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BY HAND

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

Subject: Objections to Adoption of Urban and Rural Reserves by Metro and Clackamas, Multnomah, and Washington Counties

Dear Urban and Rural Reserves Specialist:

We represent the Cities of Tualatin and West Linn (the "Cities"). Please accept this letter as the Cities' objections filed pursuant to OAR 660-025-0140 to the designation of Urban and Rural Reserves by Metro and Clackamas, Multnomah, and Washington Counties ("Reserves Decision"). Metro and the Counties mailed the Notice of Adoption of the Reserves Decision on June 23, 2010.

STANDING

The Cities participated extensively orally and in writing during the Metro and Clackamas County proceedings leading to the adoption of the Reserves Decision. See, e.g., Exhibits B, C, and D.[1] The Cities therefore have standing to submit objections pursuant to OAR 660-025-0140(2).

INTRODUCTION

The Cities primarily object to the designation of Urban Reserves 4A, 4B, and 4C (Stafford, Rosemont, and Borland) (the "Stafford Basin") and Area 4D ("Norwood") (collectively, the "Stafford Area").[2] The decision to designate these areas

[1] The exhibits to the Cities Objections are attached under separate cover.

[2] The Norwood Area is actually part of the Stafford Basin, but is located south of I-205. The Cities describe it separately because the Findings consider it separately from the rest of the Stafford Basin, in conjunction with three urban reserve areas adjacent to Wilsonville.

as urban reserves does not comply with the applicable criteria under the Goals and Rules and is not supported by an adequate factual base as required by Statewide Land Use Planning Goal ("Goal") 2 and OAR 660-027-0080(4)(a).

LEGAL FRAMEWORK

ORS 195.141 and 195.145(1)(b) and (4) were enacted by the 2007 Legislature to provide an optional alternative process to Metro and Metro counties for the designation of urban and rural reserves. The Land Conservation and Development Commission ("LCDC") adopted OAR 660 Division 27 ("Metro Urban Reserve Rule") to implement the new statutory alternative. Other cities and counties may only designate urban reserves pursuant to ORS 195.145(1)(a) and OAR 660 Division 21.

OAR 660-027-0050 requires Metro to base its decision on compliance with eight criteria (Factors 1 to 8). In addition, OAR 660-027-0080(4) requires compliance with the Goals and "other applicable administrative rules."

Pursuant to Goal 2 and OAR 660-027-0080(4)(a), LCDC must determine whether Metro's and the Counties' factual Findings are supported by an "adequate factual base."[3] This requirement applies to legislative decisions, such as the urban reserves designation at issue here, and has been interpreted to impose a "supported by substantial evidence" requirement similar to that of ORS 197.835(9)(a)(C). 1000 Friends of Oregon v. City of North Plains, 27 Or LUBA 372, 377, aff'd 130 Or App 406 (1994). In determining whether a local factual decision is supported by substantial evidence, LCDC must determine whether a reasonable person could have reached the same conclusion based on all of the evidence in the record. Younger v. City of Portland, 305 Or 346, 353-57, 752 P2d 262 (1988).

THE DECISION AND FINDINGS

The Stafford Basin and Norwood areas at issue are located entirely in Clackamas County. Metro's and Clackamas County's Findings with regard to compliance with the Goals and with regard to designation of the Stafford Basin and Norwood as urban reserves are identical. Compare Clackamas County Ordinance No. ZDO-223, Exhibit B, pp. 1 to 3 (goal compliance), pp. 14 to 17 (designation of

[3] Goal 2 states, in pertinent part:

> "To establish a land use planning process and policy framework as a basis for all decision[s] and actions related to use of land and to assure an adequate factual base for such decisions and actions." (Emphasis added.)

Stafford Basin as Rural Reserve), and pp. 18 to 21 (designation of Wilsonville Urban Reserve, including Norwood) with Metro Ordinance 10-1238A, Exhibit E, pp. 19 to 23 (designation of Stafford Basin as Rural Reserve), pp. 23 to 26, (designation of Wilsonville Urban Reserve including Norwood), and pp. 31 to 33 (compliance with Goals, Clackamas County) (the "Findings"). The Cities' objections with regard to the Findings therefore apply to both Metro's and Clackamas County's decisions unless expressly indicated to the contrary.

THE CITIES' OBJECTIONS

1. Metro has no authority to designate urban reserves pursuant to OAR 660 Division 27. Its attempt to do so creates an inconsistent and uncoordinated set of planning documents in violation of Goal 2. LCDC should dismiss or remand the Reserve Decision.

As noted above, ORS 195.145(1)(b) and OAR 660 Division 27 establish an optional alternative process for designation of urban reserves for metropolitan service districts and counties within such districts. See OAR 660-027-0020(1). Nothing in either the statute or the rule requires a metropolitan service district to designate urban reserves under either process. The statute and the rule therefore do not preempt any local choice to select one process over the other.

The problem with Metro's decision to elect the alternative Division 27 process is that Metro Code Chapter 3.01, and specifically Sections 3.01.010(h) and 3.01.012, requires Metro and cities and counties within Metro's jurisdiction to designate urban reserves pursuant to OAR Chapter 660, Division 21. (Copy of Metro Code attached as Exhibit A and incorporated by reference.) Metro has not amended its Code to permit it to elect the alternative process under OAR 660 Division 27. Metro therefore has no jurisdiction under its own Code to adopt urban reserves pursuant to Division 27, and the Counties are similarly prohibited from doing so. See Metro Code Section 3.01.012. The Reserves Decision is void. LCDC therefore has no jurisdiction to review the Reserves Decision. It should be dismissed.

In the event that Metro attempts to argue that its adoption of Ordinance 101238A should be considered a de-facto amendment to Chapter 3.01, we note that while the Ordinance amended several other sections of the Metro Code, it did not amend Chapter 3.10, nor do the Findings explain how the Reserves Decision is consistent with Chapter 3.10. The Reserves Decision therefore violates Goal 2, because Metro's adopted planning documents "must be the basis for all decisions and actions relating to the use of land." D.S. Parklane v. Metro, 165 Or App 1, 21-23, 994 P2d 1205 (2000) ("Parklane"). To any degree that LCDC determines that it has jurisdiction to

review the Reserves Decision, it should be remanded to Metro and the Counties to comply with Goal 2.

2. The Reserves Decision designating the Stafford Area as urban reserves does not demonstrate compliance with Factors 1 and 3, Goal 2 or Goal 12, or the Goal 12 Transportation Planning Rule ("TPR") with regard to transportation. LCDC should remand the decision.

When designating lands as urban reserves, OAR 660-027-0050 requires Metro to base its decision on whether such land "can be developed at urban densities in a way that makes efficient use of existing and future public and private infrastructure investments" (Factor 1), and "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" (Factor 3.)

On April 21, 2010, West Linn Planning Consultant Tom Coffee submitted an analysis of these factors as applied to the Stafford Area to the Clackamas County Board of Commissioners. (Testimony attached as Exhibit B and incorporated by reference.) Mr. Coffee's analysis is based on Metro's Final Draft 2035 Regional Transportation Plan ("RTP"), prepared by Metro pursuant to State Land Use Planning Goal 12 and the TPR. This testimony is also supported by the City of Tualatin's October 13, 2009, memorandum to the Reserves Steering Committee. (Testimony attached as Exhibit C and incorporated by reference.) (The extensive background analysis by CH2M Hill supporting the conclusions in the October 13 analysis can be found at page 2272 et seq of the full Metro Record.) The Draft RTP was enacted by the Metro Council on June 10, 2010 (Metro ORD-10-11241A). It is now the applicable transportation system plan ("TSP") for the metropolitan region pursuant to OAR 660, Division 12 (the "Transportation Planning Rule"). Regional transportation decisions must now be made in coordination with that plan. OAR 660-012-0016.

As Mr. Coffee points out, even under the rosiest of financial assumptions,[4] the RTP indicates that almost all of the transportation system that would provide access to the Stafford Area will be functioning at service level F (for "failing") by 2035.[5] In other words, Metro's own analysis conclusively demonstrates that urban development of

[4] The funding assumptions include $13.6 billion in likely available funding and $7 billion to be raised through enactment of/significant increase in state and regional registration fees, the Tri-Met payroll tax, increase in SDC fees, and adoption of a street utility fee by all Metro jurisdictions.

[5] As Mr. Coffee's memo notes, the RTP assumes that the Stafford Area will be developed at urban densities.

the Stafford Area will not be served at all, let alone adequately or efficiently, by existing or projected transportation investments. It also demonstrates that urban development of the Stafford Area cannot be efficiently and cost-effectively served by transportation infrastructure—in fact, it demonstrates that the money won't be there to fix the problems.

The sole transportation Finding relating to the Stafford Basin is as follows:

> "4) Transportation Infrastructure will be the most significant challenge. This is the case for most of the region. This Urban Reserve has physical characteristics—steep terrain, the need to provide stream crossings – that will increase the relative cost of transportation. I-205 and I-5 in this area will need substantial improvements with consequent 'huge' costs. ClackCo Record 850. As this April 9 letter points out, most of the region's state and federal facilities have limited additional capacity. The only significant exception is Highway 26, which is the site of the Clackanomah Urban Reserve. The Borland area has been identified as a 'next phase' priority for high capacity transit. See, 'Regional High Capacity Transit System Map.' The Cost of providing transportation facilities is a problem for most of the region's potential urban reserves. When evaluated with all of the factors, designation of these three areas as an Urban Reserve is appropriate."

The sole Finding under these factors relating to Norwood is as follows:

> "The steeper terrain and location of the Norwood area[6] will make development of a network of streets more difficult, and ODOT has identified the I-5 and I-205 network as having little or no additional capacity, with improvement costs rated as 'huge.' The decision to include this area as Urban Reserve is based, like the Stafford area, on the need to avoid adding additional Foundation Agricultural Land. There are other areas in the region that would be less expensive to serve with public facilities, especially necessary transportation facilities, but these areas are comprised of Foundation Farm Land."

These Findings are breathtakingly inadequate. First, they are not responsive to the factors. The Stafford Basin Finding is, in essence, that traffic will be bad all over (except, apparently, on Highway 26) and so the fact that it will be bad in Stafford makes it no worse than anywhere else. The Norwood Finding, in essence, states

[6] The Finding differentiates the Norwood area from the thee other Wilsonville area urban reserves.

that Norwood cannot be adequately served, but must be included to avoid designating more Foundation Agriculture Land. But this is not what the factors ask: They ask whether urban development can be efficiently and cost-effectively served by current or future transportation systems that the appropriate governmental entity can afford to build. Metro's own RTP indicates that the answer is "no." If transportation service really will be as bad all over as it will be in the Stafford Basin, that does not justify ignoring the factors—it indicates that Metro and the Counties ought not to be designating *any* of those areas as urban reserves until there is sufficient evidence to indicate that the future transportation system will accommodate the development. Similarly, avoidance of Foundation Farm Land does not address whether or not transportation facilities are available in Norwood.[7]

Second, the Findings are completely conclusory. The Stafford Finding concludes that traffic is bad all over, but there is no analysis, explanation, or comparison of the situation in the Stafford Basin as compared with other lands designated or undesignated. The Norwood Finding is similarly unsupported by analysis of other areas. Goal 2, Part I requires such analysis and comparison. Gruber v. Lincoln County, 2 Or LUBA 180 (1981).

Metro concludes that, notwithstanding the bad transportation situation, when the Stafford Basin is evaluated against the other factors, the Urban Reserve designation is appropriate. There is no analysis that supports this conclusion If the Stafford Basin is in gridlock in 2035, as Metro's own RTP indicates, that would seem to argue against the designation of Stafford under Factor 2 (area has sufficient capacity to support healthy economy), Factor 4 (area can be served by well-connected street and transit systems), and Factor 5 (designation will preserve and enhance natural and ecological systems). It also calls into question the Stafford Area's ability to meet the overriding objective to achieve livable communities as required by OAR 660-027-0005(2) and OAR 660-027-0080. The Findings completely fail to explain or support its conclusions.

Third, the Findings are not supported by substantial evidence in the whole record as required by Goal 2 and the Rule. A decision maker must base its decision on substantial evidence in the *entire* record. When conflicting evidence is submitted into the record, the failure of the decision maker to address that conflicting evidence and explain why it found the evidence relied upon more persuasive is a failure to demonstrate substantial evidence. Gould v. Deschutes County, 59 Or LUBA 435, 457-

[7] And see the Cities' discussion of the Foundation Farm Land issue in Section 6 below.

458 (2009). (This would seem particularly important when the "conflicting evidence" is contained within the decision maker's own TSP.)

In light of Metro's RTP, a reasonable person could not conclude that the Stafford Basin or Norwood is suitable for urban development under at least Factors 1 and 3. At the very least, LCDC should remand the decision back to Metro and the Counties for further explanation and analysis in light of the RTP.

Because Metro's RTP conflicts with the RTP, Metro's decision implicates Goal 12 (Transportation) and the TPR. Pursuant to OAR 660-012-0000(1), Goal 12 is intended to "promote the development of transportation systems adequate to serve statewide, regional and local transportation needs," provide for "safe and convenient vehicular, transit, pedestrian, and bicycle access and circulation," "facilitate the same, efficient, and economic flow of freight and other goods and services within the regions," and "ensure that changes to comprehensive plans are supported by adequate planned transportation facilities." ORS 660-012-0000 states that, in order to achieve these purposes, coordinated land use, and transportation plans should ensure that the planned transportation system supports a pattern of travel and land use in urban areas that will avoid the air pollution, traffic, and livability problems faced by other large urban areas of the country through measures designed to increase transportation choices and make more efficient use of the existing transportation system.

Metro's RTP indicates that there is neither the money nor the ability to construct transportation improvements necessary to serve an urbanized Stafford Basin to provide anywhere near an adequate, safe, or convenient transportation system through 2035. The whole purpose of Goal 12 and the TPR is to ensure that transportation and development march hand in hand. Amending the regional planning documents to provide for significant additional urban development in an area served by a transportation system that will not be able to support it violates—or at the very least requires an analysis of—Goal 12 and the TPR. The Findings do not address compliance with Goal 12 or the TPR at all. LCDC should remand the Reserves Decision to require such analysis.

Finally, Metro's conclusion in its Urban Reserve Decision that the Stafford Basin and the Norwood area can be served by transportation facilities, albeit expensively, is inconsistent with the adopted RTP, which clearly indicates they cannot be so served. Goal 2 requires implementation measures to be consistent and

coordinated with applicable plans, which would include the RTP. [8] The Reserve Decision does not comply with Goal 2.

3. The Reserves Decision designating the Stafford Area as urban reserve does not demonstrate compliance with Factors 1 or 3 or Goal 2 or the Rule with regard to efficient and cost-effective provision of other public services.

For more than sixteen years, the cities of Tualatin, West Linn, and Lake Oswego have opposed the urbanization of the Stafford Area on the grounds the cities can not cost effectively provide key public services such as transportation, water, and sewer. See Exhibits B and C, and the attached January 21, 2010, testimony submitted West Linn City Councilor Terri Cummings to the Metro Council attached as Exhibit D and incorporated by reference herein (which also includes testimony from the City of Lake Oswego.) The Cities expressly incorporated the analysis and testimony in Exhibits C and D as part of their objections to the Reserves Decision.

The Cities' testimony in the record is extensive, detailed, and clearly demonstrates that none of the cities can cost-effectively provide services to the Stafford Area.[9] The Cities have no reason to "lie" about or exaggerate the costs and negative

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[8] Goal 2 states, in pertinent part:

> To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.
>
> * * * *
>
> City, county, state and federal agency and special district plans and actions shall be consistent with the comprehensive plans of cities and counties and regional plans adopted under ORS chapter 268.
>
> All land use plans shall include identification of issues and problems, inventories and other factual information for each applicable statewide planning goal, evaluation of alternative courses of action and ultimate policy choices, taking into consideration social, economic, energy and environmental needs * * *. The plans shall be the basis for specific implementation measures. These measures shall be consistent with and adequate to carry out the plans. Each plan and related implementation measure shall be coordinated with the plans of affected governmental units.
>
> * * * *
>
> "Plans"—as used here encompass all plans which guide land-use decisions, including both comprehensive and single purpose plans of cities, counties, state and federal agencies and special districts." (Emphasis added.)

[9] For example, Attachment E of the Cummings testimony (Exhibit D) is a copy of Metro's 2002 analysis of the 94 different subareas including Stafford. The table reveals that the area next to West Linn is one of

impacts on their communities. Indeed, there are literally $millions of good reasons not to do so. Municipal services are primarily funded by property taxes. Because Measures 5 and 50[10] limit taxes and cap property values on existing development, new development is the primary method available to municipalities to significantly increase ongoing property tax revenues. If the Stafford Area could be cost-effectively served or urbanized without risking significant negative impacts on existing services or the livability of their existing residents, the Cities would be chomping at the bit to urbanize the Stafford Area, as are many other cities in the region with regard to their adjacent territories. Indeed, the City of Tualatin supported the designation of Urban Reserve Areas 4E and 5F.

For these reasons, Metro and Clackamas County should have accorded great weight to the testimony of the Cities; instead, the Stafford Basin Finding with regard to Factor 3 completely ignores the Cities' arguments:

> "This Urban Reserve 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. As with all of the region's urban reserves, additional infrastructure will need to be developed in order to provide for urbanization. It is clear that development of public infrastructure will not be 'cheap' anywhere. Relative to other areas under consideration for designation, however, this Urban Reserve area is suitable. Technical assessments rated this area as highly suitable for sewer and water. ClackCo Record 795-796. The July 8, 2009, technical memo prepared by Clackamas County also demonstrates the suitability of this area for various public facilities. ClackCo Record 704. This area can be served by the cities of Tualatin, West Linn and Lake Oswego. These cities have objected to the designation of this area as Urban Reserve, but have not stated that they would not be able to be an urban service provider for some part of the area."

This Finding is as fatally conclusory and as nonresponsive to Factor 3 as the Finding with regard to transportation. Again, a "services-are-just-as-expensive-everywhere-else" Finding is not responsive to the factor and is not supported by an analysis of other areas. And the last two sentences of the Finding are completely belied by testimony cited to and incorporated by reference in Exhibits B, C, and D.

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the six most expensive of all the areas to serve and that all of the subareas in Stafford are rated least suitable for 2040 urbanization.

[10] Article XI, sections 11 and 11b, of the Oregon Constitution.

The sole non-transportation-related Finding with regard to the Norwood area similarly ignores the City of Tualatin's extensive analysis of the prohibitive costs of service[11]:

"The Norwood area (Area 4D) is rated as having medium suitability."

These Findings are not supported by substantial evidence in the record. As noted above, when conflicting evidence is submitted into the record, the failure of the decision maker to address that conflicting evidence and explain why it found the evidence relied upon more persuasive is a failure to demonstrate substantial evidence.[12] Gould v. Deschutes County, 59 Or LUBA 435, 457-458 (2009).

Finally, in light of the unanimous opposition and extensive testimony of the surrounding cities that would be required to provide urban services to the Stafford Basin, a reasonable person would not conclude that public services can be efficiently and cost-effectively provided to the Stafford Area under Factor 3.

For these reasons, the Reserves Decision should be remanded.

4. The Reserves Decision designating the Stafford Area as urban reserve does not demonstrate compliance with Factors 2, 4, and 6 because existing parcelization and natural constraints mean that the Stafford Area has insufficient capacity to support a healthy economy, a compact and well-integrated urban form, or a mix of needed housing types.

OAR 660-027-0050 requires Metro to base its decision on whether a proposed urban reserve area includes sufficient development capacity to support a healthy economy (Factor 2), 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 (Factor 4), and includes sufficient land suitable for a range of needed housing types (Factor 6).

Three maps attached to Councilor Cummings' testimony (Exhibit D) graphically illustrate her testimony about physical constraints and existing development in the Stafford Basin. The map entitled "Natural Features" shows the significant environmental constraints in the Stafford and Rosemont areas. Twenty-nine percent of

[11] See the City of Tualatin's October 13, 2009, letter attached as part of Exhibit C.

[12] The Cities note that the documents referenced by the Findings that were submitted at the July 14, 2009, Clackamas County Reserves Policy Advisory Committee ("PAC") meeting are refuted by the Cities' subsequent much more detailed analyses submitted in the fall 2009 and winter of 2010.

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the territory is within 200 feet of a stream or river, 34 percent of the area is within Metro Upland Wildlife Habitat areas. Forty-two percent of the territory is on slopes from 10-25 percent, and an additional 13 percent is on slopes greater than 25 percent. Exhibit C, page 18, indicates the Borland Road area, although not as steep, is constrained by buffers for the Tualatin River and two streams. This map is supported by the original Metro Urban Reserve Study Map (Metro Record p. 1107), which confirms that approximately 70 percent of the land in the Stafford Area is environmentally constrained for development.

The map entitled "Parcels" shows the significant parcelization of the Stafford Basin. Thirty-three percent consists of parcels of five acres or less and 22 percent consists of parcels from 5 to 10 acres. Only 41 percent of land is in parcels greater than ten acres, and a large number of these larger parcels are in public, private, or quasi-public ownership. The figures on the "Parcels" map don't include Borland Road, but the map shows a similar parcelization pattern for the Borland Road area. Two of the largest parcels are occupied by the Athey Creek Middle School and the Rolling Hills Community Church, two uses that are unlikely to redevelop. Tualatin's analysis in Exhibit C indicates that of the 640 gross developable acres in the Borland Road sub-area, there are only 180 net developable acres. The maps and analysis in the attachments to Tualatin's October 13, 2009, letter show Borland and Norwood are also substantially parcelized and constrained by slopes and environmental features. Metro Record, pp. 2272 et seq.

The Stafford Basin Findings regarding Factors 2, 4, and 6 are just as conclusory and nonresponsive to the actual criteria as the Findings regarding transportation. The only evidence cited support of the Findings for Factor 2 is:

> "The Borland Area has been identified as being suitable for a mixed use employment center. ClackCo Record 371. In addition, there are a few larger parcels on Johnson and Stafford roads which may have the potential for mixed use development."

This Finding is nonresponsive to criterion 2, which requires that the land designated as urban reserve include "sufficient development capacity." A few developable parcels does not sufficient development capacity make. The Finding is also conclusory and does not comply with Goal 2 Part I for the same reasons as discussed above for the transportation Findings under Factors 1 and 3.

The Finding with regard to Factor 4 (area will be walkable and can be served by a well-connected system of transportation) suffers from the same defects. The Finding states:

> "The Borland area is suitable for intense mixed-use development. Other areas suitable for development can also be developed as neighborhoods with the above-described infrastructure. There are substantial portions of this Urban Reserve that will have little or no development and consequently will not need the aforementioned facilities."

This Finding is not only completely conclusory, it contradicts itself: It says that the Stafford Basin is developable with the necessary interconnected facilities, but then concludes that a substantial portion of Stafford is *un*developable and therefore won't *need* the facilities. This Finding is not only conclusory and nonresponsive to the criterion, it supports a conclusion that the Stafford Basin is not suitable for designation under the Factor.[13]

The Finding with regard to Factor 6 (sufficient land suitable for a range of needed housing types) completes the trifecta of nonresponsive and conclusory Findings:

> "This Urban Reserve in conjunction with the Urban Reserve to the South (Area 4D, Norwood), includes sufficient lands to provide for a variety of housing types. In addition to the developable acres within the Stafford, Rosemont and Borland Areas, this Urban Reserve is situated adjacent to three cities, and will augment the potential for housing in these existing cities."

There is no analysis or evidence cited to support this Finding at all. How does the addition of the Stafford Basin "augment the potential for housing" in West Linn, Tualatin, and Lake Oswego (other than adding more developable land). This Finding is not responsive to the Factor and is not sufficiently justified to comply with Goal 2, Part I. How does the addition of Norwood improve the Stafford Basin's ability to provide a mix of housing types? The Findings with regard to Norwood indicate that it is subject to the same difficult environmental constraints as the Stafford Basin:

> "The larger Norwood area, which has rolling terrain, and a mixture of small residential parcels and farms, will be more difficult to urbanize. The area is adjacent to Urban reserves on the west, north, and south. The Borland Road Area, adjacent to the north is expected to develop as a center, with potential for employment and mixed-use development. The Norwood area can be urbanized to provide residential and other uses

[13] The Cities' Attachment 1 to Councilor Cummings testimony (Exhibit D) contains Clackamas County staff findings that the Stafford Area cannot be connected or made walkable. Metro Record p. 2384, Document 1.

supportive of development in the Borland and I-5 East Washington County Urban Reserve Areas."

"The Norwood Area will be somewhat more difficult to develop, but the terrain and parcelization are not so limiting that the desired urban form could not be achieved. Like Stafford, this part of the Wilsonville Urban Reserve will be more difficult to develop with the desired urban, but is being added to avoid adding additional foundation farm land."

Given the natural resource and physical constraints as well as the parcelization in the Stafford Area, developments costs are going to be very high on a per unit basis. Therefore housing will not be provided in the price ranges for "needed housing." The Findings state: "physically, this area [the Stafford Basin] is similar to the Cities of West Linn and Lake Oswego, which are developing at urban densities." If you review the two attached maps, however, and examine the territory adjacent to the Stafford and Rosemont areas on similarly constrained lands, the areas within the cities are predominately zoned for low-density R-10 and R-15 residential development.[14] The existing development on similar land in Lake Oswego and West Linn thus supports the Cities' argument that the Stafford Area will not have sufficient development capacity to support a healthy economy, cannot be designed to be served by a well-connected and pedestrian-friendly transportation and transit system, and does not include sufficient land suitable for a mix of needed housing types.

Factors 2 and 6 both require determinations that an urban reserve area "include" "sufficient development capacity to support a healthy economy" and "sufficient land suitable for a range of housing types." In order to properly consider these factors, the text would appear to require a threshold determination of what types of land and how much is needed to achieve these purposes. There is nothing in the Reserve Decision or in the larger record that indicates Metro or Clackamas County conducted such a threshold analysis. The Reserves Decision should be remanded to properly address these factors.

Finally, none of these Findings are supported by substantial evidence in the whole record as required by Goal 2 and the Rule. First, the Findings fail to address the substantial conflicting evidence submitted by the Cities and explain why the jurisdictions found other evidence in the record more convincing.[15] In addition, in light

[14] The zoning designations are shown on the Parcel Map.

[15] For example, the Findings rely on a document at ClackCo Record 371 for the conclusion that the Borland area can be developed for a mixed-use employment center. This document is a PowerPoint presentation on the Great Communities concept made by Arnold Cogan at the January 27, 2009, PAC

of the demonstration of parcelization and environmental constraints and Tualatin's testimony that there are only 180 net developable acres in the Borland area, a reasonable person could not conclude based on the evidence in the record that the Stafford Area is suitable for urban development under Factors 2, 4, or 6.

LCDC should remand the decision back to Metro and the Counties for further explanation and analysis.

5. The Reserves Decision designating the Stafford Area as urban reserve does not demonstrate compliance with Factors 5, 7, and 8, because protecting the existing environmental features means constraining development in the Stafford Area to the degree that it cannot meet the identified land needs for urbanization.

OAR 660-027-0050 requires Metro to base its decision on whether a proposed urban reserve area can be designed to preserve and enhance natural and ecological systems (Factor 5), can be developed in such a way that preserves important landscape features (Factor 7), and can be designed to avoid or minimize adverse impacts on farm and forest practices and important natural landscape features.

As noted above, the evidence in the record indicates that as much as 70 percent of the Stafford Area is constrained by topographical (steep slopes) and environmental features (rivers, streams, and wildlife habitat). If all of this area is protected, it will necessarily preclude efficient urbanization of the Stafford Area. If, however, the Stafford Area is developed at stated density and intensity, then many of these features will be impaired or negatively impacted.

The Finding of compliance with Factors 5 and 7 recognizes this dichotomy buts fails to address it:

> "The significance of the Tualatin River and Wilson Creek systems has been recognized. The Principles specifically indentify the need to plan for these features, and recognize that housing and employment capacity expectations will need to be reduced to protect important natural features. Urbanization will occur in a city, which is obligated by state and regional

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meeting. It talks about the design features common to livable communities and how they can be in-filled into existing development, but it doesn't specifically address the Borland area at all. This is in contrast to the City of Tualatin's subsequent and much more detailed October 13 analysis of the actual developability of the Borland area, demonstrating that there are only 180 net developable acres in Borland. See Exhibit C. A reasonable person would not conclude that a generalized PowerPoint presentation would be more convincing than a location specified by the potential service provider.

rules to protect upland habitat, floodplains, steep slopes and riparian areas."

The Findings are in fatal conflict. On the one hand, in the Findings regarding Factors 1, 2, 3, 4, and 6, Metro and Clackamas County conclude that the evidence indicates that the Stafford Area can accommodate urban densities, "intense" mixed-use development, and a variety of needed housing types in a dense, walkable, transit-friendly, and interconnected design. On the other hand, in the Findings with regard to Factors 4, 5, and 7, Metro and the Counties acknowledge that a substantial portion of Stafford will be undevelopable and incapable of supporting such uses as a result of the environmental constraints. The Findings completely fail to reconcile this facial conflict. Metro and Clackamas County can't have their cake and eat it too on this issue, at least not without some additional analysis and explanation of how efficient urbanization can be achieved in the Stafford Area given that much of it will be off limits to development.

The Findings are also not supported by substantial evidence in the record. Metro does not explain why it concludes that the Stafford Area is reasonably developable and can still preserve and protect important natural features given the contrary evidence submitted by the Cities. Indeed, given the maps and testimony by the Cities, a reasonable person could not conclude that the significant environmental features of the Stafford Basin can be preserved while at the same time allowing for intense development at urban densities.

Metro and Clackamas County's Findings do not demonstrate compliance with, or adequate consideration of, the Urban Reserve factors. LCDC should remand the decision.

6. The Reserves Decision designating the Stafford Area as urban reserve does not demonstrate that the Factors as a whole support designation of the Stafford Area as an Urban Reserve. LCDC should remand the decision to Metro and Clackamas County to remove the designation.

As noted above, the Findings acknowledge the high cost and environmental difficulties with regard to urbanization of the Stafford Area under individual factors, but conclude that that the Factors "as a whole" or "on balance" support inclusion of the Stafford Area. The Cities don't disagree that an area that is less desirable for urbanization under one or two factors could, in consideration of other factors, be appropriately designated as urban reserves; this is also how the locational factors under Goal 14 are analyzed. The fatal flaw with the conclusions in the Findings is that they are never justified by an analysis of "other factors" that are relied on for this

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conclusion, or analyze the relative suitability of the Stafford Area as compared with other areas considered for urban reserves. As a result, the Findings fail to demonstrate a legal or factual basis for this conclusion as required by Goal 2 and the Rule.

In contrast, the evidence and testimony submitted by the Cities indicates that the Stafford Area:

- Will not and cannot be efficiently or cost-effectively served by transportation infrastructure.
- Cannot be efficiently or economically provided with other significant urban services, including sewer and water.
- Is so constrained by environmental and geographical features and existing parcelization that much of the Stafford Area will be undevelopable and the remainder will be too constrained to provide the kind of high density development and needed housing envisioned by the factors and necessary to the meet the planning needs over the next 30 to 50 years.

The Stafford Area is unsuitable for urbanization under virtually *all* of the factors.

The only analysis in the Findings regarding the relative suitability of the Stafford Area in comparison to other areas under consideration for inclusion is the following statement:

> "Designation of this 4,700 acre area as an Urban Reserve avoids designation of other areas containing Foundation or Important Agricultural Land. It would be difficult to justify designation of Foundation Farm Land in the region, if this area, which is comprised entirely of Conflicted Agricultural Land, were not designated as Urban Reserve (See OAR 660-027-0040)."

As quoted above, the Findings similarly state that the Norwood area must be included to avoid adding more Foundation Farm Land.

There are three problems with these conclusions. At the threshold, there is no support in the Findings for the conclusion that not designating the Stafford Basin or Norwood necessarily requires designation of more Foundation Farm Land.[16]

Second, these conclusion do not address the other half of the equation: Large portions of the Stafford Basin and Norwood are zoned for agricultural use and are home to many small-scale farming activities, such as vineyards, nurseries, and horse operations. There is no analysis of the Stafford Basin or Norwood vis-à-vis other areas that contain no agricultural uses.

Third, and most significantly, the Rule is not solely about preservation of Foundation Farm Land. Preservation of farm land is certainly a very important factor, but that factor is expressly balanced against the other factors designed to ensure efficient and cost-effective urbanization. The similar Goal 14 locational factors are designed in the same way. This scheme recognizes that failure to urbanize efficiently ultimately means consumption of an even greater amount of farm land than would have otherwise been the case. It also means failure to accomplish other important planning needs, such as provision of sufficient economic lands, needed housing, and efficient and cost-effective urban services.

The effect of an urban reserve designation is to make the designated area first priority for inclusion into the urban growth boundary as the need arises. See ORS 197.298(1). Such inclusion is not automatic, however: inclusion of the property in the urban growth boundary must be justified by demonstrating compliance with the Goal 14 factors. LCDC and the courts have concluded that if higher-priority lands, such urban reserve land, cannot reasonably accommodate the indentified land need under the Goal 14 factors, lower-priority lands, such as agricultural lands, can be included over the higher-priority land. See City of West Linn v. LCDC, 201 Or App 419, 119 P3d 285 (2005); Hildenbrand v. City of Adair Village, 217 Or App 623, 177 P3d 40 (2008). Because this is the test that the urban reserve areas will ultimately face at the time of urbanization, the Metro Urban Reserve Rule Factors should be construed the same way. If the Stafford Area cannot be reasonably urbanized under the factors, as the Cities have

[16] For example, Metro and Clackamas County could have selected the shorter 40-year planning horizon allowable under the Rule and reduced the target land need to the lower end of the urban reserve range (15,000 to 29,000), thereby excluding the Stafford Area and perhaps some of the Foundation Farm Land that the Reserves Decision currently designates as urban reserves. This is not only a feasible alternative, it was recommend by DLCD Director Richard Whitman. Metro Record, PDF file #3, pp. 1373-1374.

demonstrated, this is sufficient justification for Metro and Clackamas County to look elsewhere, even at Foundation Farm Land.[17]

Designation of territory that cannot be effectively or efficiently urbanized—such as the Stafford Area—doesn't accomplish any good planning purpose. It doesn't protect farmland, it won't meet housing and employment needs, and it will engender a long and expensive planning process that will ultimately be fruitless. It is better to face that reality now so that planning and infrastructure efforts and dollars can focused on areas where they will be effective.

The Findings, individually or on balance, fail to demonstrate that the Stafford Area is appropriately designated as an urban reserve under the factors. LCDC should remand the Reserve Decision.

CONCLUSION

Based on the above objections, the Cities respectfully request that LCDC reverse or remand the Reserves Decision.

Very truly yours,

Jeffrey G. Condit

cc: Sherilyn Lombos, City of Tualatin
Chris Jordan, City of West Linn
Laura Dawson Bodner, Metro
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Chuck Beasley, Multnomah County
Steve Kelly, Washington County

[17] We reiterate, however, that Metro and Clackamas County have not even remotely demonstrated that designating more Foundation Farm Land is the only alternative to the designation of the Stafford Area.