

October 8th 2010

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LAND CONSERVATION
AND DEVELOPMENT

John H. VanLandingham, Chair
Land Conservation and Development Commission
635 Capitol Street NE, Suite 200
Salem, OR 97301

Re: Exceptions to the September 28, 2010 Staff Report on the Objections to Portland Metro Area Urban and Rural Reserve Designations

Dear Chair VanLandingham and Members of the Commission:

This letter is a written exception to the Department of Land Conservation and Development's report and recommendation issued September 28, 2010 regarding the consolidated submittal of urban and rural reserves by Clackamas, Multnomah and Washington counties and Metro (hereinafter referred to as the "Staff Report"). This exception is submitted by James R. Irvine, specifically objecting to the designation of Area 9B as "rural reserve," rather than as "urban reserve." The decision of the Department has to be remanded or reversed and an urban reserve designation applied.

Pursuant to my previous filings and the above reference, I rebut the Staff Report with respect to 9B often referred to as the "L".

I believe the (Metro Authority) erred in its designation of Area 9B, as rural reserve, for two basic reasons:

1. The record is devoid of adequate evidence that this property should be designated rural reserve, and the evidence is abundant that the area should be designated urban reserve.
2. The designation of area 9B as rural reserve does not represent a land use decision that meets the requirement of an equitable application of our statutes, as required by ORS 197.010(2)(a).

I will not repeat the capable arguments and points raised by the representatives and owners in area 9B. Specifically, however, I adopt the arguments and assignments of error of in the letter from counsel, Steve Pfeiffer, of this date. I also adopt the argument, points, and assignments of error represented by the letter of Robert Burnham, of this date. I also adopt the arguments, points, and authorities represented by Tom Vanderzanden's letter of this date I incorporate it herein. I will not repeat those arguments here. It is sufficient to say that their points and authorities support my propositions of error listed above.

I have participated in Oregon's land use process since its early adoption with SB100 and have testified and commented on it for over 35 years. Today I am here to suggest in the strongest possible terms that the issue of Area 9B before the Commission represents a tremendous opportunity to apply the land use laws as they were intended, and that it should remand the decision of (metro) and to Metro for a designation of urban reserve.

It is Mr. Vanderzanden who most clearly illustrates the breakdown in the land use regime which, despite good intentions, presents a field for contention and contradiction that divides political agencies, counties and land owners. As Mr. Vanderzanden points out, the odds of geographical,

topographical and socioeconomic factors causing urban and rural reserve delineations to follow county boundaries are infinitesimally small. The regions Reserves Map serves as a clear illustration that decisions have been made based on private or political considerations, not consistent or coherent policy. Area 9B is the perfect time, the perfect circumstance, and the perfect equity to adopt the proper descriptions of how to equitably reconcile the standards for urban and rural reserve decisions.

What Area 9B is not, is a conflict between agriculture uses and urbanization. It is an area that is clearly undistinguished in terms of natural features, it abuts urbanization, and it meets all the criteria for urban reserve (as admitted by staff). However, it is held prisoner to a city specific and county specific agenda of indifference and neglect. It is so treated by government jurisdictions does not control its designation, nor the equitable application of Land Use law.

Putting aside personal or institutional bias for preserving Area 9B as a functional park, any objective review of the criteria applicable to urban reserve could reach only one conclusion: it is suitable urban reserve. Where the equity requirements of the land use law (ORS 197) come clearly into play is that it is not fair to injure or discriminate against innocent land owners, and who are the victims of a clear failure of due process and equal protection. It requires little investigation to find land less suitable as urban reserve which has been declared urban reserve. Further, it is easy to identify why Area 9B utterly fails many tests required for rural reserve.

Area 9B not only is prototype urban reserve, but it contains at least 500 acres of land easily served by urban services coming from Washington County, and already at its border. It is “hard to serve” only if jurisdictions like Multnomah and Washington counties refuse to cooperate. If all land owners with land on the edge of the county that was sloping away from sewer facilities could be dismissed as “too hard to reach,” then that land would be prisoner to values that do not even appear in the land use statutes. Furthermore, it would be the jurisdiction’s failure to act that was the vice, not the land itself.

A land area of 500 acres, easily served by all urban services, clearly meeting the requirements of urban reserve and proximate to highly urbanized property deserves the fair administration of our laws. This site is clearly within the context and urban consideration of the City of Beaverton, is only a seven minute walk and meets the future urbanization needs to create a successful existing Town Center (Bethany), and proximate to 24/7 mass transit service at PCC (Rock Creek). Again, it deserves the equitable administration of our laws. Here, whether it is the constraints of jurisdictions, limited vision, territorial concerns, or simple avoidance of controversy, none justify inequity. An overarching authority has to be exercised to make the process fair and equitable. Area 9B, and particularly the L portion of Area 9B, should be urban reserve. It is error to conclude otherwise without facts, and blind to the issue of the harm that is occasioned by the failures of others, but certainly not the failure of these owners.

Respectfully submitted,



James R. Irvine

Attached are photos of our property on NW Springville Rd. We own 84 acres that is sandwiched between NW Springville Rd and the Washington County line. Approximately 30% is forested with remainder in open fields. Attached are photos taken on 10/7/10.

100-0227 Lower portion of property facing South towards Washington County
100-0229 Same
100-0235 Property adjacent to Washington County. The Roof tops are homes in Washington County
100-0239 Same
100-0244 View from N W Springville Rd facing SW
100-0242 Large field on upper portion of property

Regard

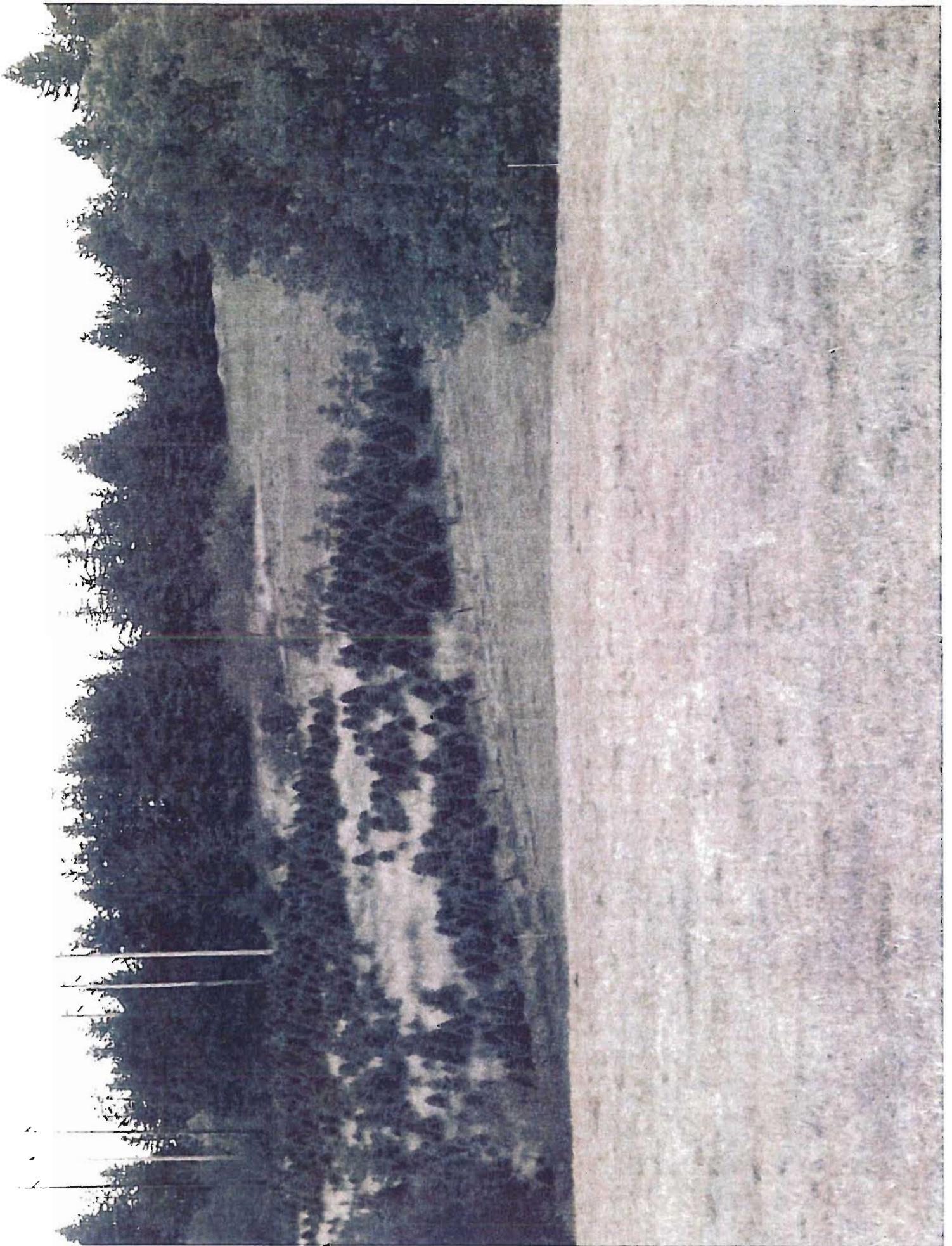
Eldon Burger
Burger Farms, LLC

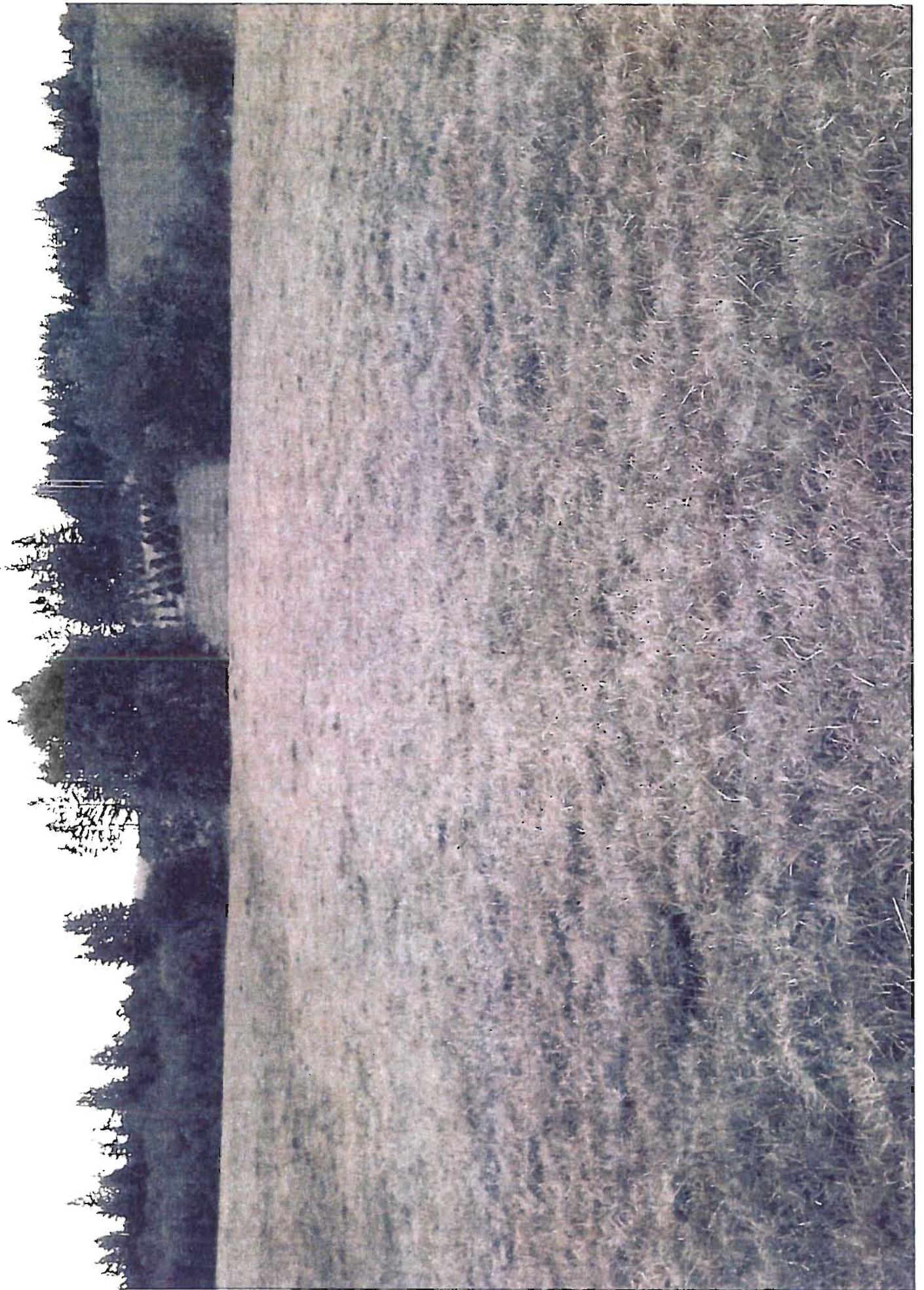
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French, Larry

From: Norah Kelly [nkelly@jameslawgroup.com]
Sent: Friday, October 08, 2010 4:54 PM
To: larry.french@state.or.us
Cc: Chris James
Subject: Submission in Exception to DLCD's Report and Recommendation issued Sept. 28, 2010 3 of 3
Attachments: Irvine October 8th 2010 Letter.pdf; Burger.pdf

Dear Commissioners:

Attached hereto are pdf documents to be submitted in exception to the Department of Land Conservation and Development's Report and Recommendation issued September 28, 2010. Specifically, these exceptions object to the findings and recommendations relating to Area 9B. These documents are as follows:

Letter from Jim Irvine
E-mail from Eldon Burger, with attached photographs

Norah Kelly
Legal Assistant

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