

HAND DELIVERED

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Our File No. 011750-0001

October 8, 2010

HAND-DELIVERED

Land Conservation and Development Commission  
c/o Richard Whitman, Director  
Department of Land Conservation and Development  
635 Capitol Street N.E., Suite 150  
Salem, OR 97301

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LAND CONSERVATION  
AND DEVELOPMENT

Reference: Exceptions to the Department's Report of September 28, 2010 --  
Portland Metro Area Urban and Rural Reserve Designations

Dear Commissioners:

This office represents the Coalition for a Prosperous Region (the "Coalition"), a consortium of business and labor organizations that includes the Columbia Pacific Building Trades Council, The Commercial Real Estate Association (NAIOP), Commercial Real Estate Economic Coalition, Home Builders Association of Metropolitan Portland, Portland Metropolitan Association of Realtors<sup>®</sup>, Portland Business Alliance, and Westside Economic Alliance. The purpose of this letter is to file written exceptions to the Department's Report dated September 28, 2010 (the "Staff Report") pursuant to OAR 660-025-0160(4).

**Exception 1: (General Exception)**

We disagree with the Staff Report's Analysis and Recommendations with regard to all of our Objections. We continue to believe that as a result of the fundamental errors in the analysis as well as the failure to comply with applicable administrative rules and statewide planning goals, the Reserves Decision is legally flawed as is described more fully in our Objections.

**Exception 2: ("Agenda 4B. Amount of Urban Reserve Land") (Staff Report 15-17; 32-42)**

a. **Balancing Urban and Rural Reserves:** The Staff Report's discussion of the Coalition's First Objection (Staff Report at 36-37) essentially repeats the same error the



Coalition objected to in the underlying decision in that it does not fully and fairly require compliance with OAR 660-027-0005(2) – setting forth the purpose and objective of the designation of urban and rural reserves in the Portland metropolitan area – which provides:

“\* \* \* 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 features that define the region for its residents.” (Emphasis added.).

One part of the Staff Report’s failure is the fact that it discusses and applies the requirement to achieve a “balance of urban and rural reserves” only in the context of rural reserves. *Compare* Staff Report at 15-17 (discussing the legal framework for the amount of urban reserves, but omitting any need to achieve a balance between urban and rural reserves) with Staff Report at 19-20 (discussing the legal framework for the amount of rural reserves, including the requirement to achieve a balance in the designation of urban and rural reserves). However, the need to achieve such balance exists for both the designation and urban and rural reserves.

A second part of the Staff Report’s failure is its refusal to require the Reserves Decision to show compliance with OAR 660-027-0005(2) by demonstrating in the findings that these competing interests were balanced. This is not simply a quantitative analysis defining some ratio between the number of acres of urban and rural reserves designated.<sup>1</sup> Instead, it requires a discussion of the trade-offs of designating fewer urban reserves (particularly when coupled with the adoption of “aggressive” assumptions to reduce the amount of land needed), and the impact such decision will have on the region’s ability to achieve livable communities. The Reserves Decision does not undertake that analysis, and the Staff Report’s conclusion that the “Background” and “Overall Conclusions” *as a whole* explain the decision is in error. The “Background” section doesn’t discuss balance at all, and the “Overall Conclusions” section only discusses balance in the context of why more rural reserves weren’t designated.

**b. 50 Year Planning Period:** With regard to the amount of urban reserve land designated, the Coalition believes the Staff Report fails to fully recognize that the Reserves Decision locks in the boundaries of reserve areas for the next 50 years, a period projected to

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<sup>1</sup> To the extent the Department interpreted the Coalition’s Objections as requiring a quantitative “reckoning,” that interpretation was inaccurate. The Coalition agrees that the balancing required by OAR 660-027-0005(2) is a qualitative analysis requiring a demonstration that the balance of urban and rural reserves “best achieves” livable communities and natural resource protection.



bring significant changes to the Metro region, with a near doubling of population and employment. Projecting which lands will best serve those needs (and in what amounts) 50 years into the future is imprecise as best. Given this uncertainty, the ability to make adjustments is a critical factor in determining whether the designated amount of urban reserves “best achieves” livable communities. Consequently, where, as here, there are legitimate disputes about the sufficiency of the amount of urban reserves designated, the decision must contain a sufficient quantity of “undesignated” areas to accommodate differences between the projected and the actual needs over this 50 year period. The Reserves Decision does not do so.

**Exception 3: (“Agenda 5A and 5C. Area Specific Objections”) (Staff Report 71-103)**

Several objections raised by other parties concern the designation of particular properties, contending that the areas should not be designated as urban reserves (e.g., Area 7I in North Cornelius and the Stafford Area). If the Commission were to conclude that the findings or evidence to support these designations as urban reserves are inadequate, additional direction must be given to the counties and Metro to designate replacement lands in the event the areas are not ultimately acknowledged as urban reserves. Otherwise, because the decision provides only the minimum urban reserves required, the decision *as a whole* will not satisfy the requirements of OAR 660-027-0040(2) (requiring a sufficient supply of land to serve the estimated population and employment growth for the region) or OAR 660-027-0005(2) (requiring a balance in the designation of urban and rural reserves).

Very truly yours,



Stark Ackerman

SA:lmn  
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cc: Ms. Laura Dawson-Bodner, Metro  
Ms. Maggie Dickerson, Clackamas County  
Mr. Chuck Beasley, Multnomah County  
Mr. Steve Kelly, Washington County  
Clients

