

HAND DELIVERED

DEPT OF  
OCT 08 2010  
LAND CONSERVATION  
AND DEVELOPMENT

21341 S. Ferguson Rd.  
Beavercreek, OR 97004  
October 8, 2010

Department of Land Conservation and Development  
635 Capitol St. NE, Suite 150  
Salem, Oregon 97301-2540

RE: EXCEPTIONS TO DLCD "DEPARTMENT'S REPORT ON THE OBJECTIONS TO PORTLAND METRO AREA URBAN AND RURAL RESERVE DESIGNATIONS" DATED SEPT. 28, 2010

Dear Department of Land Conservation and Development:

What follows are my written exceptions to the LCDC Urban and Rural Reserve report and recommendation:

3. Elizabeth Graser-Lindsey (Ref. 14-1) from p. 28-30/110 of your Sept. 28, 2010 letter.

LCDC recommended denial of this objection for two reasons:

First, LCDC claims that the decision "does not commit the lands to urban use", therefore the decision does not need to comply with the Goals' Guidelines concerning carrying capacity. LCDC's legal theory mis-interprets the Goals and their legal interpretation and the issue itself in a number of ways:

- 1) LCDC does not identify an exception to the Goals' Guidelines that indicates that the Guidelines only apply when the land is committed to urban uses. LCDC shows no evidence that the Guidelines are not to be applied at the time of the urban and rural reserve designation. Consequently, LCDC mis-interprets the Goals. The Goals themselves state that they are to be applied to plans and planning efforts and does not mention "commitments" or the Goals only being applicable to commitments, e.g. Goal 3 reads "Plans... should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources<sup>1</sup>." LCDC acknowledges that "all relevant goals apply to urban and rural reserve designations."
- 2) Many planning efforts directed at urbanization do not result in all lands being used for urban uses during a specific time period, but they effectively commit the lands. For example, some zoned lands aren't converted to the use the zoning permits in an

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<sup>1</sup> Goal 3 reads, in part, "Plans providing for the preservation and maintenance of farm land for farm use, should consider as a major determinant the carrying capacity of the air, land and water resources of the planning area. The land conservation and development actions provided for by such plans should not exceed the carrying capacity of such resources."

average lifetime. None of us can predict what will happen to the designated urban reserves in the next 50 years or whether more land will be thought to be needed for urbanization. Although the Goals does not mention “committed to urban use” and such an exception to the Goals’ Guidelines does not exist, in terms of the UGB boundary process the urban-reserve lands are committed for 50 years to be first in line and apparently Metro and the counties thought the amount of land in urban reserves was not necessarily enough so they left lots of undesignated lands near the urban reserves to be available for urbanization. Metro knows that some of these urban reserve lands will be included in the UGB soon, because this fall Metro is considering many urban reserve parcels for immediate inclusion in the UGB. Urban reserve designation causes a level of commitment of much of the urban reserves lands to a purpose – urbanization -- only slightly less than the level of commitment created by zoning.

- 3) Although the Goals’l Guidelines do not contain a “committed use” exception as DLCD would have us believe, it should be noted that the urban reserve designation commits the designated urban reserve lands to a use other than the highest agricultural use and it removes the lands from their commitment to agricultural use. The designation clearly represents a commitment of the type that DLCD denies (though the discussion here concerns the non-ag commitment rather than the urban commitment), since DLCD knows a commitment needs to be planned for as the Goals’ Guidelines provide.
- 4) Rural reserves and urban reserves are decided by this process. DLCD’s reliance on “does not commit land to urban uses” fails to recognize that Goal 3 and others direct the carrying capacity analysis to guide “preservation and maintenance of farm land for farm use<sup>1</sup>” and other non-urban purposes; the carrying-capacity analysis is not just directed at committing lands to urban use, but it’s also for protecting rural lands. The number, amount and location of both urban and rural reserves could be affected by the carrying-capacity analysis.
- 5) DLCD suggests that the Goals’ Guidelines should be applied at the time the UGB is amended, but DLCD fails to find any language in the Goals that indicates such a postponement in applying the Goals is intended. To the contrary, DLCD provides no evidence that it or Metro has been in the habit of applying the Guideline on carrying capacity at the time of UGB amendments and the opposite seems to be the case, which belies DLCD’s argument.
- 6) DLCD seems to suggest that the Goals’ Guideline could be applied at the time of an UGB amendment, but this reflects a lack of understanding of carrying capacity. Carrying capacity is defined as

“the maximum number of individuals of a species that can be sustained by an environment without decreasing the capacity of the environment to sustain that same amount in the future”<sup>2</sup>

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<sup>2</sup> This definition of carrying capacity is from page 9 of D.B. Botkin and E. A. Keller, *Environmental Science*, 7<sup>th</sup> ed., John Wiley and Sons, Inc., 2009. The definition at p. G-2 uses the term “population” as well as “species”, the terms “habitat or ecosystem” for “environment”, and “degrading the ability... to maintain” for “decreasing the capacity...”

where an environment is defined as

“all factors (living and nonliving) that actually affect an individual organism or population at any point in the life cycle<sup>3</sup>.”

Urban growth boundary amendments typically are not of a size that corresponds to the definition of carrying capacity since some UGB expansions have been of just a few acres. The definition applies to a population in an environment where the population's needs are met which is more than a few acres. The carrying-capacity definition is applicable to the region just like Metro's demographic studies are undertaken for the whole region. In addition, it is a better use of resources to study carrying capacity for the larger urban and rural reserves planning effort and to have the report available for future needs such as UGB amendments rather than to try to create a different carrying-capacity study for each couple-acre UGB expansion.

LCDC's first reason to deny the objection fails to make its case and the Goals' Guidelines on carrying capacity need to be complied with as part of this reserves planning and designation process

Second, LCDC claims that the Goals' Guidelines on carrying capacity do not need to be followed, because Metro's Regional Framework Plan and Regional Urban Growth Goals and Objectives (RUGGOS) represent an alternative course of action to satisfy the carrying capacity Guidelines. This claim is false for several reasons:

- 1) LCDC fails to indicate where Metro's Regional Framework Plan and Regional Urban Growth Goals and Objectives actually address carrying capacity<sup>4</sup> and there is no evidence that they actually do. LCDC errs if it considers that general environmentally-friendly principles would substitute for a consideration of carrying capacity – “the maximum number of individuals”<sup>2</sup>.
- 2) The OAR 660-027 governing this urban and rural reserve selection process was adopted after when the Framework and RUGGOs were acknowledged. There is no evident that the Framework and RUGGOs anticipated this exact process in order to guide its compliance with all provisions of the Goals. LCDC fails to explain why the Regional Framework Plan of 1992 would continue to be up-to-date enough to satisfy this analysis 18 years later.

LCDC's second reason to deny the objection fails to make its case and the Goals' Guidelines on carrying capacity need to be complied with as part of this planning process.

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to sustain”. This textbook is used at Clackamas Community College and numerous other universities and college across the United States. The study of population biology also includes carrying capacity.

<sup>3</sup> This definition of environment is from page G-6, *Environmental Science*.

<sup>4</sup> LCDC says, “The Framework Plan and RUGGOs include provisions *directed at* the overall carrying capacity of the lands making up the Metro region. (emphasis added)” While the framers of these documents may have included provisions that “directed at” carrying capacity, though this is not demonstrated by DLCD, “directing at” a target is different than hitting the target.

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3. Elizabeth Graser-Lindsey (Ref. 14-2) from p. 58-59/110 of your Sept. 28, 2010 letter.

LCDC mis-stated my proposed remedy which was to remand the urban and rural reserve decision, so that OAR 660-027 is applied to all study lands (rather than rural reserves, where the remand would be pointless), so that the agricultural values of lands can be considered where they have been ignored.

LCDC recommended denial of this objection for erroneous reasons:

First, LCDC (in its analysis that begins "The statement...") does not understand that errors in analysis of agricultural values of lands can affect both the urban and the rural reserve designations, because the governments are essentially performing a weighing of contrasting urban and agricultural values and if the data (i.e. agricultural values) being used in the analysis are incorrect and not in compliance with the governing law, the results of the assessment are likely to have errors as well.

Second, LCDC alleges that the objection concerned the lack of a parcel-by-parcel analysis.

This is a mis-interpretation of the objection. During the public hearing many methodologies to get at the agricultural value of land were discussed, but the decision-making process ignored these diverse, fact-based methodologies for evaluating the agricultural value of land, e.g. use of farm and forest tax deferral status, zoning, slope, surveyed land use, etc. These methodologies are not "parcel-by-parcel analysis as many of these types of data are already available as maps as seen in the record.

Third, LCDC alleges that the objection desired that the factors be used as criteria; instead the objection is that the factors were not used as factors, which would mean "factors to be considered in the reserves decision" as LCDC states is appropriate use of a factor. The agriculture-value factors were ignored as explained in the objection.

Fourth, the Findings suffer from the very problem that the objection alleges; available, quality data were not used to evaluate the factors concerning the agricultural value of land, but instead general, broad-bush mapping units from the 2007 ODA report, not intended by OAR 660-027 for characterizing agricultural values of land, were used and that mis-categorized entire areas as ignored and un-rebutted testimony demonstrated .

Agricultural lands cannot be properly and legally weighed for designation as urban reserves, undesignated or rural reserves, if the measures of the agricultural-value factors are ignored. LDCD's erroneous comments on the objections achieve nothing and the decision needs to be remanded.

Your attention to these exceptions will be appreciated.

Sincerely,



Elizabeth Graser-Lindsey

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*503 373-0050  
with Lindsey Graser*

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