



July 14, 2010

Land Conservation and Development Commission
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

DEPT OF
OCT 08 2010
LAND CONSERVATION
AND DEVELOPMENT

Dear Chair John VanLandingham and Commission,

President

Pat Campbell

Vice President

Josh Cerra

Secretary

Wink Gross

Treasurer

Ken Ivey

Past President

Peter Paquet

Josh Cerra

Tony DeFalco

Katy Erhlich

John Fitchen

Kristina Gifford

Wink Gross

John Hammerstad

Barb Hill

David Mandell

Bob Liddell

Karen O'Connor Kruse

Claire Puchy

Dan Rohlf

Lee Savinar

Ron Spencer

Board Member

Emeritus

Dave Marshall

On July 14th Audubon Society of Portland filed objections to Portland-Metro area urban and rural reserve designations. The staff DLCD staff determined our objections were invalid because they allegedly failed to include a remedy. This written testimony addresses (1) our disagreement with the staff determination of our objections and our request that our objections be accepted as valid and (2) our exceptions the reasoning of DLCD staff in denying other objections with which we agreed, particularly as they relate to the application of natural resource related factors for designating urban and rural reserves (**OAR 660-027-0050 and OAR 660-027-0060**).

(1) Staff determination and request that our objections be accepted as valid.

We disagree with the staff determination that our objections were invalid because they lacked a remedy. In the case of individual urban reserve designations, the remedy to our objection was clearly implied in our stated belief that the Metro Council and Washington County our violated SB1011 and OAR 660 Division 27 in making designations. Specifically:

1. Urban Reserve 8C Rock Creek Corridor: We objected to the designation Urban Reserve 8C north and west of the Rock Creek Corridor. The remedy is self-evident; it is to remove the urban reserve designation. We objected to the decision not to designate the Rock Creek corridor and floodplain north of the Hwy 26 as a rural reserve. The remedy is self-evidently to designate Rock Creek corridor and floodplain north of the Hwy 26 a rural reserve.

2. Tonquin Geologic Area in Urban Reserve 5F. We objected to the designation of the northern portion of the Tonquin Geologic Area as a urban reserve. The remedy is self-evidently to remove the urban reserve designation.

3. Cooper Mountain in Urban Reserve 6A. We objected to the designation of the Cooper Mountain as Urban Reserve 6A. The remedy is self-evidently to remove the urban reserve designation.

4. Council Creek Floodplain in Urban Reserve 7I. We objected to the designation of the Council Creek Floodplain and adjacent agricultural land as an urban reserve. The remedy is self-evidently to remove the urban reserve designation.

In each case we request that our objections to these designations be accepted as valid.

(2) Exceptions to staff report denying other objections with which we agreed.

Portland Audubon has actively participated in rural and urban reserve policy and planning in the Portland-Metro region in order to ensure the long-term protection of important natural landscape features in the Portland-Metro region AND to more fully integrate ecological conservation into Oregon's system of state-wide land-use planning.

Our objections to the specific urban and rural reserve designations in Washington County relates to both the specific designations and the process by which natural resource-related factors in **OAR 660-027-0050** and **660-027-0060** were or were not applied in making these decisions. In contrast to the reserve planning in Multnomah and Clackamas County, Washington County relied upon- and Metro consented to- an extremely weak and general analysis based on inaccurate information or conclusory statements in order to justify rural and urban designations. In doing so, Metro and Washington County put important natural landscape features at risk to urbanization and established a very bad precedent for urban and rural reserves planning in the region and across the state.

We are extremely concerned with the laxity of the current process which appears to allow counties and Metro to designate rural and urban. The staff has interpreted state law in such a way that establishes an absurdly low standard for applying the factors in **OAR 660-027-0050** and **660-027-0060**. During the rule making process with which we participated there was spirited debate as to whether SB1011 required specific criteria for designating reserves. While there was disagreement about whether SB1011 required specific criteria, these discussions anticipated and expected a much higher standard of review and analysis than what Washington County and Metro conducted and which the DLCDC staff now seem willing to accept as adequate.

DLCDC staff effectively conclude that Metro and by extension Washington County only have to produce some evidence that they considered the factors. This was not the intent of SB1011 or the expectations in the rule-making process for **OAR 660-027**. DLCDC staff claim that Metro or Washington County do not need to produce a quality of evidence and analysis to demonstrate it is possible to achieve the stated factors or that they conducted a credible comparative analysis of the relative suitability of different rural reserves or different urban reserves. Moreover, DLCDC staff has accepted conclusory statements from Washington County as sufficient "evidence" while rejecting conflicting evidence submitted by objectors that challenges the substance and accuracy of Washington County's "evidence" and findings.

We are particularly concerned with the extremely weak analysis and so-called "evidence" provided in applying the natural resource-related urban reserve factors

OAR 660-027-0050 (5), (7), and (8). It becomes apparent in reviewing the findings and the DLCDC staff recommendations that all Metro and Washington County had to do to demonstrate it had considered **OAR 660-027-0050 (5) and (7)** was state that a future intent to conduct a Goal 5 process (already required by state law) for important natural features in the future planning of an urban reserve. A statement that amounts to a commitment to follow existing state law related to Goal 5 is not a credible demonstration that a particular area is any more suitable for an urban reserve than any other area. This assertion is most ironic coming from Washington County which was emphatic during the rule-making process that SB1011 did not involve a Goal 5 process. If this is deemed an adequate application of **OAR 660-027-0050 (5) and (7)**, then they are legally meaningless to the urban reserve designation because they could be applied anywhere to justify any land as an urban reserve.

In the urban reserve designation listed above, we found no evidence in the record that Washington County and Metro demonstrate that these urban reserves can be designed in a way that preserve(s) and enhance(s) natural ecological systems” or “preserves important natural landscape features included in urban reserves.” Nor did they demonstrate that these ends are more likely to be achieved in these urban reserves more than any other.

Urban Reserve 5F that encompasses the northern extent of the Tonquin Geologic Area illustrates the inadequacy of Washington County and Metro’s reasoning in urban reserve designation. The Tonquin Geologic Area is among the highest value natural landscape features in the region and is identified as such in several component sources of Metro’s Inventory of Important Natural Landscape features. The Tonquin Geologic area includes fire-dependent plant communities such as oak woodlands that are particularly unsuitable for urbanization. That is why we argued repeatedly during the planning process that the Tonquin Geologic Area NOT be included in an urban reserves. Clackamas County agreed with us and designated most of the Geologic area a rural reserve. In contrast, Washington County proposed and Metro consented to **Urban Reserve 5F** which is located **entirely** within the Tonquin Geologic Area. **OAR 660-027-0050(7)** states that Metro must consider whether the urban reserve “can be developed in a way that preserves important natural landscape features included in urban reserves.” How is it possible to develop the urban reserve that “preserves important natural landscape features included in urban reserves” when the entire urban reserve is within an important natural landscape feature? Washington County provided no explanation other than statements in a Prequalified Concept Plan about applying vegetated corridor standards required by Clean Water Surfaces. Even if true, these standards will not preserve most of the important natural landscape features included in the urban reserve.

We largely support the process and outcome of urban reserve designation in Clackamas and Multnomah Counties. However, if the urban reserve decisions in Washington County are allowed to stand, Metro and LCDC will have set an unacceptably low standard for considering important natural landscape features in

urban reserves and urban growth boundary expansion decisions.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Labbe", written in a cursive style.

Jim Labbe
Urban Conservationist
Audubon Society of Portland
5151 NW Cornell Rd.
Portland, OR 97210
503-292-6855
jlabbe@urbanfauna.org

CC: Metro Council & Staff

French, Larry

From: Donnelly, Jennifer [jennifer.donnelly@state.or.us]
Sent: Friday, October 08, 2010 3:09 PM
To: larry.french@state.or.us
Cc: Whitman, Richard
Subject: FW: PAS letter to DLCD

Attachments: 10.6.10_PAS_LettertoDLCD.pdf



10.6.10_PAS_LettertoDLCD.pdf (...)

-----Original Message-----

From: jlabbe@urbanfauna.org [mailto:jlabbe@urbanfauna.org]
Sent: Friday, October 08, 2010 3:03 PM
To: Richard.Whitman@state.or.us; jennifer.donnelly@state.or.us
Subject: PAS letter to DLCD

Please see the attached letter from Portland Audubon Society to LCDC in advance of the October 19 hearing on Portland-Metro Area urban and rural reserve decisions.

Jim Labbe
Urban Conservationist
Audubon Society of Portland
6704 SE 122nd Avenue
Portland, OR 97236
jlabbe@urbanfauna.org
971-222-6112