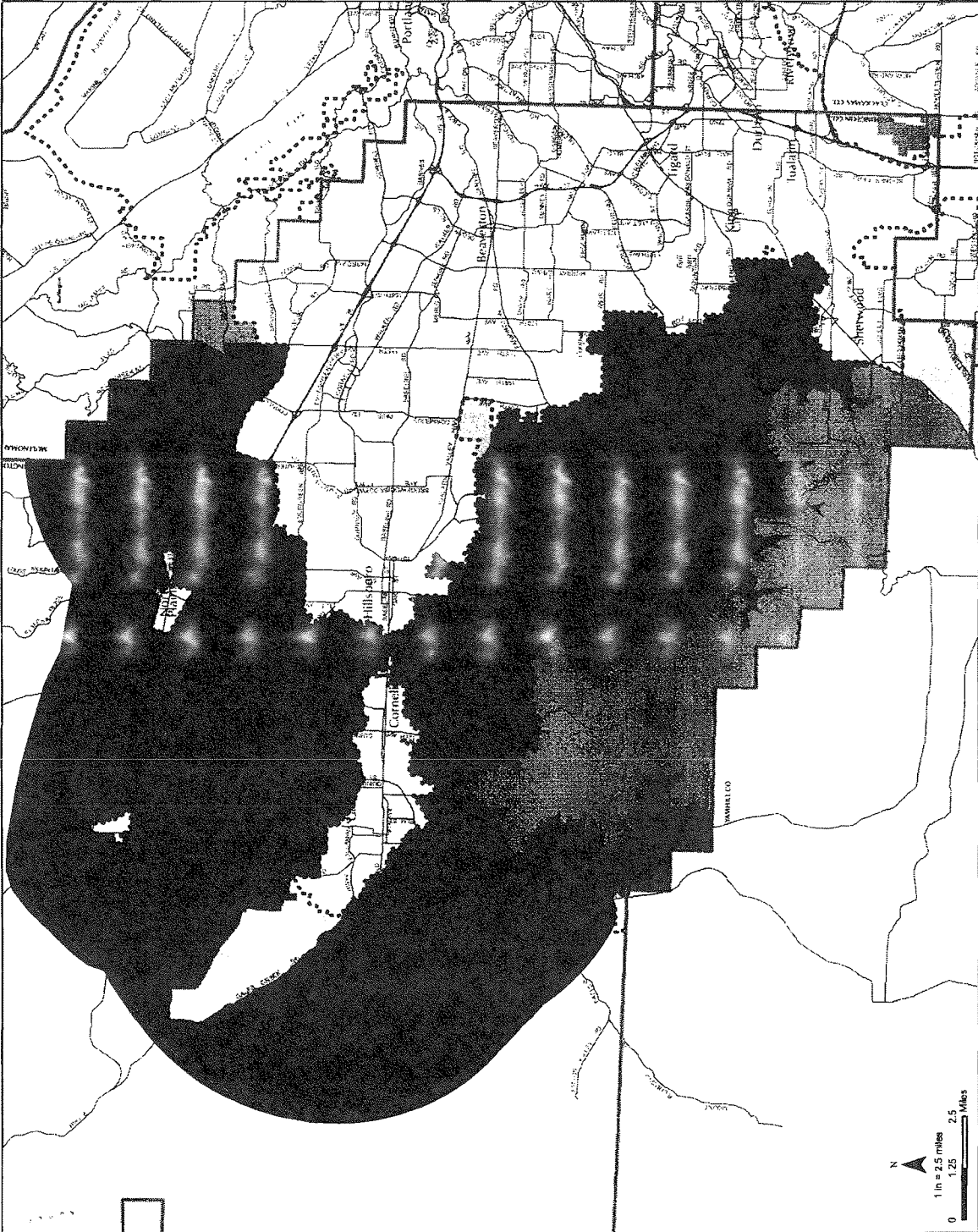
**Legend:**

- Conflicted
- Important
- Foundation
- Extent of Reserves Study Area
- Urban Growth Boundary
- County Boundary

**Source:**  
Oregon Department of Agriculture

**Disclaimer:**  
The information on this map was derived from digital databases on Washington County's Geographic Information System (GIS). Care cannot be taken to ensure that the information is current, complete, or accurate. Therefore there are no warranties which accompany this product. Notification of any errors will be appreciated.

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1 in = 2.5 miles  
0 1.25 2.5 Miles

**Map 3**

## **Peterkort Property**

---

### **Issue / Request**

Earlier adjustments to Urban Reserve Area 8C – Bethany West resulted in removal of a 129-acre property that is critical for the cost-effective and timely provision of urban services to the 2002 UGB expansion area of North Bethany. Roughly one-third of this property, owned by the Peterkort family, is floodplain / wetland traversed by Rock Creek. Long-standing planning efforts for major infrastructure improvements necessary to serve North Bethany—including sewer, stormwater management, transportation and wetland mitigation—depend upon use of this property.

Peterkort family representatives testified at both the April 21, 2010 Planning Commission and April 27, 2010 Board of County Commissioners hearings to request that the county reconsider their property's (1N1 18, Lot 100) rural reserve designation and add the property to Urban Reserve Area 8C, Bethany West. This request is supported by plans and cost considerations for near-and long-term North Bethany urban service investments. A detailed map of the area subject to this request is shown at the end of this discussion.

### **Staff Recommendation**

Designate the Peterkort property as part of Urban Reserve Area 8C - Bethany West.

Staff has determined that additional urban lands are necessary to facilitate development of the North Bethany planning area. These lands are needed for transportation, sanitary sewer and wetlands mitigation. The land is critical to adequately serve the future North Bethany community as planned for adoption later this year. The plan for North Bethany will meet both regional density requirements and ensure the economic feasibility of future land uses in the planning area.

Inclusion of the Peterkort property in an urban reserve provides multiple public benefits to the development of North Bethany in particular, and the larger community in general. The Peterkort family has entered into a written agreement with Clean Water Services to donate the necessary easements for 3,600 feet of sewer trunk line and the use of approximately 50 acres of Rock Creek floodplain for wetland mitigation in return for the property's designation as an urban reserve. According to their testimony, the Peterkort family is willing to provide a similar easement for the construction of Road A, connecting North Bethany to 185th Avenue, and to cooperate in the land use permitting process for construction of the sewer line. A rural reserve designation would negate most of these opportunities. For these reasons, staff finds that adding this property to an urban reserve is a necessary and appropriate action.

### **Planning Commission Recommendation**

At their public hearing on Urban and Rural Reserves held April 21, 2010, the Washington County Planning Commission voted seven to one in favor of including the Peterkort site within proposed Urban Reserve Area 8C – Bethany West.

### **Background**

One of the Metro conditions for the ordinance that brought North Bethany inside the UGB called for the county to *“recommend appropriate long-range boundaries for consideration by the*

*Council in future expansion of the UGB or designation of urban reserves.”* In addition to being located in an area that is a logical extension of North Bethany, inclusion of the 129-acre Peterkort property would provide a cost-effective route for sewer service and nearby opportunities to mitigate the wetland impacts of public facilities in North Bethany. The resulting wetland enhancements would have the added benefit of establishing important links between Metro’s Natural Areas target lands along Abbey Creek and downstream Metro property along Rock Creek. Approximately 52 acres of the Peterkort property are within the 100-year floodplain of Rock Creek and adjoining wetlands.

#### **Analysis**

In the technical analysis to determine conformance with the factors for designation of lands as urban reserves or rural reserves (OAR 660-027-0050 and 660-027-0060) Washington County staff found that the Peterkort property qualified for designation as both rural reserve and urban reserve. The detailed findings on these qualifications are incorporated in the September 23, 2009 recommendations report from the Washington County Urban and Rural Reserves Coordinating Committee to the Regional Core-4 and Reserves Steering Committee.

The Washington County technical analysis determined that in order to establish a land supply which would be adequate to meet long-term growth needs, priorities for inclusion in urban reserves would be based upon the criteria in the December 2006 Great Communities Report along with key decisions emanating from the Washington County Urbanization Forum. These priorities were established through direct coordination with the cities in Washington County and focused on governance, ability to be developed in concert with the Region 2040 Growth Concept and ability to meet the urban factors in the Reserve Rule.

The 129-acre Peterkort parcel was part of a 1,725-acre area of interest / (commitment to provision of governance) established by the City of Beaverton. The city prepared a pre-qualifying concept plan which provided evidence showing how this area of interest could meet all of the applicable criteria referenced above.

The Washington County Reserves Coordinating Committee recommendation of September 23, 2009 identified the Peterkort property as part of a significantly larger urban reserve area that extended from the existing urban growth boundary north and east to the Multnomah County border, and to Jackson School Road on the west. Core 4 deliberations in December 2009 resulted in the conversion of most of the urban reserve lands north of Highway 26 to rural reserve. This property was among those changed to a rural reserve designation.

A part of the Core 4 determination was based upon a recommendation embodied in the Bragdon/Hosticka map distributed in December 2009. That map illustrated a policy recommendation that floodplains be utilized to provide a buffer and/or boundary between urban and rural reserve areas. In the case of the 129-acre Peterkort property, approximately 52 acres of the land is impacted by the Rock Creek floodplain. Analyzed through the Core 4 review process, the use of floodplains as buffers was formalized through the maps adopted by each jurisdiction as part of the Intergovernmental Agreements with Metro for urban and rural reserves.

The entire 129-acre Peterkort site has long been recognized as important to the successful implementation of the North Bethany Community Plan and to important elements of the funding process on key transportation and sewer line links. The following discussion provides the supportive reasoning for including the Peterkort site based on each of the needs referenced in the Issue / Request section above.

1. **Transportation:** The connection of Road A from the northwestern corner of the North Bethany planning area through the Peterkort site to NW 185<sup>th</sup> Avenue is critical to the traffic flow at buildout of this planned community and provides alternative emergency access to the area. Transportation system funding has been one of the most difficult obstacles to overcome in the implementation process for North Bethany. Urbanization of the approximately 77 acres of buildable lands on the Peterkort site could facilitate the funding of this road connection. A rural reserve designation on this site would leave future construction of this transportation system link in a tenuous position and could present other conflicts for future road construction. The extension of Road A across the Peterkort site is on the county's acknowledged Transportation Plan.
2. **Sewer system connectivity:** The optimal alignment for the trunk line to serve North Bethany crosses the Peterkort property. This sewer project is at the "90% design" stage, is funded and is scheduled for construction as a capital improvement project beginning in 2010, with construction of the portion of the sewer on the Peterkort property scheduled for 2011. Property owner cooperation for trunk line installation is necessary in order to obtain the necessary land use permits. In addition, if designated a rural reserve, the property owners would not benefit from the project and have indicated if the rural reserve designation prevails, they would seek compensation for the necessary easements. The alternative to this gravity sewer would require pumping sewage to a nearby gravity system.

Clean Water Services has provided the following information relating to potential impacts of not obtaining property owner support for installation of a gravity flow sewer line. The primary option to constructing the planned gravity flow line through the Peterkort site would involve:









- a. Locating and acquiring buildable lands for the installation of two pump stations to tie the North Bethany sewer system to the existing Springville Trunk line.
- b. Siting an appropriate alignment and acquiring easements to facilitate installation of sewer line.
- c. Upgrading approximately 4,100 linear feet of the Springville Trunk to carry the added system load. This upgrade would require development of a parallel line to allow the existing line to continue to function during construction.
- d. Staff estimates that this alternative would increase the cost of the sewer project in the North Bethany area by approximately 2 million dollars.
- e. **NOTE: this option could delay construction of sanitary sewer services to the North Bethany area by at least three years.**

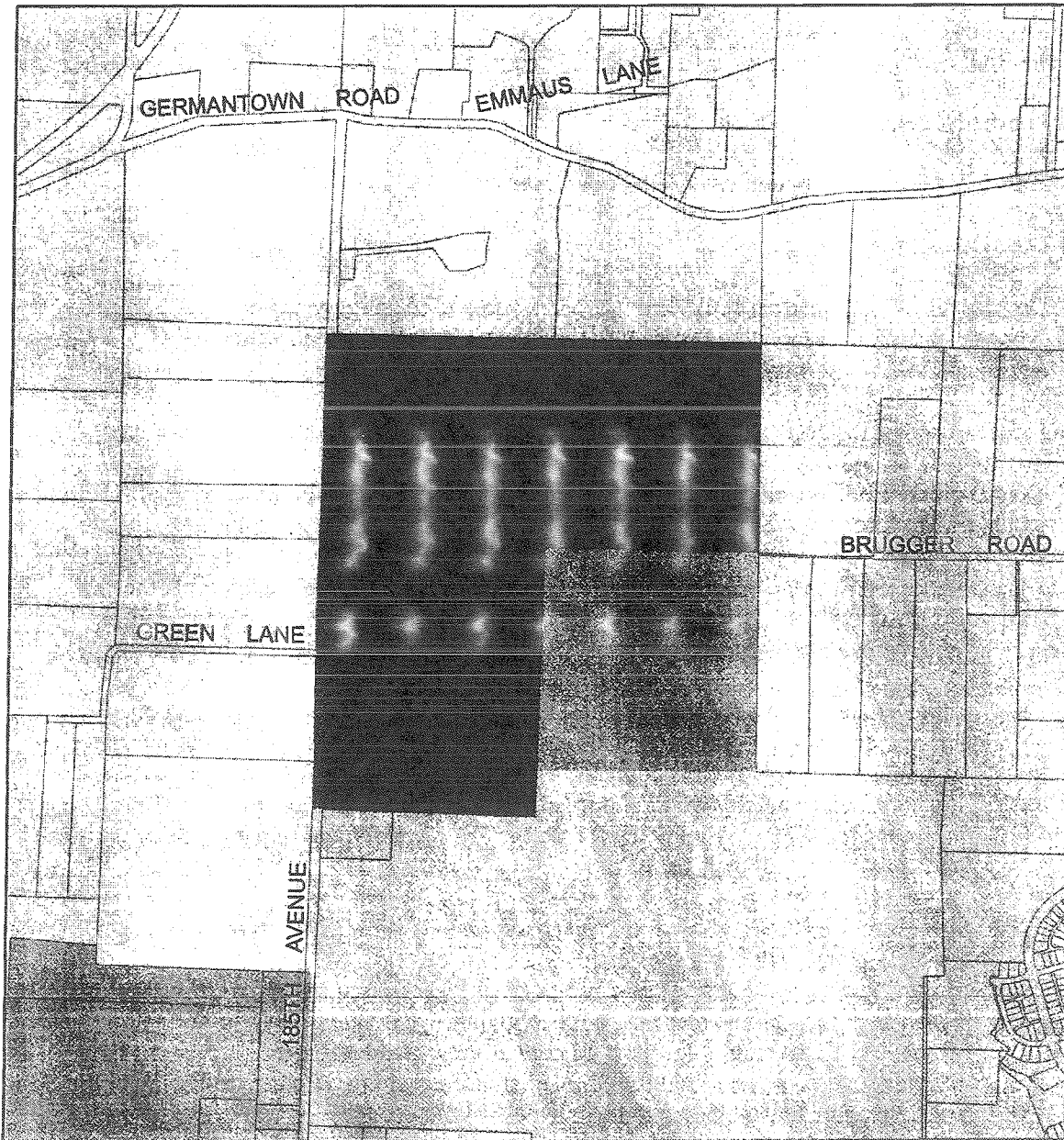


The adopted North Bethany plan takes a progressive, environmentally-conscious approach to stormwater management and water quality that is dependent upon, uses and requires the mitigation areas that are anticipated on the Peterkort property. Those areas also help to achieve Metro's goals for natural areas protection as discussed below. In addition, the use of the Peterkort property to site a gravity flow sewer line allows for an environmentally superior and significantly cheaper solution. The pump station alternative would be more expensive due to both higher capital costs and long-term operating costs.

3. **Wetlands mitigation:** The sewer plan identifies roughly 46 acres of valuable opportunities on the Peterkort property which can be used to mitigate wetland impacts caused by public infrastructure development in North Bethany (in order of priority: sewer, storm, transportation, parks, and private development). Other concerns related to wetland impacts in North Bethany include:
  - a. Clean Water Services has estimated that a total of up to 89 acres of land will be needed for mitigation of impacted wetlands by infrastructure construction within the North Bethany planning area.
  - b. State agencies prefer mitigation as close as possible to the site of impact; other mitigation possibilities in the vicinity are extremely limited and may not be cost effective.
  - c. Preliminary estimates of the value of wetlands easements on the Peterkort site total approximately \$610,000.
  
4. **Enhancement of Natural Areas Program Target Area:** There have been 3-4 years of inter-agency planning discussions among the county's Department of Land Use and Transportation, Clean Water Services and Metro's Parks staff on coordinating the timing of activities and on the multiple agency benefits of the preferred sewer alignment and associated wetland enhancements. The following points highlight the benefits:
  - a. Clean Water Services enhancement work would expand and protect the currently degraded natural area near the confluence of Holcomb and Rock Creeks, thereby improving habitat and water quality in the lower watershed. This work would benefit Metro's Natural Areas Program because it would take place within the Tier 2 priority area for the Rock Creek Target Areas, and is consistent with Program objectives for this area.
  - b. Metro's Natural Areas Program is not expected to acquire lands in Tier 2 areas - the area would be protected with Clean Water Services easements after mitigation work is complete, thereby expanding Metro holdings in the Rock Creek Target Area without expenditure of Natural Areas bond measure funds.
  - c. Mitigation easements will help connect existing Metro holdings in the Rock Creek watershed (recent purchase in Rock Creek headwaters and another near Holcomb Lake).

Peterkort  
Approximate Affected Acres: 130

Citizen Request	Ordinance No. 733
 Rural Reserve to Urban Reserve	 Rural Reserve
 Undesignated to Urban Reserve	 Urban Reserve
 Rural Reserve to Undesignated	 Existing Regional Urban Area
 Urban Reserve to Rural Reserve	
 Undesignated to Rural Reserve	



May 24, 2010

Council President David Bragdon  
Councilor Rod Park  
Deputy Council President Carlotta Collette  
Councilor Carl Hosticka  
Councilor Kathryn Harrington  
Councilor Rex Burkholder  
Councilor Robert Liberty  
Metro Regional Center  
600 NE Grand Avenue  
Portland, Oregon 97232-2736

RE: URRs Map Amendment – Peterkort Property

Dear Councilors:

On May 11, 2010, our Board of Commissioners voted to tentatively add the Peterkort Property as Urban Reserves to the IGA/URRs map, and I ask for Metro Council's agreement to this addition.

I will not repeat the arguments in support of this addition that have been communicated by Chair Brian and staff (wetland mitigation, sewer trunk line route for North Bethany area, avoidance of substantial delay and avoidance of significant, additional cost). I would like to focus on the environmental benefits of adding the Peterkort Property.

As you know, 50 of the 129 acres of the property are flood plain and wetlands. If the property is designated as Urban Reserves, its owners will provide Clean Water Services (CWS) easements on the property without cost. This provision allows for the following:

1. The wetland areas have been planned in conjunction with the wetland and open space areas in North Bethany. This plan creates the opportunity and sets the stage to create a continuous environmental corridor along the Rock Creek headwaters. It also provides nearby wetland mitigation needs for the implementation of the North Bethany Plan by allowing the use of low development impact approaches and stormwater regional facilities.
2. Access to the property 1-1/2 to 2 years sooner will allow CWS to actively begin protecting and enhancing the corridor.
3. Considering the financial savings due to avoiding easement costs for mitigation, we have the opportunity to make this sensitive wetland area a "showcase" of how to protect and enhance such corridors in an urban setting. Those cost savings for the easements are estimated to be in excess of \$600,000.

Metro Councilors  
May 24, 2010  
Page 2

4. The uncertainty of the land use process in obtaining the necessary permits without property owner cooperation seriously jeopardizes this overall plan.
5. The overall public savings are enhanced by designing and constructing sustainable sewer facilities. The gravity system, in comparison to the alternative pump station option (which adds about two million dollars to the sewer project costs), does not necessitate the additional operating cost of electrical power. Environmentally, the more reliable gravity system is also preferred.

We would further agree that Washington County, CWS and Metro could add a narrative for this area in the IGA (similar to what was done for Cooper Mountain) specifying this area as an important natural resource area. This addition would memorialize an "integrated habitats" approach to any future, development of the Peterkort property (if Metro should bring it in to the UGB sometime in the future). Perhaps an adjacent bike/pedestrian way would be appropriate as well.

With the inclusion of the Peterkort property as Urban Reserves at this time, not only do we save ratepayer dollars for other projects, facilitate development of North Bethany in an urban form and density to reduce the necessity for UGB expansion, but we can enhance and protect the natural resource corridor sooner and to a greater extent than otherwise.

I join Chair Brian, our Board and staff to urge you to support the IGA/URR Peterkort map amendment.

Sincerely,


Andy Duyck  
Commissioner (Chair-Elect)  
Washington County Board of Commissioners

# CleanWater Services

Our commitment is clear.

Date: May 25, 2010

To: Metro Council

From:  Bill Gaffi, General Manager  
Clean Water Services

SUBJECT: URBAN RURAL RESERVE TESTIMONY—NORTH BETHANY PLANNING AREA/PETERKORT PROPERTY

Clean Water Services has been working closely with Metro and Washington County on the Urban/Rural Reserves process to provide input on key policy and technical issues related to the efficient provision of sewer and drainage services, and protection and restoration of water quality in the Tualatin Basin.

Clean Water Services is requesting the Metro Council designate the 129-acre Peterkort Property (see attached map) as Urban Reserves on the IGA/URRs map.

- The property is central to the integrated, comprehensive North Bethany Plan that has been developed by our community over the last four years to meet Metro's planning requirement for areas brought into the Urban Growth Boundary (UGB) in 2002.
- Inclusion of this property will provide the region with a unique opportunity to effect large, landscape-scale restoration and protect vital wetlands and stream corridors within the Rock Creek Watershed.
- Inclusion of the property will save our ratepayers at least \$2 million in capital costs by allowing for gravity sewer service to the North Bethany development rather than the costly construction of two pump stations. This savings in concrete and steel, will allow Clean Water Services to invest in additional green infrastructure and natural resource protection in the Rock Creek watershed and beyond.
- Washington County is committed to adding a condition to Exhibit B of the IGA "Principles of Concept Planning for Urban Reserves" articulating the intent that future planning and development of this area would utilize Metro's Integrated Habitats approach emphasizing protection and enhancement of the critical habitat areas. The intent of utilizing an "Integrating Habitats" approach is to emphasize that the future planning and development of this property must achieve protection and enhancement of the critical habitat areas, while utilizing progressive and sensitive development practices.
- An Urban Reserve designation for this property provides Metro, Washington County, service providers and the landowner with the certainty necessary to plan for and provide services in a smart, comprehensive and cost-effective manner. The effect of designating the property Rural Reserve dramatically increases the costs, causes considerable time delays, and produces less than satisfactory environmental outcomes.

### **North Bethany Plan: Creating a community of distinction**

Washington County began the 800-acre North Bethany Plan more than four years ago as part of the Metro planning requirement for areas brought into the UGB in 2002. Integration of the urban and natural areas with the existing surrounding area is specifically identified as a goal of the North Bethany planning effort. The goal was to create a “Community of Distinction” by integrating natural resources, using low impact development techniques at a scale never seen before in the Tualatin Basin, implementing regional stormwater facilities, and coordinating the placement of parks, pedestrian and bike facilities to create a sustainable and connected community.

### **Developing an integrated, comprehensive natural resources plan**

To fully implement the North Bethany Plan, Clean Water Services has taken the lead in the development of a comprehensive, integrated natural resources plan to protect and restore water quality, wetlands, and fish and wildlife habitat. The Community’s vision – developed from years of stakeholder involvement and discussion – is a protected, restored and enhanced corridor through and immediately adjacent to North Bethany.

### **An opportunity to provide large-scale ecological uplift**

Clean Water Services’ comprehensive natural resources plan to restore and provide long-term protection for the floodplains and wetlands along Rock Creek offers an opportunity to fulfill the overall vision of the North Bethany plan while providing meaningful ecological uplift benefiting the entire watershed. Properties between the western border of North Bethany and West Union Road property represent a complex of more than 130 acres of floodplain and wetlands. Clean Water Services approached the owner of the largest parcel, the Peterkort Family, to discuss how their parcel—adjacent to wetland restoration areas owned by PCC—was key to this vision. Through negotiations, written agreement was reached to include the property for enhancement, mitigation, and infrastructure necessary to implement the North Bethany Plan.

Upper Rock Creek is listed as Essential Salmon Habitat (ESH) for Coho and Winter Steelhead habitat. The Peterkort property offers an opportunity to enhance more than 50 acres of degraded floodplain, wetland habitat and stream corridor. The proposed plan will restore key fish and wildlife habitat; increase plant diversity; and improve floodplain function. Elements of the project include:

- Realignment of existing incised side channel to improve backwater rearing habitat;
- Placement of large woody debris (LWD) to restore floodplain function and create aquatic habitat;
- Restoration of native plant communities; and
- Reconnection with the side channel with the degraded floodplain to provide critical habitat linkages for sensitive species along this riparian corridor.
- Initial restoration and enhancement investment: \$1.25 million.

The ecological benefits of this landscape-scale mitigation project extend far beyond the limits of North Bethany. Creating a mosaic of native plant communities and habitats including ash forested, palustrine scrub shrub and emergent wetlands and riparian forest will not only protect, but improve the existing wildlife corridor for songbirds, raptors and mammals. It will increase

the functional buffer width between Rock Creek and the North Bethany development. Focusing efforts on the existing degraded wetland on such a large scale will enhance wetland functions for water storage and temperature management, and provide habitats for aquatic invertebrates, amphibians and reptiles (including Red legged frog), and waterfowl.

Clean Water Services' required easements over the floodplain and wetland mitigation areas will provide more certain protection of these critical water quality and habitat areas than if left as Rural Reserves where standard agricultural practices tend to discourage wetland diversity.

### **Efficient Service Delivery**

An Urban Reserve designation will allow for the efficient provision of gravity sewer service to North Bethany. Gravity sewer service is the most reliable, safe and sustainable option. Without the Urban Reserve designation and its corresponding property owner support, Clean Water Services will be required to construct two pump stations to serve the North Bethany area. Pump stations have significant long-term energy, maintenance and operations impacts on the environment and ratepayers. Construction costs for this pumping option will be approximately \$2 million more than serving the area with gravity sewers; will delay implementation by up to three years; and forsake an opportunity to provide large-scale, meaningful protection and restoration of Rock Creek corridor.

Wastewater collection and treatment, specifically pumping water, is one of the most energy intensive functions managed by the public sector. Gravity sewer service is the most reliable, safe and sustainable option. The pump station alternative has significant long-term energy, maintenance and operations impacts on the environment and ratepayers. As part of Clean Water Services' sustainability strategy, we have sought to remove pump stations from our system as they are enormous energy consumers and contribute substantially the District's carbon footprint.

### **Building on our experience, knowledge and expertise**

Clean Water Services has gained the experience, knowledge, and expertise – and developed the necessary resources – to accomplish large-scale restoration projects. In the last five years, Clean Water Services has restored nearly 35 miles of stream corridors in the rural and urban areas of the Tualatin basin by planting more than 4.6 million native trees and shrubs. Successful large-scale restoration projects have been implemented at Englewood Park in Tigard, Oregon Episcopal School in Beaverton, and an Oak Savannah restoration in Tigard's Cook Park. Our nationally recognized partnership with the Farm Service Agency's Natural Resource Conservation Service and Tualatin Soil and Water Conservation District has also allowed us to implement large-scale stream corridor restoration and protection along rural tributaries in the basin.

### **Collaborative partnerships**

Like Metro, Clean Water Services has a history of establishing partnerships, working cooperatively with both public entities and private property owners, both inside and outside the urban growth boundary. That partnership includes the agricultural community through various programs for tree-planting and stream corridor restoration. Clean Water Services has not used its

authority of eminent domain in the rural area. We believe that such efforts have enhanced our ability and reputation to do the right thing cooperatively rather than through the courts.

**A showcase opportunity**

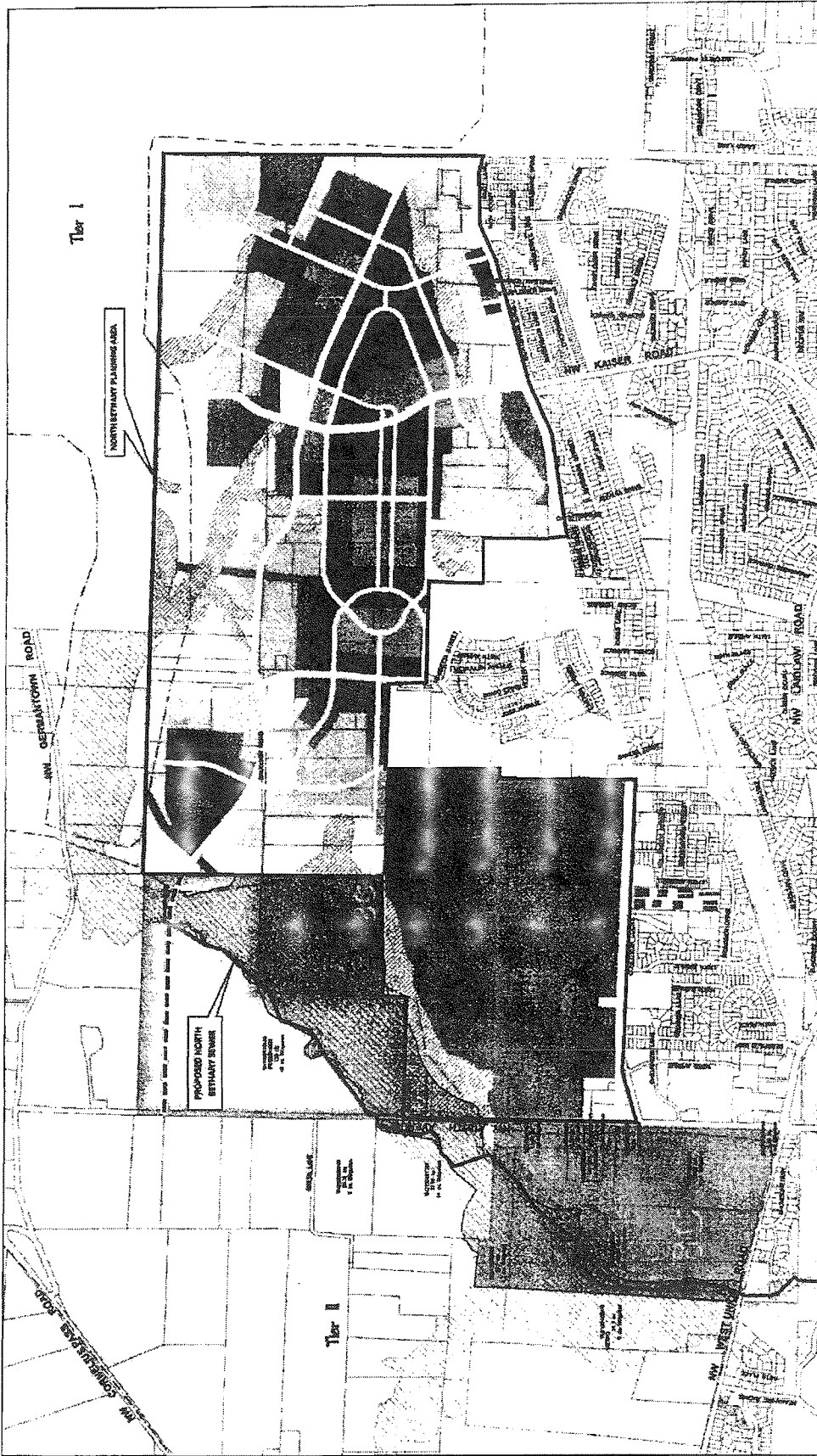
Clean Water Services, Washington County, and the entire region have a great opportunity to showcase smart, comprehensive, environmentally sensitive, and cost-effective planning at its best. It is an opportunity we don't want to lose.



# Urban & Rural Reserves Near North Bethany

## North Bethany Concept Plan

- Map Information: February 25, 2010 ICA Expiration Areas
- Urban Growth Boundary
- Rural Reserve
- Recreation/Urban Reserve
- Primary Street
- Land Use and Natural Feature Categories
- Low Density Residential 1
- Low Density Residential 2
- Medium Density Residential 1
- Medium Density Residential 2
- High Density Residential
- High Density Specialty
- Class Commercial
- Industrial
- Medium - Estimated CMA Verticalized Center



1916

To: Washington County Reserves Coordinating Committee

From: Robert F. Peterkort,

representing owners group, Washington County tax lots #R590970 and #R590961

Date: August 18, 2009

Re: Urban Reserve Designation

Dear Committee Members,

We are joint owners of approximately 129 acres, located between the North Bethany planning area, and 185<sup>th</sup> Avenue, north of the PCC Rock Creek property. A map showing this property and relevant details is attached.

Thank you for recommending our property for "urban reserve" status. We strongly agree with your recommendation, but have become concerned by the number of public comments urging "rural reserve" status for areas north of highway 26. We would like to reiterate why we think you have made the correct decision for our property. Specifically, we think the following Urban and Rural Reserve Factors make our property ideally suited for urban reserve status.

**Urban Reserve Factor 1:** The current North Bethany plan calls for a new, major east-west arterial (Road A in the North Bethany plan) to cross our property and connect to 185<sup>th</sup> avenue. The North Bethany plan also calls for significant widening of 185<sup>th</sup>, along the western border of our property. Consistent with urban reserve factor 1, these transportation improvements provide much of the necessary transportation infrastructure necessary for urbanization of our property.

**Urban Reserve Factor 3:** Clean Water Services is currently in the design process to construct a major sewer trunk line through our property down the Rock Creek stream corridor. This sewer line is necessary to serve the planned development in North Bethany. The North Bethany planning process has also shown that water is readily available to our property. The October 17, 2006 Bob Fuller/CH2M Hill memo titled "Water Infrastructure Availability North Bethany Planning, Concept Plan Phase" states, "If the urbanizable area is extended to the west through future Urban Growth expansions, this 435 service can serve it, too." Consistent with Urban Reserve factor 3, sewer and water services are readily available to serve our property with little additional investment in infrastructure.

**Urban Reserve Factors 4, 5, and 7:** Of our 129 acres, more than 50 acres are Rock Creek stream corridor, which Metro has identified as Tier II lands in the Rock Creek Headwaters and Greenway Target Area. If and when our property is brought into the UGB and urbanized, we expect to transfer ownership of the stream corridor acreage to the public domain. Consistent with factors 4, 5, and 7, this would provide public agencies the ability to create public green space, preserve and enhance the wetlands, and create public trails, parks and other public amenities.

**Rural Reserve Factor 2d:** With Road A through our property, and the widening of 185<sup>th</sup> to arterial status, access to our property will be limited to arterial streets designed to serve urban areas, and will result in smaller parcels, less efficient for agricultural purposes. Even without the planned urban facilities in and around our property, the Oregon Department of Agriculture's "Agricultural Lands Hierarchy" classified our property as "important", rather than the higher value "foundation" agricultural land. The planned urban improvements further reduce the already marginal agricultural value.

We think our assessment of the suitability for urban reserve status is confirmed by the fact that both Beaverton and Hillsboro have expressed willingness to accept governance for our property in the future.

In summary, we thank you and strongly agree with your recommendation for urban reserve status for our property. If any of you would like to further discuss this situation, please feel free to contact us.

Sincerely,

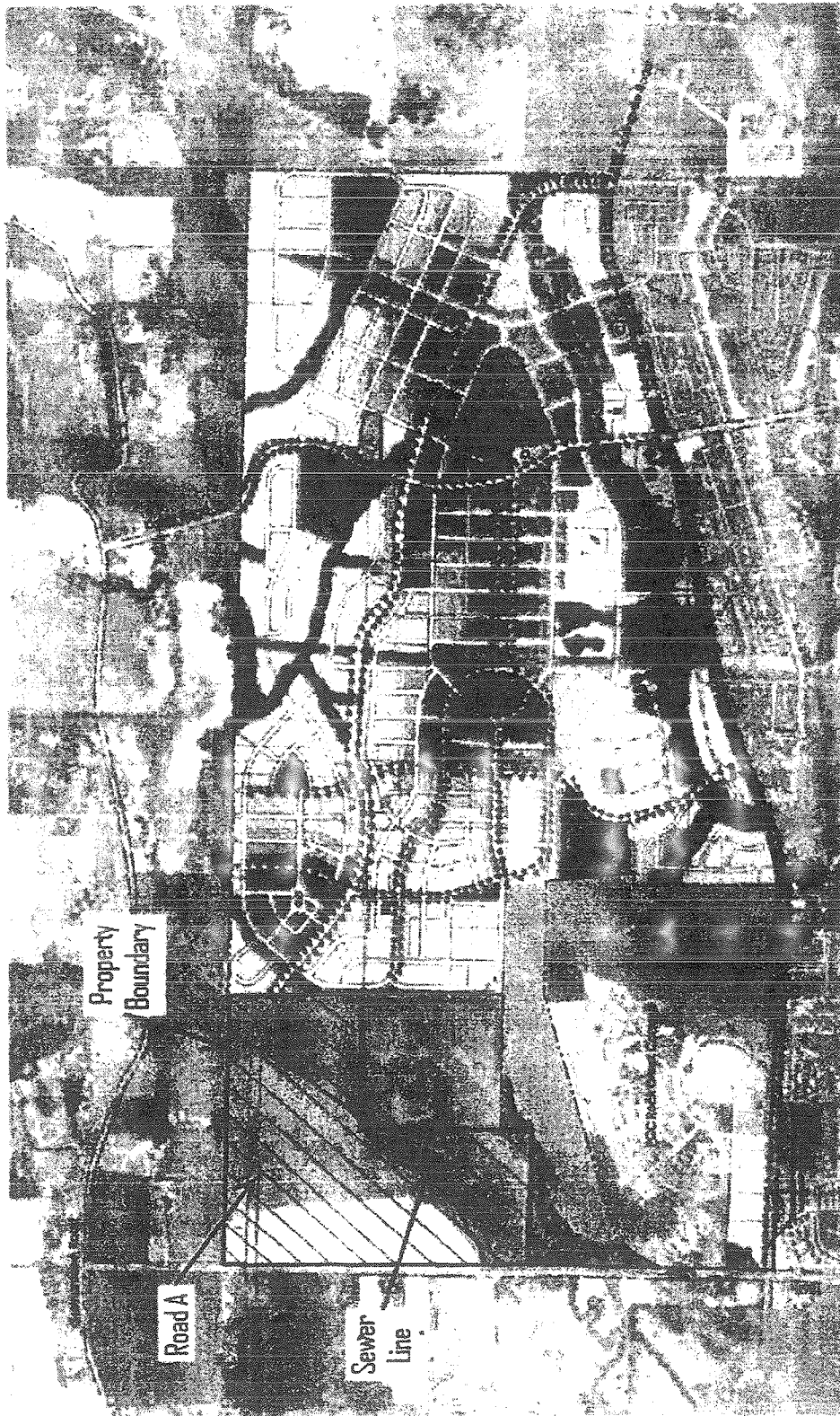
Robert F. Peterkort



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541-908-6241  
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Owners Group:

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Carol F. Peterkort  
John J. Peterkort  
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Norman J. Peterkort  
Robert F. Peterkort  
Steven A. Peterkort  
Madalyn M. Rustagi



Map adapted from May 5, 2009 North Bethany Stakeholder Work Group packet materials.

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## North Urban Reserve Area

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

The North Urban Reserve Area can be served by water, storm and sanitary sewer lines extended for the Bethany area that was brought into the UGB in 2002. The Metro Infrastructure Improvements Analysis Water Suitability Map depicts the Southwest Urban Reserves Area as having high water suitability. Tualatin Valley Water District is expected to be the water service provider for this area as the current water service boundary between the City of Hillsboro and TVWD is Cornelius Pass Road. The estimated cost for a fully developed potable water system for the North Urban Reserve Area is \$81,795,153 in 2009 dollars.

Sanitary and Storm Sewer services for the North Urban Reserve Area will most likely be provided through Clean Water Services in coordination with the cities of Beaverton and Hillsboro. The Metro Infrastructure Improvements Analysis Sewer Efficiency Map depicts the North Urban Reserve Area as being moderately difficult to serve. As urban development moves into this area new sewer trunks and lines will be required. The estimated cost for fully developed piped sanitary sewer and storm drainage systems in the North Urban Reserve Area is \$28,829,080 for each, resulting in a total of \$57,658,160 for both in 2009 dollars. These improvements are expected to be funded through the existing System Development Charge structure.

Existing transportation facilities require considerable upgrades accommodate current and future growth projections. New transportation infrastructure will also be required. Further discussion of transportation improvements and their costs is provided in subsection 4, below.

***(2) Includes sufficient development capacity to support a healthy economy;***

It is expected that the North Urban Reserve Area will primarily develop with residential uses to support industries and employment areas developing in Hillsboro directly to the south and west and existing industries within the City of Beaverton to the southeast. Land within this expansion area is generally not suitable for industrial employment since contiguous land outside of natural resource lands is not large enough for many industrial uses and the area lacks proximity to airports and railways of significant size. Service industry employment is anticipated to be the main job provider in this area. The North Urban Reserve Area is expected to contain approximately 30 acres of mixed use zoned land, which will provide neighborhood center services to surrounding residential uses.

***(3) 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;***

The North Urban Reserve Area is expected to be served by several appropriate, capable and proven service providers, as follows:

- Fire: Tualatin Valley Fire and Rescue currently provides service to this area. Additional fire stations may be required as development levels reach specific thresholds for service as set by the fire district.

- Schools: Provision of public education services is currently provided by Beaverton School District east of Rock Creek south of Green Lane and by Hillsboro School District over the remaining area. Capital improvement bond funds will likely be required in order to acquire approximately 40 acres in order to construct an estimated need for potentially 2 elementary schools and 1 middle school.
- Parks: This area is currently not served by a park district. Provision of park services in this area will require annexation into THPRD, as the City of Beaverton does not have a parks department.

***(4) 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;***

Development of the North Urban Reserve Area is expected to include a few solutions. Bikeways and recreation trails along natural resource corridors and a Bonneville Power Administration (BPA) line will provide connected off-street options. Upgrading of existing roads and construction of new roads will be required to accommodate a mix of transportation options. Bus transit stops are expected to locate near neighborhood centers as ridership needs meet thresholds for service. Weaving trails, roads and transit facilities will provide residents, employees and visitors with a well-connected travel system.

The cost for upgrading existing road facilities and constructing new road facilities is estimated at \$115,000,000 in 2009 dollars. This total includes \$107,000,000 for upgrades and \$8,000,000 for new facilities, but does not include trails and transit amenities. The estimate is based on the roads depicted on the pre-qualifying concept plan constructed as five land arterials. In order to project the cost for a future year, the estimated cost should be multiplied by 6% per year for inflation.

***(5) Can be designed to preserve and enhance natural ecological systems;***

As noted above, floodplains, slopes greater than 25 percent Washington County's Goal 5 Inventory and Metro's Goal Five Inventory classes I, II, III and A, B, C have been removed from the total gross acreage as part of calculating for net buildable acreage. Most of the acreage included in the noted categories is associated with Rock Creek and tributaries of Rock Creek within the North Urban Reserve Area. The location of resources within these categorized does not preclude the area from being designed and developed respective of preserving and enhancing the natural ecological systems.

Creeks from the North Urban Reserve Area primarily drain into Rock Creek, which flows to the south. In tact ecological systems associated with these creeks are expected to be preserved and enhanced as the area develops. In limited instances floodplains may be developed with ball fields or soccer fields for schools and parks.

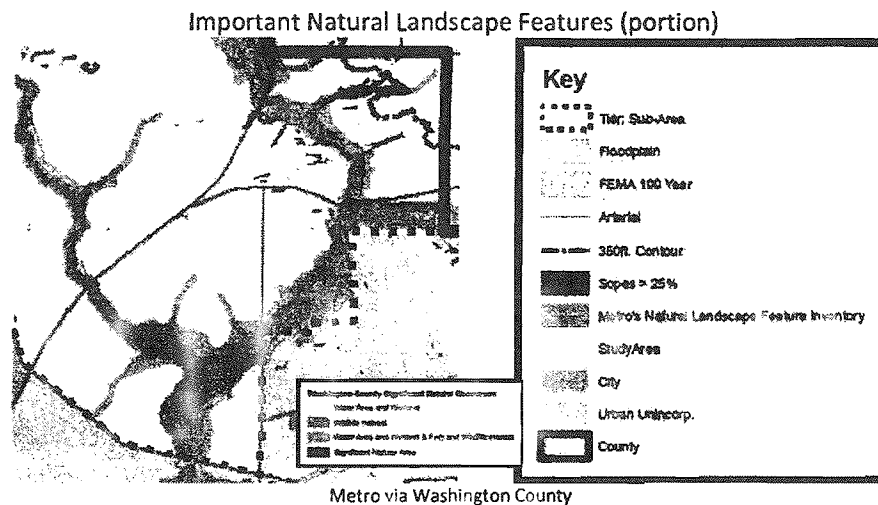
As with creeks, other natural ecological systems that are not directly connected with stream flows will be evaluated for function, quality and size in order to determine the level of preservation and enhancement to ensure continuation of the resource's characteristics.

**(6) Includes sufficient land suitable for a range of needed housing types;**

The North Urban Reserve Area has the capacity to accommodate approximately 5,828 dwelling units with at least 30 of those dwelling units within mixed use neighborhood centers allowing high density residential. Outside of mixed used designations, the remaining acreage is planned to develop with an average 10 units to the acre from low to medium densities.

**(7) Can be developed in a way that preserves important natural landscape features included in urban reserves; and**

Important natural landscape features within the North Urban Reserve Area involve many of the areas already included in the constrained areas listed previously in this document. Limiting development of the North Urban Reserve Area based upon site specific evaluations will allow for preservation of important natural landscape features.



**(8) 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.**

Land uses outside the boundaries of the North Urban Reserve Area vary. Suburban level development exists south of West Union Road and east of 185<sup>th</sup> Avenue. North and east of the Washington County/Multnomah County lines within Multnomah County the land uses are farm, forestry and rural residential, currently under consideration for urban reserve designation by Multnomah County. Lands west of Cornelius Pass Road are also farm, forestry and rural residential; however these lands are also under consideration for urban reserves. Forestry and farm lands in and around the North Urban Reserve Area are considered to be Tier 3 as aggregated by Washington County.

Bethany that staff from the County, with the assistance of Clean Water Services and consultants, have looked at. He reported that there are high quality wetlands and some more marginal wetlands. Mr. Curtis said that associated with providing the urban services in North Bethany, some mitigation will have to be done offsite because there are not a lot of opportunities onsite. He stated that the best opportunities for that were on the Peterkort property within the floodplain. Mr. Curtis went on to say that that connects with a Metro property that is downstream. He said that there are upstream opportunities that Metro has prioritized for greenspaces investment. Mr. Curtis stated that there are environmental impacts that are associated with and can be enhanced for that corridor. He said that it is not just a sewer corridor; it is an environmental mitigation for North Bethany as well. Mr. Curtis concluded that to stop and change courses would have an impact and staff would have to advise the Board that North Bethany could not be finished this year.

Mr. Curtis said that staff talked a little bit in the issue paper about the cost differential for the sewer. He stated that one thing noted in the issue paper is that the Peterkort family has worked with Clean Water Services and is prepared to provide gratis easements for the sewer trunk line and easements for the mitigation area, as well as willing participation in the land use process. Mr. Curtis said that if those two things do not occur, if it is not urban reserve, then we cannot count on getting the gratis donation for the easement for the sewer line or the mitigation area; we cannot count on the cooperation and the likelihood of moving ahead with that would require a condemnation action (which would be challenging, more expensive and problematic in regard to the permitting process for land use).

Commissioner Schouten asked if a gravity flow sewer line could run through that Road A corridor. He wanted to know if the right to put that road in would include the ability to have the easements for sewer line. Commissioner Schouten was interested in the legal engineering questions about whether or not we can do gravity flow along Road A and if there is anything that precludes us from doing mitigation work with respect to wetlands in the area that becomes designated rural reserves.

Bob Cruz said that the simple answer to the question in regard to gravity sewer for Road A is "no". He stated that the depths and just to get there is not feasible in terms of constructing sewers.

Commissioner Schouten asked if there is anything about rural reserves that would preclude us from doing wetland mitigation on the Peterkort property if that area is designated rural reserves.

Bob Cruz stated that the difficulty in proposing to construct urban services or due to urban mitigation in a rural area is a land use issue. In his experience in making those kinds of proposals without property owner confirmation, it has been nearly impossible, very difficult to get approvals for those kinds of improvements outside the urban areas.



**(5) Can be designed to preserve and enhance natural ecological systems;**

An outline of natural resources within Area 8A is provided in the PQCP (WashCo. Rec. at 3133). It is Hillsboro's intent to preserve and incorporate these areas as open space into future neighborhoods (WashCo. Rec. at 3133-34). The City has implemented its Significant Natural Resource overlay to protect such natural resources and any development in these areas will be required to address preservation of wildlife habitat, natural vegetation, wetlands, water quality, open space and other natural resources important to the ecosystem (WashCo Rec. at 3136).

**(6) Includes sufficient land suitable for a range of housing types;**

The adopted urban reserves have significantly reduced the amount of housing that will be provided in North Hillsboro (Table 1). However, combined with efforts in AmberGlen (high-density housing), downtown and South Hillsboro (mixed densities and housing types), the city will be able to provide a broad mix of housing throughout the City (WashCo Rec. at 3112, 3117 & 3452). Housing provided in Area 8A is particularly important, as it is in close proximity to new and proposed industrial areas (attached Map and WashCo Rec. at 3451), which will further the region's efforts in reducing vehicle miles traveled and, thus reduce green house gas emissions and creating livable communities.

**(7) Can be developed in a way that preserves important natural landscape features included in urban reserves, and**

See response to subsection (f) and WashCo Record at page 3136.

**(8) Can be designed to avoid or minimize adverse effects on farm and forest practices and on important natural landscape features on nearby resource land, including land designated as rural reserves.**

Natural and artificial features make up the boundaries for Area 8A, including Highway 26 to the north and Dairy Creek to the west (attached Map; WashCo Rec. at 3451).

***RURAL RESERVE FACTORS***

***(2) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to provide long-term protection to the agricultural industry or forest industry, or both, a county shall base its decision on consideration of whether the lands proposed for designation.***

***(a) Are situated in an area that is otherwise potentially subject to urbanization during the applicable period described in OAR 660-027-0040(2) or (3) as indicated by proximity to a UGB or proximity to properties with fair market values that significantly exceed agricultural values for farmland, or forestry values for forest land;***

The area is directly adjacent to the UGB and thus subject to urbanization (WashCo Rec. at 3013, ranking the majority of the area highly subject to urbanization with the western portion “medium”).

*(b) Are capable of sustaining long-term agricultural operations for agricultural land, or are capable of sustaining long-term forestry operations for forest land;*

The area has a mix of lot size and ownership blocks (WashCo Rec. at 3019-3021) and the area is characterized by medium/high agricultural productivity (WashCo Rec. at 3017). There are pockets of low to medium density rural residential throughout area 8A (WashCo Rec. at 3022-23). A portion of Area 8A adjacent to Highway 26 and the Brookwood Interchange, including areas containing high rural residential development, is ranked as Tier 3 on the County Farm Analysis, with the remainder ranked as Tier 2 (WashCo Rec. at 2294-2302, 2340 & 3025). The area north of Waibel Creek is similarly split between Tiers 2 and 3. Tier 1 is considered by the County to be the most suitable for agricultural purposes, with Tiers 2 and 3 increasingly less suitable (WashCo Rec. at 2300).

*(c) Have suitable soils where needed to sustain long-term agricultural or forestry operations and, for agricultural land, have available water where needed to sustain long-term agricultural operations; and*

Area 8A is predominantly Class II soils and has a few parcels with water rights, and most of the few that do have water rights are located to the south of Waibel Creek. (WashCo Rec. at 3015-16). Area 8A is not within the Tualatin Valley Water District (WashCo Rec. at 3015).

*(d) Are suitable to sustain long-term agricultural or forestry operations, taking into account:*

*(A) for farm land, the existence of a large block of agricultural or other resource land with a concentration or cluster of farm operations, or, for forest land, the existence of a large block of forested land with a concentration or cluster of managed woodlots;*

*(B) The adjacent land use pattern, including its location in relation to adjacent non-farm uses or non-forest uses, and the existence of buffers between agricultural or forest operations and non-farm or non-forest uses;*

*(C) The agricultural or forest land use pattern, including parcelization, tenure and ownership patterns; and*

*(D) The sufficiency of agricultural or forestry infrastructure in the area, whichever is applicable.*

As outlined below, parcelization patterns in the form of rural residential uses split the area north of Waibel Creek in half, both adding to traffic conflicts between urban and farm uses, as well as thwarting efforts to preserve large blocks of viable farmland:

- As highlighted in the DLCDC staff report, the County’s findings for the portion contained in Farm Analysis subarea 14 is “characterized by a high level of urbanization, lower

- There is no forest land in Area 8A (*WashCo Rec.* at 2999).
- Area 8A has two areas of exception land, both of which are north of Waibel Creek – one adjacent to the interchange with Brookwood Parkway and Hwy 26 and the other extending up from the existing UGB to Meek Road midway between Brookwood Parkway and Jackson School Road (*WashCo Rec.* at 3019-20). This second exception area, which is north of Waibel Creek, essentially splits the area north of Waibel Creek in half (*WashCo Rec.* at 3288). These exception areas are characterized by parcel size of less than 8.64 acres and ownership patterns of less than 18.15 acres and are improved with rural residential dwellings (*WashCo Rec.* at 3019-22). There is no buffers between these rural residential uses and surrounding agricultural uses (*WashCo Rec.* at 3019-22). As testified by the Washington County Farm Bureau, such rural residential uses, as well as proximity to the UGB, result in conflicting traffic patterns on rural roads. Jackson School Road already experiences urban traffic usage.
- As noted in response to subsection (c), Area 8A is not within the Tualatin Valley Water District and few parcels have water rights. There is no known additional agricultural infrastructure in the area.
- Foundation Farm Land (Oregon Department of Agriculture’s Agricultural Lands Inventory, *WashCo Rec* at 2996)
- Washington County Farm Lands Tiers Analysis – Tiers 2 & 3 (approximately 70% - 30%, respectively), Subareas #13 - High Urbanization, Lower Productivity Rating, Bigger parcels; #14 High Urbanization (small portion is Medium), Lower Productivity Rating, Smaller Parcels, Physical Features help define the area, Higher Dwelling density (*WashCo Rec* at 2978 to 2979 [table] and 3025 [map])
- Washington County Urban Reserve Recommendation – Urban Reserve (*WashCo Rec* at 3034 [map]), adopted by IGA (*WashCo Rec* at 7998 to 8010)

### ***EXPLANATION FOR THE DESIGNATION OF AREA 8A AS URBAN RESERVE***

#### ***Suitability for Urban uses:***

As noted in the findings, this area was selected as urban reserves “for its key location along the Sunset Highway and north of existing employment land in Hillsboro and also because of the identified need for large-lot industrial sites in this region” (*WashCo Rec.* at 9670, citing *WashCo Rec.* at 3124-3128). The area will further the region’s efforts to meet projected large lot industrial needs. Unlike other areas studied for urban reserves, this area has been shown to meet the industry criteria for large lots (*WashCo Record* at 3125 & 3163). As reflected in the PQCP and findings and the record (*WashCo Record* at 3111-12, 3125 & 3163), unique characteristics of Area 8A include:

## **Index of Appendix**

Table: Location of Answers to Assignments of Error .....	APP-1
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**TABLE: LOCATION OF ANSWERS TO ASSIGNMENTS OF ERROR**

<b>Petitioners</b>	<b>Assignments</b>	<b>Answering briefs with responsive arguments</b>
1000 Friends of Oregon, Dave Vanasche, Bob Vanderzanden and Larry Duyck	First	Washington County, Hillsboro
	Second	Washington County, Hillsboro
Barkers Five, LLC and Sandy Baker	First	Multnomah County
	Second	LCDC
Carol Chesarek and Cherry Amabisca	First	Washington County
	Second	LCDC
	Third	LCDC
City of Tualatin and City of West Linn	First	Metro, Clackamas County
	Second	Metro, Clackamas County
Elizabeth Graser-Lindsey and Susan McKenna	First	Clackamas County
	Second	Clackamas County
Chris Maletis, Tom Maletis, Exit 282 A Dev. Co., LLC and LFGC, LLC	First	Metro
	Second	Clackamas County, LCDC
	Third	Metro
	Fourth	Metro
	Fifth	Clackamas County
Metropolitan Land Group	First	LCDC
	Second	Metro, Multnomah County
	Third	Metro
	Fourth	Clackamas County
Save Helvetia and Robert Bailey	First	Hillsboro, Metro; Washington County
	Second	Hillsboro; Washington County
Springville Investors, LLC and Katherine and David Blumenkron	First	LCDC
	Second	Metro
	Third	Multnomah County

*CERTIFICATE OF FILING AND SERVICE*

I hereby certify that on December 11, 2012, I filed the **Respondent Washington County's Answering Brief** by Appellate Court Administrator via the Oregon Appellate Court eFiling System.

I also certify that on December 11, 2012, I served a true and correct copy of **Respondent Washington County's Answering Brief** on the following attorneys and parties via ECF (electronic filing with the Oregon Appellate Court eFiling system).

<i>Name and Address</i>	<i>Attorney for</i>
Kristian Spencer Roggendorf O'Donnell Clark & Crew, LLP 1650 NW Naito Parkway, Suite 302 Portland, OR 97209	Petitioners Barkers Five and Sandy Baker
Wendie Kellington P.O. Box 159 Lake Oswego, OR 97034	Petitioners Barkers Five and Sandy Baker
Patrick M. Ebbett DOJ Appellate Division 1162 Court St NE Salem, OR 97301	Respondents LCDC and State of Oregon
Jeffrey G. Condit Miller Nash, LLP 111 SW 5 <sup>th</sup> Ave, Suite 3400 Portland, OR 97204	Petitioners City of Tualatin and City of West Linn
Christopher D. Crean Pamela J. Beery Beery Elsner Hammond, LLP 1750 SW Harbor Way, #380 Portland, OR 97201	Respondent City of Hillsboro
Rhett C. Tatum Clackamas County Counsel 2051 Kaen Road Oregon City, OR 97045	Respondent Clackamas County

Carrie A. Richter Garvey Schubert Barer 121 SW Morrison St, 11 <sup>th</sup> Floor Portland, OR 97204	Petitioner Save Helvetia
Jed Tomkins Multnomah County Atty's Office 501 SE Hawthorne Blvd, Suite 500 Portland, OR 97214	Respondent Multnomah County
Roger A. Alfred Office of Metro Attorney 600 NE Grand Ave Portland, OR 97232	Respondent Metro

I also certify that on December 11, 2012, I served two (2) true and correct copies of **Respondent Washington County's Answering Brief** on the following attorneys and parties via **Mail** (First class mail plainly addressed as shown and deposited, postage fully prepaid, with the U.S. Postal Service).

Alison Kean Campbell Office of Metro Attorney 600 NE Grand Ave Portland, OR 97232	Respondent Metro
Michael F. Sheehan 33126 SW Callahan Road Scappoose, OR 97056	Petitioners Carol Chesarek and Cherry Amabisca
Mary Kyle McCurdy 1000 Friends of Oregon 133 SW 2 <sup>nd</sup> Ave, Suite 201 Portland, OR 97204	Petitioners 1000 Friends of Oregon, Dave Vanasche, Bob Vanderzanden, and Larry Duyck
Christopher James The James Law Group, LLC 1501 SW Taylor St, Suite 200 Portland, OR 97205	Petitioners Katherine and David Blumenkron and Springville Investors, LLC
Steven L. Pfeiffer Perkins Coie, LLP 1120 NW Couch, 10 <sup>th</sup> Floor Portland, OR 97209	Petitioners Chris Meletis, Tom Meletis, Exit 282A Development Co, LFGC, and Metro Land Group

Matthew D. Lowe O'Donnell Clark & Crew, LLP 1650 NW Naito Parkway, Suite 302 Portland, OR 97209	Petitioners Barkers Five and Sandy Baker
Elizabeth Graser-Lindsey 21341 S. Ferguson Road Beavercreek, OR 97004	Petitioner Pro Se
Susan McKenna 22800 S. Ferguson Road Beavercreek, OR 97004	Petitioner Pro Se

*s/Alan A. Rappleyea*

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Of Attorneys for Respondent Washington County

*s/Jacquilyn Saito-Moore*

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