Washington County Board of Commissioners
c/o Anne Elvers
Department of Land Use and Transportation
155 N. 1st Avenue, Suite 350-14
Hillsboro, OR 97124-3072

April 12, 2010

Re: Plan Amendment Casefile No: 09-360-PA, KCL Inc.

Dear Chair Brian and Commissioners,

As owners of properties nearby and immediately adjacent to the subject property, we would like to reiterate our support of, and agreement with the findings and conclusions of the Washington County Department of Land Use & Transportation (as submitted in their Staff Reports) and the findings of the State of Oregon Department of Agriculture and Department of Land Conservation and Development: "The applicant has not provided sufficient evidence to justify an irrevocably committed exception for Statewide Planning Goal 3" [to preserve and maintain agricultural lands]. KCL Inc. has not demonstrated that, as a result of adjacent uses, farming or forestry practices are no longer practicable on the subject property. It is clear to the majority of neighbors – many of whom have lived beside an active Christmas tree farm on the subject property for over two decades and, before that, next to a cleared wheat field – that any claims that the subject property – suddenly – cannot be farmed are completely unfounded.

On March 17, 2010, the Washington County Planning Commission recommended that the application for a committed exception be approved. We believe that the Planning Commission made this decision without the benefit of complete and well-balanced information about the case, and that their conclusions and rationales for reaching those conclusions were erroneous. Commissioners suggested that they considered the testimony of KCL's consultants to be the "expert" testimony in this case, disregarding the reports and letters from LUT staff, ODoA, and ODLCD which clearly point out the fact that the legal criteria for granting such an exception to State goals and regulations have not been satisfied.

Planning Commissioners rationalized their votes to approve the application, instead, based on "a little common sense," which – KCL Inc.'s counsel managed to convince them – meant extrapolating from KCL's various claims as to how difficult or how expensive it might be were KCL ever to attempt to farm the subject property and to conclude that the property is therefore not practicably farmable. We do agree that "a little common sense" needs to be applied in understanding the context of this application. KCL Inc. – a construction company – purchased the property as an active Christmas tree farm two years ago for a price far above the current market value for farm property given existing designations and restrictions. KCL Inc. never tried to farm the property, and is only now (not previous to the land purchase) conducting analyses of the property which happen to support their claim that it cannot be practicably farmed. Were it so simple to buy property out from its designation as

Rural/Natural Resource Lands, most of the agricultural and forested properties remaining in Washington County would be in danger of re-designation and development.

We would also like to address several of the points Mr. Junkin makes in his application report (submitted on February 10, 2010 to the Washington County Planning Commission on behalf of KCL Inc.) and which, he claims, "establish that the applicant has met the committed exception criteria."

The applicant's argument that farm and forest uses of the property are now impracticable hinges on their claims that "neighborhood development" and the improvement of adjacent properties for residential uses between 1983 and the present "has increased the impacts on the farming activities on this parcel making farming activities much more difficult." But farming activities on the subject property have continued from as far back as county records have been kept to the present day, including the period from 1983 to present. Farming activities continued with no significant impact from, or on, the surrounding residential until two years ago when the current owner purchased an operating Christmas tree farm and chose not to farm the property.

Hypothetical complaints from neighbors regarding hypothetical uses of one or another particular farming practice are to be found throughout the verbal and written testimony submitted on behalf of KCL Inc.'s application. Most of those imagined cases of conflict assume the use of a specific farming technique (e.g., aerial spraying of pesticides), or the impact of a specific product on a specific crop (e.g., household use of 2,4-D herbicides that could damage grapes at a certain stage of that crop's development). None of these specific techniques, specific products, or specific crops represents the full range of farming practices that are available to farmers and that could be – and historically have been – productively applied in farming the subject property. Were we to believe the assertion put forward in this application that the subject property is rendered "not practicably farmable" due to hypothetical future conflicts over the use of a select subset of the available, viable farming practices, we would have to conclude that it is impossible to farm in close proximity to residential properties at all. The many vineyards, Christmas tree farms, and small woodlots immediately adjacent to residential properties throughout Washington County are clear evidence contradicting that conclusion.

Mr. Junkin includes two letters from neighbors (Mr. Harris and Mr. Smith) in his application documentation and references those as "a series of letters evidencing that neighbors would have significant concerns if this land was returned to farm use." We take issue with such statements and must correct Mr. Junkin on two points: 1) that excepting the past two years during which the current owner has neglected the Christmas trees currently growing on the property, this land has never been *out* of farm use for as long as local residents can remember and county records have been kept; and 2) that the majority of neighbors, in fact, support the continued farm use of this property and, conversely, would have significant concerns were this land to lose its status as a Rural/Natural Resource – especially regarding the precedent-setting rationale for a parcel's "un-farm-ability" put forward in this application and the implications that acceptance of such a rationale could have on the potential loss of similarly designated

resource lands nearby. (See the accompanying letters signed by neighbors of the subject property.)

Mr. Junkin subsequently generalizes the health and environmental concerns expressed in the two letters from Mr. Harris and Mr. Smith as the opinions of "the neighbors." In fact, those letters express the opinions of only two residents: a father and son who live on a single lot – through a hardship permit – which is near but not directly adjacent to the subject property and which, like the subject property, is over 20 acres in size (24.09 acres to be precise) and therefore could be considered for a similar committed exception (AF-20 to AF-10) and sub-division were KCL Inc.'s application to be approved. Mr. Harris has, in fact, indicated to neighbors that he intends to follow this same process to sub-divide his nearby property. These individuals' opinions are not representative of the opinions of the majority of neighboring residents.

While minor disputes between neighbors are inevitable, the Regan Bros. managed their Christmas tree farm on the subject property alongside these neighbors (many whose homes predate the Regan Bros. tenure) with almost no conflict for more than 25 years. Mr. Junkin mentions a single dispute over that long history involving the death of a neighbor's goat which she suspected may have been related to a pesticide application. That neighbor supports the continued farm use of the subject property, and her signature is to be found attached to the accompanying letter from neighbors as well.

The subject property is accessible via two private roads: Larkins Mill Road and Brighton Lane. Mr. Junkin claims that those roads are "wholly inadequate to support agricultural uses," yet current residents have shared those private drives with the Regan Bros. farm vehicles for more than a quarter century without conflict or complaint. Neither have neighbors raised objections when an occasional helicopter lands on or near the subject property, as we understand this is necessary to maintain regular farming practices.

Neighboring residents have signed waivers of the right of remonstrance (see attached example) which is appended to our property titles and indicates our willingness to live beside a farmed property as well as our acceptance of any minor inconveniences associated with farming. With those contracts, the neighboring property owners have expressed our "consent to those customarily (commonly) accepted farm and forestry practices" and have willingly waived our rights to formally protest or oppose such practices. By signing those waivers, we have registered our expectations that farming practices will in fact take place on the subject property and indicated, in spirit, that we intend to maintain mutually respectful relationships with neighboring farmers.

Such contracts exist expressly for the purpose of preventing the sorts of protests from neighbors which KCL suggests would make farming uses of the subject property impracticable.

In summary, we believe as neighbors of the subject property and as concerned citizens that this application for an irrevocably committed exception and re-designation of the subject property from AF-20 to AF-10 should be denied. KCL Inc. has met neither legal

nor common-sense standards in attempting to demonstrate the impracticability of farming the subject property. The fact that the current owner of the property does not *want* to farm the property, that it *could* be difficult to farm, that the owner might not make an immediate profit by farming, or that they would make more money by subdividing and developing, are immaterial to the legal requirements for a committed exception. In fact, the property has been commercially farmed for well over a quarter century with little or no impact due to adjacent uses, and there is no good reason to believe that it cannot be productively farmed well into the future.

Thank you for your consideration.

Sincerely,