



Richard P. Benner
Phone: 503-797-1532
Fax: 503-797-1792

Richard.Benner@oregonmetro.gov

August 8, 2011

Mr. Larry French
Periodic Review Coordinator
Department of Land Conservation & Development
635 Capitol Street NE, Suite 150
Salem, OR 97301

Subject: Exceptions to July 28, 2011, Report "Metro Urban and Rural Reserves"

Dear Mr. French:

Below are exceptions filed by Metro and Washington County to the Department's July 28, 2011, report "Metro Urban and Rural Reserves", which recommends LCDC approval of the revisions to reserves in Washington County. We file these exceptions pursuant to OAR 660-025-0160(4). Our exceptions have primarily to do with the failure of the responses to objections to refer to LCDC discussion of the reserves that were the subject of the objections.

Introduction

We concur with DLCD staff that the issues before the Commission are limited to those arising from the oral remand. Accordingly, objections that address properties not subject to the oral remand, or that raise issues that were or could have been addressed at the Commission's initial hearing (such as the need for industrial land) are invalid as untimely and beyond the scope of the remand.

1. Objection that "Balance" not Achieved due to "too many acres of Urban Reserves"

1000 Friends, the Oregon Department of Agriculture and others objected that the revisions Metro made to urban reserves in Washington County, by agreement with the county, offend the "balance" requirement in the reserves rules because too many acres of urban reserves are designated. The department recommends that the Commission reject this objection:

"The amount of urban reserves designated by Metro in the region and in Washington County declined in the re-designation submittal [approximately 300 acres]. The department found in 2010 that Metro justified the amount of land included and used an authorized planning period for establishing urban reserves; we see no reason to change that conclusion." Report, p. 23.

The report fails to recount the Commission's decision on October 29, 2010, to approve the amount of urban reserves for the planning period:

Richard Whitman (RW): "I would recommend that you affirm the amount of urban reserve, the amount determined in Metro's decision and indicate that it could be less, but that it could not be more."

John VanLandingham (JVL): "I thought we had already decided that."

RW: "You did; I am just trying to be clear."

Greg Macpherson (GM): "I think we heard a good input on the amount. It was contested by some, but I was satisfied that they got the amount in a reasonable range."

JVL: "Yes, I think what we have talked about so far is, remanding to reject 7I, remanding to direct Washington County and Metro to develop findings on 7B, remanding all of the rural reserves in Washington County for Washington County and metro to consider whether to designate some of the currently proposed rural reserves to urban reserve, capped at the amount in 7I, but also they may want to propose additional undesignated land that would not be capped. Does that sound right, Richard?"

RW: "Just a minor clarification: capped at the sum of 7I plus whatever amount they may choose to not designate as urban reserves within 7B, if they so choose."

This motion was made and passed. Transcript, LCDC meeting, October 29, 2010.

The report also fails to cite the following the four governments' findings on achievement of "balance": Metro Rec 3 to 10; WashCo Rec 12674 to 12686.

2. Objections about Undesignated Land

Several participants have objected to particular areas left undesignated or to the increase in the number of acres left undesignated adjacent to the UGB. The department recommends that the Commission reject these objections, but fails to recount the Commission's discussion on October 29, 2010, of land left undesignated:

GM: "The only part of that that really resonates with me is that, I think the decision having been made by the local governments to be so extensive in the designation of rural reserves, leaves little undesignated lands and so I guess the one piece of this that, if other members of the commission agreed with that concern, I could be comfortable with an invitation to un-designate some rural reserves that are, particularly those that

are conflicted, in order to have something to go to that is just not those few undesignated areas down the road.”

Marilyn Worrix (MW): “I was surprise by the amount of rural reserve, especially when it is far from the UGB. And I was disappointed in the amount of undesignated because I think that’s where you get a bit of flexibility and some future balance.”

JVL: “If we approve the rural reserves now, they can’t change that. They couldn’t take any land that is now in rural reserve or suggest it be an urban reserve area or that it be undesignated.”

Christine Pellett (CP): “I guess I come down with leaving an option to let them decide what to do. I too have been troubled by the lack of undesignated land. I don’t think it is enough.”

GM: “My proposal would be that they would be capped at additional urban reserve designations at the amount that is being removed from that designation, it wouldn’t have to be close to it. They could decide looking at our numbers and timelines and where we want to be within our projections, we are OK even without designating any new urban reserves. But that they would not be limited in choosing to remove lands previously designated as rural reserves and making them undesignated.”

JVL: “Yes, I think what we have talked about so far is, remanding to reject 7I, remanding to direct Washington County and Metro to develop findings on 7B, remanding all of the rural reserves in Washington County for Washington County and metro to consider whether to designate some of the currently proposed rural reserves to urban reserve, capped at the amount in 7I, but also they may want to propose additional undesignated land that would not be capped. Does that sound right, Richard?”

JVL: “Any concerns with this agreement?”

[No concerns expressed.]

Transcript, LCDC meeting, October 29, 2010. The Commission voted to remand the rural reserves in Washington County with the expressed intent of the remand to allow the county and Metro to change some rural reserves to urban reserves or to leave them undesignated. See WashCo Rec 12726 to 12731 for reasoning for leaving land undesignated.

3. Objection that Designation of Areas 6A and 8B as Urban Reserve Violated OAR 660-027-0040(11)

Several participants have objected to designation of Areas 6A and 8B as urban reserve for the reason that the findings do not explain, as required by OAR 660-027-0040(11), why Metro designated Foundation Agricultural Land as urban reserve rather than lands that are not Foundation Land (portion only of 6A; much is "Conflicted"). The Department's report correctly points to explanation in the findings adopted by Metro Ordinance No. 11-1255. The report fails to cite the thorough explanation, including references to specific areas of Conflicted and Important Agricultural Land, set forth in the findings at Metro Rec 4 to 10 and WashCo Rec 12732-12735.

OAR 660-027-0040(11) also requires the four governments to demonstrate consideration of the rural reserves factors in the designation of Foundation Agricultural Land as urban reserve. At the October hearings, the Department and the Commission expressed concern that the findings accompanying the reserves ordinances did not show that the rural reserves factors had been considered. The Department's report does not state that Ordinance No. 11-1255 adopts new findings to demonstrate that the governments did evaluate the urban reserves on Foundation Land under the rural reserves factors. Please see Metro Rec 8 to 10 and WashCo Rec 12686 to 12726.

4. Objection that Designation of Area 8B as Urban Reserve Violated the Reserves Rules

1000 Friends and others objected that Metro failed to consider urban reserve factors four and six in OAR 660-027-0050(4). The Department's report describes the treatment of the factor in the findings and concludes that Metro did consider the factor as applied to Area 8B. But the report fails to point to findings that flat land is more suitable for the uses and services listed in factor four. Metro Rec 3 to 5.

5. Objection that Metro designated Urban Reserves for Industrial Use

1000 Friends and others objected that Metro impermissibly designated urban reserves as industrial land. The Department's report correctly states that Metro did not designate any urban reserve for industrial use or any other use. Metro and Washington County do find that certain lands are suitable for industrial use. But the report fails to note that the governments also find these lands to be suitable for other urban uses that perform better under the urban factors of the rules if they occur on relatively flat areas with large parcels. Please see Metro Rec 3 to 10 and WashCo Rec 12693-12707.

6. Objection that Washington County failed to Comply with Procedural Requirements in its Charter

Objector Bobosky contended that Washington County had failed to follow procedures in its own charter when adopting Ordinance No. 740. The Department's report concludes the objector failed to

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Page 5 of 5

demonstrate that the county failed to comply with the charter. But the report fails to advise that the contention itself is not within the scope of the Commission's review. Also, the objection itself is unclear. It appears to conflate adoption of the Supplemental Reserves IGA with Ordinance No. 740. Only the latter is subject to the Charter ordinance adoption provisions. All tentative decisions in the IGA were expressly subject to further consideration and modification in the Ordinance process. In accordance with the Charter, the Planning Commission conducted a public hearing on Ordinance 740 on March 2, 2011. WashCo Rec 10194. The Board held subsequent public hearings and made the final binding decisions in response to the remand when it adopted Ordinance No. 740 in April 2011.

7. Objection that Purdin Road does not Provide Adequate Buffer along Area 7B

1000 Friends objects that Purdin Road will not provide a sufficient buffer between urban uses and practices on farms to the northeast. The Department's report correctly points out that the law does not require Metro to establish the "best" buffer and recommends rejection of the objection. But the report fails to state that Metro's Regional Framework Plan contains Policy 1.9.8¹, implemented by paragraphs 3.07.1110B(1)(g) and (2)(e) in Title 11 of the Urban Growth Management Functional Plan.² This policy and these code provisions will ensure buffers – in addition to the buffering effects of roads - between urban uses and rural resource practices. Additional discussion of buffers and the role that roads can play in buffering at WashCo Rec 12700. Metro and Washington County call the Commission's attention to the difference between a "buffer" and a "hard edge." Purdin Road will serve as both, but the buffers required by Metro regulations described above would be in addition to the road, established on lands adjacent to the road.

Sincerely,

Richard P. Benner
Metro
Senior Attorney

Brent Curtis
Washington County
Planning Manager

¹ "Use natural or built features, whenever practical, to ensure a clear transition from rural to urban land use."

² "A concept plan shall achieve...Avoidance or minimization of adverse effects on farm and forest practices and important landscape features on nearby rural lands."

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Page 5 of 5

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