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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON

Portland Division

KATHERINE BLUMENKRON, an individual; DAVID BLUMENKRON, an individual; SPRINGVILLE INVESTORS, LLC, a limited liability company,  
Plaintiffs,

Civil No. CV

**CV '12 - 351 - BR**

**COMPLAINT**

v.

**42 U.S.C. § 1983 (Violation of Equal Protection) and Violation of State Statutes (ORS Ch 195, 197 et. seq.)**

**(Declaratory Relief; Injunctive Relief)**

**JURY TRIAL DEMANDED**

BARTON EBERWEIN, in his official capacity as member of the Land Conservation & Development Commission; HANLEY JENKINS, in his official capacity as member of the Land Conservation & Development Commission; TIM JOSI, in his official capacity as member of the Land Conservation & Development Commission; GREG MACPHERSON, in his official capacity as member of the Land Conservation & Development Commission; CHRISTINE M. PELLETT, in her official capacity as member of the Land Conservation & Development Commission; TED WHEELER, in his official capacity as member of the Land Conservation & Development Commission; JOHN VANLANDINGHAM, in his official capacity as member and chair of the Land Conservation & Development Commission; MARILYN WORRIX, in her official capacity as member and vice-chair of the Land Conservation & Development Commission; TOM HUGHES, in his official

capacity as a council president of Metro;  
SHIRLEY CRADDICK, in her official  
capacity as a councilor of Metro;  
CARLOTTA COLLETTE, in her official  
capacity as a councilor of Metro; CARL  
HOSTICKA, in his official capacity as a  
councilor of Metro; KATHRYN  
HARRINGTON, in her official capacity as a  
councilor of Metro; REX BURKHOLDER,  
in his official capacity as a councilor of  
Metro; BARBARA ROBERTS, in her  
official capacity as a councilor of Metro;  
and MULTNOMAH COUNTY,

Defendants.

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Plaintiffs allege as follows:

### **JURISDICTION**

1.

Original federal jurisdiction exists under 28 USC §§ 1331, 1343, and 42 U.S.C. § 1983, under the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

Supplemental jurisdiction arises under 28 USC § 1367 for all common law and Oregon state law claims.

### **VENUE**

2.

Venue is proper in the District of Oregon pursuant to 28 U.S.C. §1391, as Plaintiffs reside within the state of Oregon, and many acts alleged herein occurred in Multnomah County, Oregon. Defendants are subject to personal jurisdiction within the District of Oregon based on residency and sufficient business contacts within this forum.

### **PARTIES**

3.

KATHERINE BLUMENKRON, DAVID BLUMENKRON, and SPRINGVILLE

INVESTORS, LLC, (hereinafter, “Plaintiffs”) are and at all material times were owners of land situated in the southwest portion of Area 9B (as defined in the Core 4 reserve designation map), Multnomah County, in the State of Oregon. Plaintiffs Katherine and David Blumenkron are citizens and residents of the State of Oregon, and Springville is organized in Oregon.

4.

Defendant LAND CONSERVATION & DEVELOPMENT COMMISSION (hereinafter, “LCDC”) is a governmental agency of the State of Oregon, established under Oregon Revised Statute (“ORS”) 197.030(1). BARTON EBERWEIN, HANLEY JENKINS, TIM JOSI, GREG MACPHERSON, CHRISTINE M. PELLETT, TED WHEELER, JOHN VANLANDINGHAM, and MARILYN WORRIX were at all material times were the operating members of LCDC.

5.

Defendant MULTNOMAH COUNTY is a County of the State of Oregon.

6.

Defendant METRO COUNCIL (hereinafter “Metro”) is a regional governmental agency of the State of Oregon, established under ORS chapter 268. Pursuant to its enabling statute, Metro has one council president and six counselors. TOM HUGHES was at all material times the council president of Metro. SHIRLEY CRADDICK, CARLOTTA COLLETTE, CARL HOSTICKA, KATHRYN HARRINGTON, REX BURKHOLDER, and BARBARA ROBERTS were at all material times councilors of Metro.

### **FACTS COMMON TO ALL CLAIMS**

7.

Under the Equal Protection Clause of the Fourteenth Amendment, a state may not “deny

to any person within its jurisdiction the equal protection of the laws.” U.S. Const. Amend. XIV,  
Sect. 1.

8.

The Oregon Constitution, Article 1, Section 20, provides that “[n]o law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.”

9.

ORS 197.010(2)(a) provides as follows:

“The overarching principles guiding the land use program in the State of Oregon are to:

- “(A) Provide a healthy environment;
- “(B) Sustain a prosperous economy;
- “(C) Ensure a desirable quality of life; and
- “(D) Equitably allocate the benefits and burdens of land use planning.”

10.

ORS 197.040, entitled “Duties of commission; rules,” sets forth the duties of the Land Conservation and Development Commission; its pertinent part, it states that:

“(1) The Land Conservation and Development Commission shall:

- “(a) Direct the performance by the Director of the Department of Land Conservation and Development and the director’s staff of their functions under ORS chapters 195, 196 and 197.
- “(b) In accordance with the provisions of ORS chapter 183, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:
  - “(A) Allow for the diverse administrative and planning capabilities of local governments;
  - “(B) Consider the variation in conditions and needs in different regions of the state and encourage regional approaches to resolving land use problems;
  - “(C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
  - “(D) Assess the likely degree of economic impact on identified property and economic interests; and
  - “(E) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

\* \* \*

“(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.”

11.

In 2007, the Oregon State Legislature enacted Senate Bill 1011, which included legislation establishing an extensive land use system, including the establishment of “urban reserves” and “rural reserves” and a “[c]oordinated and concurrent process for designation of rural reserves and urban reserves[.]” ORS 195.137, *et seq.*

12.

As part of that land use system, ORS 195.141, entitled “Designation of rural reserves and urban reserves pursuant to intergovernmental agreement; rules,” provides in pertinent part as follows:

“(1) A county and a metropolitan service district ...may enter into an intergovernmental agreement ...to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).

“(2) Land designated as a rural reserve:

“(a) Must be outside an urban growth boundary.

“(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).

“(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

“(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the designation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

“(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

“(b) Is capable of sustaining long-term agricultural operations;

“(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

“(d) Is suitable to sustain long-term agricultural operations, taking into account:

“(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

“(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

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

“(D) The sufficiency of agricultural infrastructure in the area.”

13.

ORS 195.143, “Coordinated and concurrent process for designation of rural reserves and urban reserves,” provides, in pertinent part:

“(1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

“(a) Rural reserves pursuant to ORS 195.141; and

“(b) Urban reserves pursuant to ORS 195.145 (1)(b).

“(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to ORS 195.141 and urban reserves pursuant to ORS 195.145 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district’s regional framework plan as urban reserves. A county may not designate rural reserves pursuant to ORS 195.141 until the county and the district have entered into an agreement pursuant to ORS 195.141 that identifies the land to be designated as rural reserves by the county in the county’s comprehensive plan.

“(3) A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless the county and the district also agree to designate rural reserves in the county.”

14.

ORS 195.145, “Urban reserves; when required; limitation; rules ,” provides, in pertinent part, as follows:

“(1) To ensure that the supply of land available for urbanization is maintained:

“(a) Local governments may cooperatively designate lands outside urban growth boundaries as urban reserves subject to ORS 197.610 to 197.625.

“(b) Alternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

\* \* \*

“(3) In carrying out subsections (1) and (2) of this section:

“(a) Within an urban reserve, neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve.

“(b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserves.

“(4) Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.

“(5) A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

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

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

“(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

“(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

“(e) Can be designed to preserve and enhance natural ecological systems; and

“(f) Includes sufficient land suitable for a range of housing types.”

15.

Under the applicable legislation, the LCDC, through its members, was tasked with “adopt[ing] by goal or by rule a process and criteria for designating [urban and rural] reserves....” ORS 195.141(4) and ORS 195.145(6).

16.

Pursuant to the applicable legislation, on January 25, 2008, LCDC adopted OAR chapter 660, division 27, which purports to “establish[] procedures for the designation of urban and rural reserves in the metropolitan area by agreement between and among local governments in the area

and by amendments to the applicable regional framework plan and comprehensive plans. This division also prescribes criteria and factors that a county and Metro must apply when choosing lands for designation as urban or rural reserves.” OAR 660-027-0005.

17.

OAR 660-027-0050 (Urban Reserve Factors) provides as follows:

”When identifying and selecting lands for designation as urban reserves under this division, Metro shall base its decision on consideration of whether land proposed for designation as urban reserves, alone or in conjunction with land inside the UGB:

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

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

“(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;

“(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;

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

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

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

“(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.”

18.

OAR 660-027-0060 (Rural Reserve Factors) provides, in pertinent part, as follows:

“(1) When identifying and selecting lands for designation as rural reserves under this division, a county shall indicate which land was considered and designated in order to provide long-term protection to the agriculture and forest industries and which land was considered and designated to provide long-term protection of important natural landscape features, or both. Based on this choice, the county shall apply the appropriate factors in either section (2) or (3) of this rule, or both.

\* \* \*

“(3) Rural Reserve Factors: When identifying and selecting lands for designation as rural reserves intended to protect important natural landscape features, a county must consider those areas identified in Metro's February 2007 ‘Natural Landscape Features Inventory’ and other pertinent information, and shall base its decision on consideration of whether the lands proposed for designation:

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

“(b) Are subject to natural disasters or hazards, such as floodplains, steep slopes and areas subject to landslides;

“(c) Are important fish, plant or wildlife habitat;

“(d) Are necessary to protect water quality or water quantity, such as streams, wetlands and riparian areas;

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

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

“(g) Provide for separation between cities; and

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

19.

At the outset of the reserve designation process, Metro sought and received recommendations from the three metropolitan counties regarding how much land within its respective borders each county believed should be designated rural and/or urban reserve. Multnomah County proposed two small areas of urban reserve comprising under 1,000 acres.

20.

Multnomah County consists of 278,400 acres of land, with additional acreage being water. Clackamas County consists of 1,195,520 acres of land, with a very small additional amount of water; this acreage includes portions of Mount Hood National Forest and Willamette National Forest. Washington County consists of 463,360 acres of land, with a very small additional amount of water.

As a result of the consultation process, the following designations were adopted by Metro in individual agreements with each county:

	<b>Multnomah County</b>	<b>Washington County</b>	<b>Clackamas County</b>
<b>Existing UGB Area (as % of total)</b>	46%	30%	24%
<b>New Urban Reserves (as % of total)</b>	3%	48.5%	48.5%
<b>New Rural Reserves (as % of total)</b>	17.5%	56.8%	25.7%

Also as part of the process, Metro made the following forecasts regarding the population increase during the period intended to be provided for by the reserves:

	<b>In 2000</b>	<b>90% likelihood in 2030, according to Metro's report</b>	<b>90% likelihood in 2060, according to Metro's report</b>
<b>Population of the Portland-Beaverton- Vancouver OR-WA Primary Metropolitan Statistical Area (in numbers)</b>	1.9 million	2.9 - 3.2 million	3.6 - 4.4 million
<b>% increase in population of the Portland-Beaverton- Vancouver OR-WA Primary Metropolitan Statistical Area</b>		53% - 68%	89% - 132%

The City of Portland is within Multnomah County and comprises 93,056 acres (with some of that being water).

Despite the fact that the factors of ORS 197.040 are required to be considered in urban

reserve/rural reserve decisions, Multnomah County predetermined that it did not want any urban reserves designated within its borders. That predetermination: (1) precluded any real, fact-based decisions with respect to analyzing the land available for the reserve designations; (2) precluded any application of the controlling requirements of ORS 197.040; (3) precluded application of the statutory and regulatory mandates to base the decisions regarding reserves on consideration of the enumerated factors and criteria; and (4) precluded the “Service District” determination of urban reserve designation on any rational or area-wide basis.

22.

Plaintiffs are informed and believe, and on that basis allege, that the counties’ predetermination regarding how much and what type of reserves they would accept within their borders foreclosed and precluded a full consideration and application of the required analyses under ORS 197.010, 197.040, 195.145, and the associated Administrative Rules, which threatens the “coordinated state-wide land conservation and development....” (Senate Bill 100, Section 1(4).) The counties’ and Metro’s refusal to work together to determine the appropriate amount and distribution of reserves created “uncoordinated” proposed land use, which “threatens the orderly development, the environment of the state and the health, safety, order, convenience, prosperity and welfare of the people of this state.” (Senate Bill 100, Section 1(1).)

23.

Multnomah County and Metro found that Plaintiffs’ land was suitable for urban reserve designation. However, as a result of the preclusive effect of Multnomah County’s actions, a rural reserve designation was applied to Plaintiffs’ land, a designation that prohibits an urban reserve designation or inclusion in the Urban Growth Boundary for fifty years.

24.

Notwithstanding Multnomah County’s pre-determination regarding the reserve

designations, in or about 2009, Metro and the Counties undertook to set up a process by which public input into the reserve designation decisions could be solicited and obtained. The process by which the public was entitled to participate in reserve designation decisions was not only illusory, but also failed to consider the requirements of ORS 197.040.

25.

Plaintiffs did not receive (1) a substantive and fair opportunity to provide input regarding the application of the required factors and criteria, regarding decisions that would affect the designation of their land; or (2) consideration of the factors of ORS 197.040.

26.

On May 20, 2010, Metro held a public hearing on the urban and rural reserve recommendations. Although it attempted to foster the appearance of an open process, the map of reserve designations was already completed prior to the public hearing.

27.

On June 3, 2010, after the purported consideration of public opinion, Metro approved and adopted the rural and urban reserve designations with no changes whatsoever.

28.

Out of 28,615 acres adopted by Metro for designation as urban reserve, only 857 acres are located in Multnomah County. All of the urban reserve designated in Multnomah County is in the vicinity of the city of Gresham and is Foundational Farmland.

29.

Of the urban reserves designated by Metro, almost half (11,915 acres) was Foundational Farmland before the LCDC remanded the process with the instruction that Metro and

Washington County review and reallocate urban reserves in such a manner as to remove large tracts of farmland from the urban reserve recommendations. Moreover, despite the obvious imbalance in the designated urban reserve, LCDC remanded only the decision regarding reserves in Washington County, precluding any appropriate reevaluation of the metropolitan area as a whole. Because of this constraint, the revised recommendations for urban reserve in Washington County again included only Foundational Farmland.

30.

The “L” contained in Area 9B has all the characteristics of an area appropriate for inclusion in the urban reserves: it has no viable use other than development, especially in light of the nearby, encroaching urban and suburban communities.

31.

The “L” is adjacent to the community of North Bethany, less than a mile from its town center. Commercial development of eight hundred acres is occurring directly west of the “L.” The “L” is adjacent to the UGB; in fact, it borders the UGB on two sides. Moreover, it already has main power lines and some other infrastructure. Governmental entities have formally expressed interest in providing the East Bethany area with infrastructure and municipal services.

32.

The Department of Agriculture labeled Area 9B “conflicted” agricultural land. For the most part, Area 9B is not utilized for agriculture, and certainly the land nearest the UGB has not been used for agricultural purposes for approximately ten years. It is not contested that Area 9B cannot be viably utilized for agricultural or other rural purposes.

33.

The “L” in Area 9B does not present any topographical obstacles to urban use.

Moreover, it contains few, if any, important natural landscape features; the only landscape feature identified by defendants in the investigation process was an Abbey Creek *tributary*, which can be protected under the urban reserve mandates or by drawing the reserve boundary around it (as was done for Johnson Creek in Area 1C, *see infra*).

34.

The defendant governmental entities have long recognized and conceded that the properties of Area 9B meet the criteria for urban reserve. These agencies have repeatedly acknowledged that natural landscape features, if any, can be adequately protected under a designation of urban reserve.

35.

The residents and landowners in the “L” of Area 9B favor designating it as urban reserve.

36.

Despite the fact that the “L” contained in Area 9B meets the criteria for urban reserve and can only be economically viable through development, Multnomah County designated it as rural reserve through its adoption of Ordinance No. 1165.

37.

On September 28, 2010, the Department of Land Conservation & Development (“Department”) issued its report and recommendations concerning the consolidated submittal of urban and rural reserves by the three metropolitan counties and Metro. (“Staff Report”) In the Staff Report, the Department recommended that the LCDC reject every single objection and exception submitted in response to the Counties’ and Metro’s decisions. Many of the justifications by the Department for its dismissals of the objections and exceptions were little more than repetition of the statutes and rules.

38.

Metro designated 4,699 acres as urban reserves in Areas 4A, 4B, and 4C, the Stafford area, “knowing they will be more difficult and expensive to urbanize....” (Staff Report, at p. 54.)

39.

Stafford is similarly situated to Area 9B in terms of topography, functionality, population, and proximity to public services, and contains even more extreme nature landscape features than the “L” in Area 9B. Stafford is no more ready or appropriate for development than the “L” in Area 9B.

40.

In Area 1C, Metro also designated for urban reserve 855 acres that are less appropriate for urbanization than the “L” contained in Area 9B.

41.

Area 1C was labeled by the Department of Agriculture as “Foundation” agricultural land, currently in agricultural use. Although Area 1C is adjacent (on only one side) to the UGB, the nearby UGB lands are undeveloped, also currently being utilized for agriculture.

42.

Area 1C contains Johnson Creek, which was protected by drawing the urban reserve boundary around it.

43.

Upon information and belief, Plaintiffs allege that the residents and landowners of Area

1C favor designating the area as rural reserve.

44.

Defendants' actions in refusing to properly apply the land use statutes and rules were intentional and taken with willful or reckless indifference to plaintiffs and have caused plaintiffs to incur damages and loss.

### **FIRST CLAIM FOR RELIEF**

(42 U.S.C. § 1983 Federal Equal Protection Violation and Oregon Equal Protection Violation)

45.

Paragraphs 1 through 44 of this Complaint are incorporated herein by reference.

46.

Defendants did not apply the land use statutes contained in ORS chapters 195 and 197 in the manner intended by the Oregon State Legislature. The selection process was neither determined by the anticipated needs of the tri-county metropolitan area nor the mandated criteria as applied to the actual land available in the three counties. The Core 4 governmental entities imposed artificial and arbitrary limitations on the process. Defendants' actions therefore constituted an improper motive in violation of the Equal Protection Clause of the Fourteenth Amendment and the Equal Protection guarantee found in the Oregon State Constitution.

47.

Plaintiffs are entitled to a declaration that Chapter 660, Division 27, of the Oregon Administrative Rules are invalid as: (a) the rules unlawfully protect farmland owners at the expense of non-farmland owners; (b) the rural reserve designation that prohibits activity or consideration of an urban reserve for fifty years is irrational; (c) the criteria related to natural landscape features are arbitrary and can be accomplished with urban reserve protection; (d) the

rural reserve designation that prohibits entitlement change is an irrational restriction and discriminates between property owners on an *ex parte* basis; and (e) there is no rational basis for Defendants' failure to utilize the mandatory factors and criteria as the bases for their decisions regarding the reserve designations. Accordingly, these rules violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and the Equal Protection guarantee found in the Oregon State Constitution.

48.

There is no rational basis for Defendants' treatment of Plaintiffs or for the classification Defendants have created. The course of conduct taken by, or attributable to, Defendants is not tailored to further any legitimate, substantial or compelling interest. Accordingly, their conduct violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and the Equal Protection guarantee found in the Oregon State Constitution.

49.

Defendants' utilization of political objectives as the bases for their decisions regarding the reserve designations violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and the Equal Protection guarantee found in the Oregon State Constitution.

50.

Defendants' failure to utilize the mandatory factors and criteria as the bases for their decisions regarding the reserve designations violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and the Equal Protection guarantee found in the Oregon State Constitution.

51.

Defendants' failure to treat Plaintiffs' land in the "L" in Area 9B in a fair and equitable manner as compared to other similarly situated land violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and the Equal Protection guarantee found in the Oregon State Constitution.

52.

The manner in which Defendants made their decisions regarding the designation of Plaintiffs' land in the "L" in Area 9B as rural reserve, despite the fact that it qualified as urban reserve was unfair, inequitable, and unrelated to any legitimate state interest, and violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983, and the Equal Protection guarantee found in the Oregon State Constitution.

53.

As a result of Defendants' unconstitutional actions, Plaintiffs have suffered substantial injury.

54.

The unlawful designation of Plaintiffs' land as rural reserve is causing irreparable harm and Plaintiffs are entitled to a preliminary and permanent injunction to restrain Defendants from unlawfully burdening Plaintiffs' land.

**SECOND CLAIM FOR RELIEF**  
(Violation of State Statute)

55.

Paragraphs 1 through 54 of this Complaint are incorporated herein by reference.

56.

In making the reserve designation decisions in an arbitrary, unequal and politically motivated manner, Defendants failed to base their decisions on the criteria and factors enumerated in ORS 197.040 and 195.137, *et seq.*

57.

Defendants' utilization of their own political objectives and agendas as the bases for their decisions regarding the reserve designations violates ORS 197.040 and 195.137, *et seq.*

58.

The manner in which Defendants made their decisions regarding the reserve designations was in willful disregard of the anticipated growth of the multi-county area and thus violates the land use statutory scheme, including but not limited to Chapters 195 and 197.

59.

By failing to make the reserve designation decisions in the manner mandated by state statute, Defendants violated ORS 197.040 and 195.137, *et seq.*

WHEREFORE, Plaintiffs pray for the following:

- a. a judicial declaration that defendants' policy, practice, and agreements in connection with the reserve designation system violate plaintiffs' rights to equal protection of the laws as

guaranteed by the Fourteenth Amendment to the Constitution of the United States,

- a. judicial declaration that defendants' policy, practice, and agreements in connection with the reserve designation system violate plaintiffs' rights to equal protection of the laws as guaranteed by the Constitution of the State of Oregon.
  
- b. a judicial declaration that defendants' policies and practices of making reserve designation decisions are in violation of Oregon's statutory mandates.
  
- c. a judicial declaration that defendants' practice and policy of making land use decisions and reserve designations in a political manner, without adherence to the applicable statutes to be in violation of the Fourteenth Amendment to the United States Constitution;
  
- d. a judicial declaration that defendants' practice and policy of making land use decisions and reserve designations in a political manner, without adherence to the applicable statutes to be in violation of the Oregon State Constitution;
  
- e. a judicial declaration that defendants' practice and policy of making land use decisions and reserve designations in a political manner, without adherence to the applicable statutes to be in violation of Oregon's statutory mandates.
  
- f. Issuance of a preliminary and permanent injunction restraining and enjoining defendants, their successors, agents, and employees, and all persons in active concert and participation

with defendants, from implementing, enforcing, or otherwise acting on the reserve designations adopted by Metro and Multnomah County and approved by LCDC as set forth in the Staff Report;

g. Issuance of a preliminary and permanent injunction requiring defendants, their successors, agents, employees, and all persons in active concert and participation with defendants (a) to designate the “L” in Area 9B, as defined herein, as Urban Reserve;

h. Issuance of a preliminary and permanent injunction enjoining defendant LCDC, defendant county, defendant agency, and defendant individuals from enforcing any statutes, rules, agreements, policies or informal understandings defendants may have by which reserve designations are applied to Plaintiffs’ land;

k. Plaintiffs’ reasonable attorney fees, costs, and disbursements, particularly those provided for under 42 U.S.C. § 1988; and

l. Such other and further relief as the Court may deem equitable and just.

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DATED this 27<sup>th</sup> day of February 2012.

THE JAMES LAW GROUP LLC

A handwritten signature in black ink, appearing to read "Christopher James", is written over a horizontal line. The signature is fluid and cursive.

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