

Carol Chesarek
13300 NW Germantown Road
Portland, OR 97231

Cherry Amabisca
13260 NW Bishop Road
Hillsboro, OR 97124

July 14, 2010

To: Urban and Rural Reserves Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

Subject: Objection to Urban and Rural Reserves, Metro Ordinance No. 10-1238A and
Washington County Ordinance 733

Dear Urban and Rural Reserves Specialist,

We wish to file an objection to the regional decision to designate Tax Lot 1N1 18, Lot 100 (hereafter known as "the Peterkort property") as an Urban Reserve. This parcel is part of Washington County Urban Reserve Area 8C. We believe this decision violates statutes, goals, and administrative rules that apply to urban and rural reserves.

Carol Chesarek served on the Multnomah County Reserves Citizen Advisory Committee. Carol and Cherry Amabisca both testified at numerous Reserves Hearings held by Metro, Multnomah County, and Washington County. We both submitted written testimony during the Reserves process. As a result, we have standing to file objections. A list of other individuals who testified, who have standing and who support these objections is attached as Exhibit 1.

Because the findings in Metro Ordinance No. 10-1238A and Washington County Ordinance 733 are almost identical, we will refer to the Metro decisions, where applicable. References to "the County" or "County" mean Washington County.

We have several objections to Metro's decision to designate the Peterkort property as an Urban Reserve (part of Washington County Area 8C), which we have explained below.

We concur with the decision to designate the other portions of Area 8C as Urban Reserves, because the developable portions of those properties are on the urban (south) side of Rock Creek, adjacent to existing arterials, bus line to light rail, and a small shopping center with a full service grocery store. The property in 8C that is adjacent to Peterkort is south of Rock Creek, comprising mostly constrained floodplain and riparian corridor, and it is owned by PCC Rock Creek. PCC Rock Creek has been a good steward for their rural lands and riparian areas, supporting floodplain restoration and offering wetland education classes¹.

¹ Brian Lightcap letter, Washington County Urban & Rural Reserves Record, May 28, 2010, p. 9463

An Urban Reserve on the Peterkort property will result in a small 77 acre island of urban development. It would result in unnecessary and unavoidable adverse effects on adjacent and nearby farm practices and important natural landscape features by extending urban development beyond an extremely valuable buffer (the floodplain) between urban and rural uses, thus ruining forever the value of this floodplain “edge”.

To resolve these objections, and to comply with relevant goals and administrative rules, the Department should reject the Urban Reserve designation of the Peterkort property and recommend a Rural Reserve designation instead.

Objection 1: Designating the Peterkort property Urban Reserves Misapplies Urban Reserve Factors of OAR 660-027-0050, Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

The Metro decisions fail to address several important points in the Urban Reserve Factors. To balance this document, our analysis of the Urban Reserve Factors is located under Objection 2, starting on page 9, but the conclusions there apply to this Objection too.

According to Exhibit E to Metro Ordinance No 10-1238A, Reasons for Designation of Urban and Rural Reserves, Peterkort Property, pages 55-56, the reasons for designating the Peterkort property for urban uses are to provide an easement for a sewer line, to mitigate wetland impacts, to accommodate a road, and to enhance natural areas. Designating the Peterkort property as urban reserves does not facilitate sewer provision or stormwater management, or help accommodate this road. Utility facilities, such as stormwater collection or sewer pump stations, are allowed outright on land zoned for Exclusive Farm Use under ORS 215.283(1)(c). There is no planning limitation imposed by retaining the EFU zoning and designating the land rural reserve.

There is no evidence to suggest that the Peterkort property must be designated urban reserves in order to meet the County’s objectives. To the contrary, it is more likely that designating the area as urban reserves will diminish the value of natural features on and near the property and spoil a valuable buffer between urban and rural uses.

The County argues² that the entire 129-acre Peterkort site is 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 Metro decisions fail to provide an adequate factual base to support these assertions. They offer the four points below to support the inclusion of the Peterkort site within Urban Reserves. Here are their points and our response.

“1. Transportation: Provides urban land for public ROW and supports the development of a key transportation system link serving the future development of the North Bethany Community.”³

Response: The County asserts that a Peterkort UR will provide urban land for a public ROW and “support” development of a new road to serve North Bethany. But the county

² Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, pages 55, 56. See Exhibit 9 in Attachments.

³ Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, p 56. See Exhibit 9 in Attachments.

does not define this “support” or demonstrate that Peterkort will provide it.

The County has already completed the Goal Exception necessary for the extension of North Bethany Road A across the Peterkort property⁴, and this section of Road A is in the County’s acknowledged Transportation Plan⁵.

If the Peterkort property is an Urban Reserve, this ROW will likely be more expensive to purchase. An Urban Reserve on the Peterkort property is not needed to permit construction of this road, and might make the road more expensive by increasing the cost of securing the necessary Right of Way (the county has not identified any alternative routes for Road A).

Development of the Peterkort property will bring its own road and infrastructure needs, and these costs have not been estimated and weighed against possible funding benefits before concluding that development of the Peterkort property would be a net funding benefit for North Bethany. Development of the Peterkort property is likely to require more new roads (including some through adjacent agricultural land and natural features), or expansion of existing roads. It might also require other significant new infrastructure, such as a new reservoir. A new reservoir could cost more than \$3.5M, a pump station \$1.5M.

To argue that Peterkort development will help pay for a road to serve North Bethany development without estimating costs for infrastructure needed to serve Peterkort development is not sound. The Metro decisions fail to provide an adequate factual base to demonstrate that the Peterkort development will be able to finance road improvements and other infrastructure needed to serve the Peterkort property, let alone other new urban areas (any more than North Bethany is able to finance all the road improvements required to serve North Bethany).

“2. Sewer system connectivity: The optimal alignment for a primary gravity flow sewer trunk line to serve North Bethany crosses the Peterkort property. **NOTE: construction of a pump station-based option could delay construction of sanitary sewer services to the North Bethany area by at least three years.”**⁶

Response: The least expensive alignment of a primary gravity flow sewer trunk line to serve North Bethany does cross the Peterkort property. However, a Rural Reserve would not be an impediment to this sewer trunk line. The County argues that construction of an alternative route sewer line could delay construction of sanitary sewer service for up to three years, but this is not a relevant consideration for an Urban Reserve designation.

Sewer connectivity for North Bethany does not depend on an Urban Reserve on the Peterkort property. There are no legal or policy barriers to constructing a sewer trunk line through a Rural Reserve.

⁴ Washington County Ordinance No. 712, June 10, 2009. Link: <http://www.co.washington.or.us/LUT/Divisions/LongRangePlanning/upload/NB-Ord-712-complete.pdf>

⁵ Washington County Ordinance No. 733 Issue Paper No. 3, also in Washington County Urban & Rural Reserves Record, May 6, 2010, p. 8589. See Exhibit 10 in Attachments.

⁶ Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, p 56. See Exhibit 9 in Attachments.

The Covenant signed by the Peterkort family and Clean Water Services⁷ commits the Peterkort family to donate both sewer and wetland mitigation easements if Metro designates the property as an Urban Reserve by June 30, 2010, so these easements should already be committed, and under the terms of the Covenant they would not be lost if the Urban Reserve designation is now changed.

It is not clear that a three year delay in sanitary sewer service provision would slow development in North Bethany. Washington County has not yet approved a financing plan for North Bethany. No development that depends on this sewer trunk line can begin without an approved financing plan.

This sewer trunk line will serve only a portion of North Bethany, and development in that area also requires a number of new roads and other new infrastructure that will take years to build. Because of these extensive infrastructure needs, development in that area will not begin for many years even if a financing plan for North Bethany is approved in October.

There are other barriers to construction of this sewer trunk line.

There is no evidence in the record that Clean Water Services has signed easements with all of the property owners along the sewer trunk line route. Failure to secure any one of these easements could result in a delay and redesign of the sewer line.

There is also no evidence in the record that Clean Water Services has the necessary permits for this sewer trunk line (the permit is still being reviewed by the Department of State Lands), and comments opposing this route along Rock Creek have been filed with the Department of State Lands, including comments from Oregon Department of Fish and Wildlife (ODFW)⁸. ODFW recommends using pump stations instead, eliminating the need for the sewer trunk line through the Peterkort property.

The Peterkort property does not need to be designated Urban Reserves in order to provide sewer or stormwater management for North Bethany. Utility facilities such as stormwater collection or sewer pump stations are allowed outright on lands zoned for Exclusive Farm Use under ORS 215.283(1)(c). The Peterkort property is currently zoned for Exclusive Farm Use and could continue as such while providing utility facilities per ORS 215.283(1)(c).

The county has not demonstrated that designation of the Peterkort property as Rural Reserve would delay construction of this sewer trunk line, or that a delay in construction of the sewer trunk line is a valid Urban Reserve consideration. They have also failed to demonstrate that the only obstacle to timely and cost effective completion of the sewer trunk line is designation of the Peterkort property as Urban Reserve.

“3. Wetlands mitigation: The sewer plan identifies roughly 46 acres of valuable

⁷ Peterkort Covenant with Clean Water Services, February 19, 2010, p 2. Attached to Carol Chesarek letter to Metro Council, May 20, 2010, re: Metro Rural and Urban Reserves hearing, Peterkort Property in Washington County. See Exhibit 5 in Attachments.

⁸ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, “ODFW Comments”, p 8-11.

opportunities on the Peterkort property which can be used to mitigate wetland impacts caused by public infrastructure development in North Bethany.”⁹

Response: A Rural Reserve designation would be more compatible with using the Peterkort property for wetland mitigation. Wetland mitigation on the Peterkort property does not depend on an Urban Reserve designation -- there are no legal or policy barriers to wetland mitigation in a Rural Reserve.

There are extensive floodplains and wetlands in this area¹⁰ -- the Peterkort property is not the only viable candidate for wetland mitigation near North Bethany.

The Covenant signed by the Peterkort family and Clean Water Services¹¹ commits the Peterkort family to donate both sewer and wetland mitigation easements if Metro designates the property as an Urban Reserve by June 30, 2010. Wetland mitigation on the Peterkort property does not depend on maintaining the current Urban Reserve designation.

The County has failed to demonstrate that wetland mitigation for North Bethany depends on an Urban Reserve designation of the Peterkort property, and that wetland mitigation is not possible in a Rural Reserve.

“4. Enhancement of Natural Areas Program Target Area: Lands on the Peterkort site will support connections to important regional natural areas.”¹²

Response: The County argues that an Urban Reserve on the Peterkort property will “support” connections to important regional natural areas. But these wildlife connections exist today.¹³ Metro’s February 2007 *“Natural Landscape Features Inventory”* for Area #22 Rock Creek Headwaters says “These headwaters also provide wildlife habitat and trail connectivity from the Tualatin Valley to the Tualatin Mountains that includes Forest Park.” These wildlife connections are entirely compatible with the purpose of a Rural Reserve, and a Rural Reserve would better protect these connections for species that can be harmed by human intrusion into the area. There is insufficient evidence in the record that an Urban Reserve would adequately protect these sensitive species.

⁹ Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, p 56. See Exhibit 9 in Attachments.

¹⁰ Map attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, page 9447]. See Exhibit 3 in Attachments, Map 1: North Bethany Concept Plan Natural Features.

¹¹ Peterkort Covenant with Clean Water Services, February 19, 2010, p 2. Attached to Carol Chesarek letter to Metro Council, May 20, 2010, re: Metro Rural and Urban Reserves hearing, Peterkort Property in Washington County. See Exhibit 5 in Attachments.

¹² Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, p 56. See Exhibit 9 in Attachments.

¹³ Map attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, page 9447]. See Exhibit 3 in Attachments, Map 1: North Bethany Concept Plan Natural Features.

ODFW opposes¹⁴ the sewer trunk line through the Peterkort property due to adverse impacts on "sensitive priority habitat," including wildlife habitat fragmentation and harm due to additional human intrusion into the area. Development of the Peterkort property would greatly increase the human intrusion into this sensitive habitat area, far beyond intrusions due to a sewer trunk line.

ODFW has documented¹⁵ the presence of Northern Red Legged Frogs in this area. These frogs use extensive upland areas, up to 300 yards from ponds when they are not breeding. According to the City of Portland's Forest Park Natural Resources Management Plan¹⁶, these frogs are killed by vehicle traffic on roads, and amphibians can be killed by foot and bicycle traffic on trails as well. These frogs are highly terrestrial, using areas up to 300 yards from standing water during non-breeding season. These frogs are declining seriously in the Willamette Valley, and are no longer found in areas where they were once abundant.¹⁷

Elk currently use the Peterkort property, as documented by SaveHelvetia in a report¹⁸ that also describes the effects of urban development. Elk are sensitive to roads and human presence. According to Oregon Department of Fish and Wildlife's "Oregon's Elk Management Plan"¹⁹:

- "Numerous studies have shown ... Roosevelt elk are sensitive to human disturbances such as motorized travel on and off roads"
- "It is documented in numerous studies that human access to elk habitat due to increased road density can negatively affect elk habitat utilization and increase elk vulnerability... Habitat Effectiveness models developed from these studies all concluded that the effectiveness of habitat for elk declines as road density increases."

The City of **Portland's Forest Park Natural Resources Management Plan**²⁰ describes the harmful effects of roads and residential development on wildlife.

Metro's Technical Report for Fish and Wildlife Habitat says "recreation in wildlife habitats is negative in that human intrusions lead to alterations in habitat – for example, vegetation trampling, trails and roads – and may alter wildlife behavior, physiology and

¹⁴ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, "ODFW Comments", p 8-11.

¹⁵ *ibid.*, p 10.

¹⁶ *Ibid.* See Exhibit 2 in Attachments, "From the "Forest Park Natural Resources Management Plan" Portland Parks and Recreation, Bureau of Planning, Adopted by City Council February 8, 1995.", p 2.

¹⁷ "Northern Red-Legged Frog Survey" from Carol Chesarek letter to Multnomah County Board of Commissioners, May 6, 2010, Re: Urban and Rural Reserves. See Exhibit 4 in Attachments.

¹⁸ "Wildlife Habitat" report by SaveHelvetia.org, August 14, 2009 [Washington County Urban & Rural Reserves Record, pgs 5998-6014]

¹⁹ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, "Elk", p 7.

²⁰ *Ibid.* See Exhibit 2 in Attachments, "From the "Forest Park Natural Resources Management Plan" Portland Parks and Recreation, Bureau of Planning, Adopted by City Council February 8, 1995.", p 2,3.

distribution. ... In Colorado, elk experienced reproductive failure when repeatedly approached by humans (Phillips and Alldredge 2000)."²¹

The wildlife corridor between Forest Park and the Coast Range is critical to the health of the Forest Park ecosystem. For elk, the mix of open fields and shrub/tree cover on the southwest side of the Tualatin Mountains, including the Peterkort property, is a critical component to this corridor because the more northerly areas are densely forested and offer fewer food sources. Attachment 1 to Metro Resolution No. 07-3833: Summary of Comments from Stakeholder Interviews For Forest Park Connections Target Area says:

"Northwest corridor and Rock Creek connection properties are also important for maintaining habitat connections to adjacent natural areas and ecosystems, headwaters, and for buffering unique habitats. Important local elk habitat shared with Rock Creek. Elk use creek corridors for movement, feed in open fields, and use forested areas for cover/rest."²²

Development of the Peterkort property would eliminate elk habitat (the upland and riparian portions of the property are both used by elk), and it would also put two wildlife corridors at risk. Urban development on the north side of Rock Creek will disrupt elk use of the north/south wildlife corridor along the creek that leads to Holcomb Lake. It would also significantly narrow the important east/west wildlife corridor that lies between North Bethany and the western portions of City of Portland.²³

Metro's February 2007 "*Natural Landscape Features Inventory*" for Area #22 Rock Creek Headwaters says "These headwaters also provide wildlife habitat and trail connectivity from the Tualatin Valley to the Tualatin Mountains that includes Forest Park."

For Area #23 Forest Park Connections, Metro's February 2007 "*Natural Landscape Features Inventory*" says "The Forest Park connection area ... secures the integrity of the "big game" corridor that links the park with habitat in the northern Coast Range."

Urban development will also influence nearby wildlife habitat, casting a shadow much larger than its footprint, especially if there is not an effective buffer such as Rock Creek between that habitat and urban Bethany.

The Metro decisions fail to demonstrate that Enhancement of the Natural Areas Program Target Area depends on designation of the Peterkort property as an Urban Reserve. They also fail to demonstrate that development of the Peterkort property will "enhance" the connections for wildlife such as elk that use the area today. Such enhancement is more compatible with a Rural Reserve designation.

The only added cost or delay to North Bethany development that the County has demonstrated is likely if the Peterkort property is designated as Rural Reserve is the additional cost of paying for the wetland mitigation easement on the Peterkort property, with an approximate estimated value of approximately \$610,000. But if the property becomes an Urban Reserve, the cost of the ROW for Road A across the Peterkort property is likely to be higher, offsetting some or all of the cost of

²¹ Metro's Technical Report for Fish and Wildlife Habitat, April 2005, Exhibit F to Metro Ordinance No. 05-1077, Attachment 2, page 109.

²² Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, p. 6

²³ *ibid.* p. 4 "Stakeholders identified protection of east/west wildlife corridors as just as important as north/south corridors."

the wetland easements.

We cannot make Reserves decisions based on speculation about what the Peterkort family may or may not do if the property is designated as a Rural Reserve.

The urban reserve factors do not require consideration of timing – possible delays in development of North Bethany are not a valid Urban Reserve consideration.

“Integrating Habitats” does not add any new protections for natural features

The County has adopted “Principles for Concept Planning of Urban Reserves”²⁴ for Area 8C (including the Peterkort property), saying that the “Integrating Habitats’ approach ... shall be utilized.” The county uses this to imply that Area 8C will receive a higher level of protection than other riparian and habitat areas in Washington County, but there is no evidence in the record that the “Integrating Habitats” approach will provide heightened protection for wildlife and natural resources beyond what is currently required.

PRINCIPLES FOR CONCEPT PLANNING OF URBAN RESERVES²⁵ for Urban Reserve area 8C says:

“It is 305 acres, of which approximately 114 acres are constrained lands such as wetlands and floodplains. This Urban Reserve area provides vital habitat linkage for sensitive species along a riparian corridor. During concept planning, subsequent comprehensive planning and development review and implementation for the entire special concept plan area, the “Integrating Habitats” approach championed by Metro’s Nature in Neighborhoods program shall be utilized. The “Integrating Habitats” approach is intended to provide appropriate protection and enhancement of natural areas through the use of progressive and environmentally sensitive development practices. This approach combines and balances ecological stewardship and economic enterprise with protection of water quality and restoration and enhancement of key fish and wildlife habitats.”

Response: Integrating Habitats was a design competition sponsored by Metro²⁶. The competition did not provide any new measurable or enforceable standards for habitat protection; it relies on Metro Title 13, a standard that any development in this area is already required to comply with. Washington County has its own Goal 5 implementation program, incorporated into Metro Title 13, called the Tualatin Basin Program. This Program allows some types of development in floodplains, such as parking lots and ball fields, as long as flood capacity is not affected. This type of development would harm wildlife habitat, but is not prohibited by “Integrating Habitats.” Requiring use of the “Integrating Habitats’ approach” is not a substantive new requirement for Area 8C, it does not add any new protection for natural resources, water quality, or fish and wildlife habitats.

²⁴ Special Concept Plan Area C, from Exhibit B to Agreement between Metro and Washington County [Washington County Urban & Rural Record, page 9299], See Exhibit 8 in Attachments.

²⁵ Ibid.

²⁶ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, “Integrating Habitats”, p 11.

Goal 5 protections implemented in the Tualatin Basin Program are not sufficient to protect all elements of Natural Features, including upland resources, wildlife such as elk, and Sense of Place.

Remedy. Based on the above, the Peterkort property does not satisfy the factors of OAR 660-027-0050 and should not be designated urban reserves.

Objection 2: Designating the Peterkort property Urban Reserves fails to satisfy OAR 660-027-0040(1) that both the urban and rural reserve factors must be applied “concurrently and in coordination with one another.” , Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

Because of this requirement, it is improper to solely consider the case of urbanization without simultaneously considering whether these same lands might be more suitable for rural reserve protections. Washington County staff has noted that “the requirement to accommodate urban land need was the deciding element in choosing between an Urban Reserve designation rather than Rural Reserve designation, where the underlying suitability analysis would otherwise support either designation.”²⁷ This built-in bias in the County’s analysis violates the obligation to apply the urban and rural reserves factors concurrently.

Analysis by County staff acknowledges that the Peterkort property qualifies as both urban and rural reserves²⁸. The concurrency obligation requires deciding whether the land more closely satisfied rural objectives over urban, and if so, the land must be protected with a Rural Reserve.

The broad Rock Creek floodplain on Peterkort property exemplifies an important natural landscape feature. Rural Reserves are defined in SB 1011 Section 1 (1):

- (1) “Rural reserve” means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.” (underline added)

The County’s analysis for the remainder of 8C, Bethany West/West Union²⁹ says “Rock Creek and its associated broad floodplain (averaging over 800 feet in width at this location) provides an excellent buffer between the potential urbanization of this site and surrounding rural Reserve lands.” This shows that Metro and Washington County are aware of the value of this buffer. This floodplain is even wider where it crosses the Peterkort property.

The Metro decisions fail to address several important points in both the Urban and Rural Reserves factors. An analysis of each set of factors follows.

Analysis Under OAR 660-027-0050 - Factors for Designating Land as Urban Reserves

The following analysis responds to the urban reserves factors analysis in Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, p 56-58 (see Exhibit 9 in Attachments).

²⁷ Washington County Staff Report, Urban & Rural Reserve Recommendations, August 3, 2010.

²⁸ Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, p 55. See Exhibit 9 in Attachments.

²⁹ Ibid. p. 81

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

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.”

Response: It is not certain that the planned sewer trunk line across the Peterkort property will be built (see Response to “2. Sewer system connectivity” in Objection 1, page 4).

Urbanization of the Peterkort property is not required for Road A construction (see Response to “1. Transportation” in Objection 1, page 3).

There is no evidence in the record demonstrating that the Peterkort property would aid in funding long-term infrastructure construction and maintenance. North Bethany was expected to be efficient and cost-effective to develop when it was added to the UGB in 2002, but those expectations were sadly disappointed. Estimates of full infrastructure costs (roads including ROW, water, sanitary sewer, stormwater, schools, parks, affordable housing, etc) are needed to support claims that Peterkort development could aid long-term construction and maintenance for infrastructure.

The Metro decisions fail to provide an adequate factual base to demonstrate that the Peterkort development will be able to finance road improvements and other infrastructure needed to serve the Peterkort property, let alone other new urban areas (any more than North Bethany is able to finance all the road improvements required to serve North Bethany).

The necessity of crossing Rock Creek and the wide floodplain will make transportation connections to the Bethany area expensive and inefficient compared to other Urban Reserves that do not require crossing steelhead-bearing streams and broad floodplains.

There is inadequate evidence in the Metro decisions to support several assertions for UR Factor (1).

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

Together with remaining buildable lands within the UGB and other urban reserve lands throughout the region there will be sufficient development capacity to support a healthy economy. The addition of the Peterkort property adds approximately 80 acres of developable land to Urban Reserve Area 8C. The area could likely be developed as the sixth neighborhood of North Bethany, featuring a walkable community centered around

parks and mixed use areas.”

Response: Because the developable portion of the Peterkort property is separated from North Bethany by a broad floodplain, the Peterkort property will not be well connected to North Bethany neighborhoods, with only one direct road connection (Road A) likely. NW 185th will provide another connection, but there will be a gap of about 2000’ between the southern edge of Peterkort development and the nearest residential area to the south since the road must first cross the floodplain and then the edge of the Rock Creek PCC campus.

An isolated 77 acres of urban development is unlikely to support significant retail in this neighborhood. Most of the developable portions of the Peterkort property are more than 1 mile from nearby grocery stores, a distance most people are unwilling to walk to meet their daily needs. Maps 1 and 2 in Exhibit 3 (see Attachments) show that most of the developable part of Peterkort is more than 1 mile from the retail center with grocery store at NW 185th Ave and NW West Union Rd, and that all of the Peterkort developable area is more than 1 mile as the crow flies from the planned North Bethany mixed-use center (expected to include a small grocery type store) to be built along Kaiser Road. Road A crosses the narrowest point of the floodplain and riparian corridor, leaving the nearest residential development on either side roughly 500’ apart.

“(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;

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.”

Response: It is not clear whether the 77 acres of developable land could support a new elementary school. The Metro decisions do not consider that about two-thirds of the Peterkort property is in the Hillsboro school district, only about one-third is in the Beaverton school district that serves North Bethany.

“(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;

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.”

Response: As explained above in the Response to Urban Reserve factor (2) (see pages 10 and 11), the 77 developable acres on the Peterkort property would become an urban island, with EFU farmland to the west and the north, and the wide Rock Creek floodplain to the east and south. This tiny urban island will not have a network of local streets connecting it to the larger urban fabric due to these barriers, it will remain isolated.

The road connections to the Bethany area are likely to remain limited to Road A and NW 185th Ave. Any new or improved road connections must cross Rock Creek and its broad floodplain.

New off-street pedestrian (trail) connections between Peterkort and North Bethany would also require expensive bridges to cross Rock Creek. Rock Creek is used by steelhead.

As documented under #4 in Objection 1 above [clean up reference and add page #], Metro's Technical Report for Fish and Wildlife Habitat [Exhibit F to Metro Ordinance No 05-1077, Attachment 2] explains that recreation in wildlife habitats can lead to alterations in habitat and may alter wildlife behavior, physiology, and distribution. Trails inevitably alter habitat, and they are a source of human disturbance in wildlife areas.

Additional creek crossings would be expensive and potentially harmful to the creek. New trails to link the broader Bethany area along the Rock Creek corridor to not require an Urban Reserve, they are entirely compatible with a Rural Reserve.

The roads to the north (NW Germantown Road, etc.) and the west (NW Cornelius Pass Road, etc.) are rural roads, without bike lanes or sidewalks.

Tri Met expects that people will walk up to ¼ mile to reach a bus line. There is a single bus line providing service along NW Springville Road and on NW 185th Ave south of NW Springville Road, connecting to Westside Light Rail Transit, but this service is more than 1 mile from the developable portion of the Peterkort property. The other bus line serving PCC Rock Creek is even further away from the Peterkort property.

During North Bethany Stakeholder Workgroup meetings (held during 2006 and 2007), PCC Rock Creek representatives said they did not want any new roads from North Bethany to enter their campus.

The Peterkort property is bordered to the north and west by EFU-zoned farmlands in Rural Reserves. These resources would be harmed by any new roads constructed to create a more complete network of roads to serve the Peterkort property.

“(5) Can be designed to preserve and enhance natural ecological systems;
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.”

Response: It is almost impossible to meet this factor for the Peterkort property.

Factor (5) is not limited to natural ecological systems within the Urban Reserve. If an Urban Reserve will harm an ecological system that extends beyond the urban area, this factor cannot be met. The riparian area and floodplain between the developable portion of the Peterkort property and Rock Creek campus of Portland Community College (PCC Rock Creek) is used by the local elk herd, bobcats, and wildlife that is part of a larger ecological system – the Rock Creek Headwaters natural landscape feature, which is in turn strongly connected to the Forest Park Connections natural landscape feature.

As explained above the Response to “4. Enhancement of Natural Areas Program Target Area” in Objection 1 (page 6) elk are sensitive to roads and human presence, and City of Portland has documented the harmful effects of roads and residential development on wildlife.

Development of the Peterkort property would force elk out of that section Rock Creek, make it harder for them to reach the important habitat around Holcomb Lake, and could also harm both their east-west wildlife corridor across the foothills and their north-south corridor along the Rock Creek floodplain between Holcomb Lake and the Rock Creek Headwaters areas to the north.³⁰

According to Metro, Forest Park is a Habitat of Concern³¹. It is especially important to maintain the park’s wildlife corridor to the Coast Range. As mentioned above, Metro’s February 2007 “*Natural Landscape Features Inventory*” says “The Forest Park connection area ... secures the integrity of the “big game” corridor that links the park with habitat in the northern Coast Range.”

Urbanization of the Peterkort property would put this important east/west wildlife corridor on the south side of the Tualatin Mountains at risk – there is a relatively narrow “pinch point” in between North Bethany and the western part of Portland above North Bethany. New urban development on the north side of Rock Creek would endanger this important wildlife corridor by ruining the floodplain’s buffer between urban and rural areas. Elk, cougar, and black bear use this corridor. Development of the Peterkort property would also add more vehicles to NW Germantown and NW Cornelius Pass Roads, adding more urban pressure on nearby habitat and making wildlife crossings more hazardous.

Even if the factor is considered limited to the Urban Reserve area, forcing the elk out of this portion of their habitat would clearly harm a natural ecological system by reducing their habitat and by altering the ecosystem that they currently participate in.

As documented on page 8, Integrating Habitats was a design competition that did not provide any new measurable or enforceable standards for habitat protection; it relies on Title 13, which any concept plan for this area is already required to comply with.

There is no reason the Peterkort property cannot be used for wetland mitigation if it is designated rural reserve, an urban reserve designation is not required to allow wetland mitigation.

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

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

³⁰ Map attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, page 9447]. See Exhibit 3 in Attachments, Map 1: North Bethany Concept Plan Natural Features.

³¹ Map attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, page 9458]. See Exhibit 3 in Attachments, Map 3: Metro Habitats of Concern.

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.”

Response: There is no evidence in the record to show that the Peterkort property would be more suitable for a range of housing types or more attractive for housing than other Urban Reserve candidate areas in Washington County.

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

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.”

Response: According to OAR 660-027-0010(6), “ ‘Important natural landscape features’ means landscape features that limit urban development or help define appropriate natural boundaries of urbanization.” The Rock Creek floodplain is mapped as an important natural landscape feature, but its ability to limit urban development and help define appropriate natural boundaries of urbanization would be destroyed by developing the Peterkort property. There is no evidence in the record that the loss of these important functions was considered.

New urban roads and trails within the Peterkort area are likely to be within 300 yards of ponds in the Rock Creek floodplain and wetland areas between the developable portion of the Peterkort property and the Rock Creek campus of Portland Community College. Northern Red-Legged Frogs have been identified in this area, and these frogs use extensive upland habitat areas, up to 300 yards from their breeding ponds, making them susceptible to vehicle, bicycle, and foot traffic on roads and trails. According to the City of Portland’s Forest Park Natural Resources Management Plan³², amphibians can be killed by vehicle traffic on roads, and by foot and bicycle traffic on trails. Northern Red Legged Frogs are declining seriously in the Willamette Valley, and are no longer found in areas where they were once abundant.³³

Development of the Peterkort property is also likely to expand the urban intrusion into the sensitive habitats along Rock Creek by putting development near both sides of the floodplain and

³² Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, “From the “Forest Park Natural Resources Management Plan; Portland Parks and Recreation, Bureau of Planning, Adopted by City Council February 8, 1995.”, p 2

³³ “Northern Red-Legged Frog Survey” from Carol Chesarek letter to Multnomah County Board of Commissioners, May 6, 2010, Re: Urban and Rural Reserves

probably adding new trails through the floodplain and riparian areas. The City of Beaverton's Pre-Qualified Concept Plan³⁴ proposed ball fields as a possible use of this floodplain. The potential harm is documented³⁵ in comments from Oregon Department of Fish and Wildlife opposing the Clean Water Services application for permission to build a sewer trunk line across part of the Peterkort property.

Locational and topographic realities beyond the county's control will result in traffic from this area using NW Germantown Road to reach Portland. This added traffic will have a negative impact not only on adjacent agriculture, but also on Forest Park and the valuable wildlife corridors in the West Hills.³⁶ Elk are sensitive to human disturbance such as motorized travel.

Development of the Peterkort property would also destroy the sense of place provided by the floodplain and adjacent trees that currently mark a departure from the Bethany urban area and entry into a rural area with farms and floodplain surrounding you. This development would also eliminate a valued pastoral view from North Bethany as explained in RR factor 3e, Sense of place below (pages 18 and 19). The boundary and buffer between urban and rural uses that is provided by the creek and floodplain would also be lost.

“(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.

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.”

Response: The Cities of Beaverton and Hillsboro both appear to have included the Peterkort property in their Urban Reserves documented in their Pre-Qualified Concept Plans.

However, the Metro decisions fail to provide an adequate factual base to demonstrate that the Peterkort property can be designed so that urban development will avoid or minimize the adverse effects that will result from additional urban traffic on rural roads through nearby agricultural areas, and through important natural features, even though the harm of such roads is well documented.³⁷

³⁴ City of Beaverton Pre-qualifying Concept Plan, September 23, 2009, Washington County Urban & Rural Reserves Record p 3063

³⁵ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, “ODFW Comments”, p 8-11.

³⁶ Ibid. See Exhibit 2 in Attachments, “From the “Forest Park Natural Resources Management Plan”; Portland Parks and Recreation, Bureau of Planning, Adopted by City Council February 8, 1995.”, p 2,3.

³⁷ “Wildlife Crossings”, Washington County Urban & Rural Reserves Record, July 14, 2010, pages 9473 - 9480.

It would be difficult to avoid or minimize the harm in this case, since the fastest and most direct route to downtown Portland from the Peterkort property uses NW Germantown Road. NW Germantown Road runs through agricultural land being designated as rural reserves, through the Rock Creek Headwaters natural feature (and crossing the Rock Creek riparian area) and the Forest Park Connections natural feature, and through Forest Park itself. The City of Portland has already documented the harm that traffic on NW Germantown Road causes for wildlife in the park. Traffic from this area will also use NW Cornelius Pass Road, which also runs through agricultural land being designated as Rural Reserves, and which also cuts through the wildlife corridors between Forest Park and the Coast Range, as well as the Rock Creek Headwaters natural feature. Both of these rural roads already bear high traffic loads³⁸.

Because roads across the Tualatin Mountains are very limited (from this area, NW Germantown Road and NW Cornelius Pass Road are the only obvious options), urban traffic is funneled down (instead of being spread across a number of roads) onto a few rural roads, and the impact of this traffic is carried much further from the edge of the urban area than it normally would be.

The Oregon Department of Agriculture report for this area "Identification and Assessment of the Long-Term Commercial Viability of Metro Region Agricultural Lands," January 2007, documents that cut-through urban traffic is already a problem for agricultural practices in this area.

The other portions of this Urban Reserve area 8C are less likely to cause traffic issues on nearby rural roads. They will cause some, but the only portion of the rest of 8C likely to be developed to any great extent is located at the intersection of two arterials which offer attractive alternatives to nearby rural roads. This other portion of 8C is also closer to Hwy 26, will have better access to transit (both bus and light rail), and is adjacent to a grocery store and small retail center at NW 185th and West Union.

There is no evidence in the Metro decisions or in the Pre-qualified Concept Plans for the Peterkort property that the need for a buffer or setback between urban development on the Peterkort property and the adjacent farm property to the north and west was considered. As documented below in the References section, and in attachments, the county does not have a good track record of providing buffers along the edges of urban areas³⁹, and conflicts have resulted in other areas.⁴⁰

The Metro decisions fail to demonstrate that the Peterkort property can be designed to avoid or minimize the adverse effects of urban traffic on farm and forest practices, and the adverse effects on important natural landscape features on nearby land designated rural reserves.

Analysis Under OAR 660-027-0060 - Factors for Designating Land as Rural Reserves

Peterkort property fits the definition of a Rural Reserve. Rural Reserves are defined in SB 1011 Section 1 (1):

³⁸ Carol Chesarek email to Washington County Staff, October 24, 2006, Comments on North Bethany Transportation assumptions [Washington County Urban & Rural Reserves Record, pages 9421 - 9431]

³⁹ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, "Part 7: Findings for Metro Ordinance No. 02-987A", p 12

⁴⁰ 3 Letters to Washington County Board of Commissioners [Washington County Urban & Rural Record, pages 9468 – 9470]

- (2) “Rural reserve” means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.” (underline added)

Washington County agrees that the Peterkort property qualifies as a rural reserve. According to the Reasons for Urban and Rural Reserves in Washington County [Section VIII of Exhibit E to Ordinance No. 10-1238A, page 55]:

“In the technical analysis to determine conformance with the factors for designation of lands as urban reserves or rural reserves Washington County staff found that the property qualified for designation as either rural reserve or urban reserve.”

The southeastern portions of the Peterkort property hold a riparian corridor and broad floodplain along Rock Creek. The land slopes up on both sides of the floodplain, adding to its function as a natural landscape feature that limits urban development and helps define an appropriate natural boundary for urbanization. The floodplain makes the 77 acres of developable land that lies northwest of the floodplain a poor candidate for urbanization by limiting transportation connections to any urban development in North Bethany. Crossing the broad floodplain and riparian corridor would make roads and trails very expensive – a single 2-lane bridge across the narrowest part of the floodplain, proposed to support North Bethany, is estimated to cost \$14M.

The importance of this urban edge at the Rock Creek floodplain is mentioned in Metro’s materials for the 2006 Natural Areas Bond measure⁴¹: “Build on wetland/creek confluence near PCC/Rock Creek – opportunity for a “natural edge” between urban and rural areas.”

The October 14, 2009 joint State Agency Letter about Urban and Rural Reserves⁴² emphasizes the importance of using floodplains as urban edges, and urges that floodplains along these edges be placed in Rural Reserves:

“As a general matter, the state agencies believe that larger floodplain areas that are on the periphery of the urban area should *not* be included in urban reserves and that, instead, they should be used as a natural boundary between urban and rural areas to the extent possible. Although some development in floodplains may be possible, the overall amount of development likely to occur in floodplains does not justify their inclusion in urban reserves.”

Aside from forming a natural edge, this floodplain also provides sense of place by clearly marking the urban edge. Sense of place, and the buffering effect of the floodplain, are enhanced by moderate slopes on either side of the floodplain. The changes in elevation support the sense of separation.

Developing the 77 “buildable” acres on the Peterkort property would create an urban island, with EFU farmland to the west and the north, and the Rock Creek floodplain and PCC campus to the east and south. This tiny urban island will not have a network of local streets connecting it to the larger urban fabric due to these barriers, leaving it isolated.

⁴¹ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, “From Attachment 1 to Resolution No. 07-3834”, p.5

⁴² State Agency Comments to Metro Reserves Steering Committee, October 14, 2009, p. 10.

The Oregon Department of Agriculture rated this area as Important agricultural land. The Peterkort property should all be designated Rural Reserve (with the adjacent agricultural lands to the north and west) to protect Natural Features and Important farm land. It qualifies for the “safe harbor” provision in the Administrative Rules.

Rural Reserves for Agriculture. This property is rated “Important” agricultural land by ODA, and is adjacent to the UGB, so it qualifies for the “safe harbor” provision in the Administrative Rules (OAR 660-027-0060 (4)). It is a valuable part of a larger agricultural area proposed for Rural Reserve by Washington County. Development of this property would harm other agriculture in the area due to a lack of sufficient buffers and added traffic on rural roads, diminishing the long term viability of farming across a wider area. A soils report for the Peterkort property is attached⁴³, showing that almost all of the developable area has Class II soils.

Rural Reserves for Natural Landscape Features. The Peterkort property also qualifies for rural reserves based on its regionally significant natural landscape features. The Rock Creek floodplain and riparian corridor are part of the Rock Creek Headwaters (#22) natural landscape feature, identified in Metro’s February 2007 “Natural Landscape Features Inventory”.

Potentially Subject to Urbanization (3)(a). This property has two edges adjacent to the UGB, and it all lies within 3 miles of the Portland Metro area UGB. There can be no question that this area is “potentially subject to urbanization” since it has been designated urban reserves.

Natural Hazards (3)(b). About 50 acres of the property is floodplain.

Fish and Wildlife Habitat (3)(c). Valuable habitat in this area is well documented by Metro and the Natural Landscape Features Inventory. The floodplain and riparian corridor are included in the Natural Features Inventory, and are also target acquisition areas Metro’s 2006 Natural Areas Bond, Rock Creek Headwaters area. Roosevelt Elk have been reported using the floodplain and riparian corridor, and these areas include valuable elk forage. Wildlife connections between Forest Park and Rock Creek are valuable, as is wildlife connectivity to Holcomb Lake (slightly west of the Peterkort property and part of the Rock Creek riparian area). See attached photos of elk⁴⁴ using areas slightly north of here.

Water Quality (3)(d). The Rock Creek watershed already has significant and well-documented water quality issues downstream of this area. This area is considered part of the upper or headwaters portion of Rock Creek. The importance of headwater streams is cited in target area information for Metro’s 2006 Natural Areas Bond for Rock Creek Headwaters (“Goals: Protect the upper watershed to meet water quality protection goals in the lower watershed”)⁴⁵. The upper Rock Creek watershed is defined to include Abbey, Bronson, Holcomb and Beaverton Creeks.

Information for this target area notes: **“Scientific data continues to show the critical importance of intact headwaters for water quality and quantity protection, wildlife habitat**

⁴³ Soils Report for Peterkort property. Attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9459-9462]. See Exhibit 7 in Attachments.

⁴⁴ Elk Photos attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9455-9457]

⁴⁵ Excerpt from Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, pages 9432 – 9445]. See Exhibit 2 in Attachments, “Excerpts from “Rock Creek Headwaters and Greenway Target Area”, September 6, 2007, pgs 3-4

and maintenance of overall watershed health.”⁴⁶ This emphasis on intact headwaters indicates that water quality and quantity as would be harmed by urban development in headwater areas, even with Washington County’s stream protections.

In discussion during the 6/18/09 meeting of the Multnomah County CAC, the committee decided on this standard: **“is it important to stop urbanization short of this feature to protect water quality and quantity?”** This floodplain and riparian corridor meet this standard.

Sense of Place (3)(e). The broad Rock Creek floodplain provides a clear sense of departing the urban area when driving on NW 185th Ave. Further, views of the Peterkort property are called out in the Natural Features Overview for North Bethany⁴⁷ as part of an important view corridor from North Bethany, so preserving this property in a Rural Reserve will enhance sense of place for North Bethany. The scenic view corridor from North Bethany to the northwest across the Peterkort property is described as “valued”:

“View Corridor 3—From ridge separating Bethany Creek and Abbey Creek tributaries (near Brugger Road) and facing west and northwest, all views northwest to Tualatin Mountains are valued as scenic viewing pastoral landscape of agrarian fields, wetlands, and forest landscape. All views west allow vista of the distant horizon at the Coast Range Mts. This view direction overlooks Rock Creek North Streamshed (Multnomah County, Local Site 50).”

Boundary or buffer (3)(f). The floodplain through this area is mostly about 1000’ wide – it clearly helps define appropriate natural boundaries of urbanization and to buffer adjacent farms and wildlife habitat from urban development in Bethany.

We need to maintain and reinforce the clear urban edge provided by the creek and floodplain to minimize conflicts between the Bethany urban area and farming on adjacent EFU land expected to be designated Rural Reserves by Washington County.

We also need to maintain an east/west wildlife corridor on the south side of the Tualatin Mountains – there is a relatively narrow “pinch point” in between North Bethany, the Peterkort property, and the western part of Portland in Area 9D to the north. New urban development on the north side of Abbey or Rock Creek would endanger this important wildlife corridor.

Recreation (3)(h). The floodplain and riparian corridor offer wonderful bird watching opportunities, Kingfishers can be seen when driving along NW 185th Ave. The floodplain area could also include recreational trails for North Bethany residents. Trails are consistent with a Rural Reserve.

Summary

I believe that the Peterkort property easily meets these Rural Reserve factors, and that comparing an evaluation of the Rural Reserve factors to the Urban Reserve factors makes it clear that the Peterkort property is clearly more suited to be a Rural Reserve. Its value as a boundary and buffer between urban and rural uses is outstanding (and this value would be lost forever if the property is developed). Speculative short term benefits for North Bethany cannot outweigh the long term value of this resource.

⁴⁶ *ibid.*, also page 1.

⁴⁷ “Natural Features Overview; North Bethany Planning, Concept Plan Phase,” a Technical Memorandum prepared for Washington County by Steve Mader/CH2M HILL and Robin Craig/GreenWorks, P.C., dated October 11, 2006. Page 12

SB 1011 and the Administrative Rules are designed to protect “large blocks” of farm and forestry land, and to achieve “viability and vitality of the agricultural and forest industries.” This property is part of a large block of Important agricultural land.

The Agriculture and Natural Resources Coalition recommended a Rural Reserve across this area, demonstrating that they agreed that the Peterkort property’s value as a rural reserve exceeds its urban reserve value.

The Metro decisions⁴⁸ argue in favor of designating Urban Reserve on high quality farmland where it can be developed into a Great Community with compact, mixed-use communities with fully integrated street, pedestrian, bicycle and transit systems. But this type of community will not be achieved here due to the separation provided by the floodplain. The Metro decisions also say⁴⁹ that Urban Reserve factors (5), (7), and (8) seek to direct urban development away from important natural landscape features and other natural resources, but urban development of the Peterkort property would surround an important stretch of the Rock Creek Headwaters natural landscape feature #22 and would diminish its value.

Remedy. Based on the above, the Peterkort property does not satisfy the requirements of OAR 660-027-0040(1) and should be designated rural reserves, not urban reserves.

Objection 3: Designating the Peterkort property as Urban Reserves fails to satisfy Goal 2, Evaluation of alternative courses of action, Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

There is no evidence in the record showing that the Peterkort property could not provide wetland mitigation if it is a Rural Reserve. There is also no evidence in the record to show that nearby alternatives wetland mitigation sites were evaluated for cost and availability, only a comment that there are “limited opportunities for wetlands mitigation ... in this area of the county.”⁵⁰ There are many acres of floodplain and wetland upstream and downstream from the Peterkort property⁵¹, and there is not sufficient evidence in the record to show that these other properties do not offer opportunities for wetlands mitigation near North Bethany.

There is no evidence in the record showing that Road A cannot be built across the Peterkort property if it is a Rural Reserve. There is no evidence in the record to show that alternative funding approaches for Road A were considered, for example slightly higher residential densities in North Bethany. Washington County has the option of increasing the planned density in North Bethany because the North Bethany Community Plan has not been finalized. Urban Reserves are expected to yield an average of 15 dwelling units per acre, but North Bethany is being planned at only about 10 dwelling units per acre. Development of additional homes within North Bethany would produce additional funds from both System Development Charges and Transportation Development Taxes, and would produce those funds closer to the time when Road A will need to be constructed to serve North Bethany than urban development on the Peterkort property (which

⁴⁸ Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, page 3.

⁴⁹ Ibid.

⁵⁰ Metro Ordinance No. 10-1238A, Exhibit E, “Reasons for Designation of Urban and Rural Reserves”, page 57. See Exhibit 9 in Attachments.

⁵¹ Map attached to Carol Chesarek letter to Washington County Board of Commissioners, June 15, 2010, Re: Urban and Rural Reserves, Ordinance 733. [Washington County Urban & Rural Record, page 9447]. See Exhibit 3 in Attachments, Map 1: North Bethany Concept Plan Natural Features.

may not occur for some time because it is not adjacent to any city to provide urban services). This option would also make more efficient use of North Bethany infrastructure, provide additional dwelling units, and would not require expensive new infrastructure to serve development on the Peterkort property, while preserving important agriculture lands and a highly valuable natural feature.

There is no evidence in the record to show that the proposed sewer trunk line could not be built if the Peterkort property was a Rural Reserve. There is no evidence in the record to show that later construction of sanitary sewer service to the northwest area of North Bethany would unreasonably delay development, even if that was an allowable consideration for an Urban Reserve decision.

Remedy. Based on the above, designating the Peterkort property as urban reserves does not satisfy Goal 2, and should be designated rural reserves, not urban reserves.

Objection 4: Designating the Peterkort property Urban Reserves fails to satisfy Goal 3 - Agricultural lands (OAR 660-015-000(3) - Urban growth should be separated from agricultural lands by buffer or transitional areas of open space, Violates Goal 2, Adequate Factual Base, and is not Supported by Substantial Evidence in the Whole Record.

This Metro decision violates a key planning principle in Goal 3, that urban growth should be separated from agricultural lands by buffer or transitional areas of open space, because it would eliminate an effective, high quality buffer that serves to protect valuable farm lands.

The key to improving the interface between urban and agricultural lands is providing an adequate (in size and form) buffer between the two uses. Designating the Peterkort property as Urban Reserve would eliminate a high quality existing buffer (the Rock Creek riparian corridor and floodplain) between agriculture and urban uses in the Bethany area without providing a comparable replacement.

The developable portions of this property lie north and west of the broad Rock Creek floodplain, extending into agricultural lands rated Important and Prime, that are zoned EFU and separated from the only nearby urban area (PCC Rock Creek and undeveloped portions of North Bethany) by the substantial Rock Creek floodplain.

There is no comparable natural feature to provide a buffer between urban and rural uses north and west of the Rock Creek floodplain. There is no buffer at all between the Peterkort property and farmland to the north, and to the west only NW 185th Ave is available as a buffer. Roads such as NW 185th can provide hard edges between urban areas and agricultural practices, but they do not provide a useful buffer for agriculture, especially compared to the broad Rock Creek floodplain and adjacent vegetation. A road is not open space.

Designating the Peterkort property as urban reserve does not satisfy the Goal 3 requirement for a buffer or transitional open space between urban growth and agricultural lands.

Remedy. Designating the Peterkort property as urban reserves does not satisfy Goal 3. The property should be designated rural reserves, not urban reserves.

Objection 5: Designating the Peterkort property Urban Reserves violates Goal 5, OAR 660-015-0000(5), To Protect Natural Resources and Conserve Scenic and Historic Areas and Open Spaces, Violates Goal 2, Adequate Factual Base and is not Supported by Substantial Evidence in the Whole Record

The Metro decisions fail to provide an adequate factual base to demonstrate that they have the adequately considered or addressed OAR 660-015-0000(5), GUIDELINES FOR GOAL 5, which says, in part, that “Plans providing for open space, scenic and historic areas and natural resources should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources.” The Peterkort property does not have adequate carrying capacity to serve both the current wildlife population and new urban development. The Implementation section of the Guidelines for Goal 5 says:

1. Development should be planned and directed so as to conserve the needed amount of open space.
2. The conservation of both renewable and non-renewable natural resources and physical limitations of the land should be used as the basis for determining the quantity, quality, location, rate and type of growth in the planning area.

The Metro decisions fail to address these considerations for the Peterkort property. Elk habitat, Northern Red Legged Frogs, and other sensitive habitats would be adversely affected by urban development of the Peterkort property, as explained previously.

The regulatory component of Washington County’s Goal 5 program (the “Tualatin Basin Program” element of Metro Title 13) relies heavily upon the existing vegetated corridor rules and does not address the needs of wide ranging upland species such as elk. Upland habitats in the Tualatin Basin Program are given a “lightly limit” level of protection, education and incentives are the focus, not regulation. Resource retention is optional (voluntary) in upland areas. The Tualatin Basin Program Implementation Report, dated January 2007, says “Jurisdictions may also choose to encourage habitat-friendly development practices in other habitat areas including Class III riparian areas and Class A uplands.”

There is another problem. The Tualatin Basin Program only protects riparian corridors after they are within Clean Water Services service boundary. Until then, they are governed by the Rural/Natural Resource element of the Washington County Comprehensive Plan, which does not limit forestry practices. In rural areas, this means that property owners are allowed to remove trees to within 25’ of a stream.

The Tualatin Basin Program, implemented by Clean Water Services (CWS) to protect riparian areas, only takes effect after the UGB has been expanded, and after Concept planning has completed. Any property owner with trees in a riparian corridor within an Urban Reserve, or in an unplanned UGB expansion area, can remove trees that are more than 25’ away from a stream to minimize the habitat conservation area and maximize the development potential of their property up until CWS annexes the property. This type of tree removal has been common in the North Bethany area. The incentive to remove such trees results directly from planned urban development.

There is an inadequate factual base in the record to demonstrate that the Metro decisions considered the Goal 5 requirement to “conserve the needed amount of open space” by evaluating the needs of elk, Northern Red-legged Frogs, and other species that use the Peterkort property. There is also no evidence that the Metro decisions considered the effects that Peterkort development and the resulting additional urban traffic would have on the important east/west

wildlife corridor on the south side of the Tualatin Mountains that is used by elk, cougar, and black bear⁵².

Remedy. Designating the Peterkort property as urban reserves does not satisfy Goal 5. The property should be designated rural reserves.

Objection 6: Designating the Peterkort property Urban Reserves fails to satisfy OAR 660-027-0005(2), Long-term Protection of Large Blocks of Agricultural Land and Important Natural Landscape Features, Violates Goal 2, Adequate Factual Base and is not Supported by Substantial Evidence in the Whole Record

OAR 660-027-0005(2) says “Rural reserves under this division are intended to provide long-term protection for large blocks of agricultural land and forest land, and for important natural landscape features that limit urban development or define natural boundaries of urbanization. The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of the agricultural and forest industries and protection of the important natural landscape feature that define the region.”

The Metro decision to designate the Peterkort property as urban reserves fails to achieve this balance.

Urban development on the Peterkort property would not result in a livable community because it would be physically separated from North Bethany and is not “walkable” due to the distance to retail stores that meet daily needs. OAR 660-027-0010(12) says that “Walkable describes a community in which land uses are mixed, built compactly, and designed to provide residents, employees, and others safe and convenient pedestrian access to schools, offices, businesses, parks and recreation facilities, libraries and other places that provide goods and services that are used on a regular basis.” Development on the Peterkort property will not provide convenient pedestrian access to schools, offices, and businesses that provide the goods and services that are used on a regular basis, as explained in Objection 2, analysis of Urban Reserve Factor (2) on pages 10 and 11.

Urban development on the Peterkort property would cast a shadow over a large block of nearby Foundation and Important agriculture lands that form a large block, threatening their viability and vitality with additional urban cut through traffic, possible requirements for new roads through adjacent farmlands, and unbuffered urban edges.

The Rock Creek floodplain limits urban development and defines a natural boundary of urbanization, exemplifying an important natural feature that deserves rural reserve protection.

Remedy. Designating the Peterkort property as urban reserves does not satisfy OAR 660-027-0050(2). The property should be designated rural reserves.

Conclusion

⁵² In 2006, Forest Park Neighborhood Association mapped locations where people had seen elk, cougar, and black bear. This map is included in the Multnomah County Urban and Rural Reserves Record, page 392, and it complements the elk sightings recorded in the SaveHelvetia.org August 14, 2009 report “Wildlife Habitat” [Washington County Urban & Rural Reserves Record, pgs 5998-6014

One of the goals of the Reserves process is to ensure that we make smart decisions about which areas to develop. Great Communities should allow residents to walk to meet their daily needs. New development needs to be integrated into the urban fabric, not isolated in little islands. Farmlands and natural resource areas should be protected for the long term benefits they provide, not sacrificed for short term gains.

Designating Peterkort as an urban reserve will not create a Great Community, and it will result in harm to adjacent and nearby agricultural practices and important natural landscape features.

There is ample evidence to support designating this property as a Rural Reserve for both natural features and agriculture, especially given the valuable buffer that the Rock Creek floodplain provides between urban and rural uses, and its importance in the context of the West Hills, Forest Park, and wildlife corridors.

The Peterkort property is important for the surrounding agricultural area and for its natural landscape features, which deserve the protection of a Rural Reserve.

Thank you for your consideration.