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August 8, 2011

BY E-MAIL

Urban and Rural Reserves Specialist
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

Subject: Exceptions to the Department's July 28, 2011, Report on the Objections to
Portland Metro Area Urban and Rural Reserves Designations

Dear Urban and Rural Reserves Specialist:

We represent the Cities of Tualatin and West Linn (the "Cities"). The Cities primarily object to the designation of Urban Reserves 4A, 4B, and 4C (Stafford, Rosemont, and Borland) (the "Stafford Basin") and Area 4D ("Norwood") (collectively, the "Stafford Area") by Clackamas County and Metro. The Cities submitted valid objections to Metro's and Clackamas County's decisions¹ with regard to the urban and rural reserve designations to the Department of Land Conservation and Development ("DLCD" or "Department") on July 14, 2010, and to the September 28, 2010, Department Report on October 7, 2010. Please accept this letter as the Cities' exceptions to the July 28, 2011, Report filed pursuant to OAR 660-025-0160(4).

The Land Conversation and Development Commission ("LCDC" or "Commission") preliminarily voted to deny the Cities' objections and approve the designation of urban and rural reserves in Clackamas and Multnomah Counties at its October 2010 meeting. The Commission, however, remanded the Washington County submittal to eliminate certain Urban Reserve designations and to reconsider its rural reserve designations. That decision on remand is before the Commission as described in the Department's July 28 Report. The Commission has not yet adopted a final order with regard to the designations as applied to any of the counties.

¹ Because Metro's and Clackamas County's findings with regard to the four Stafford sub-areas are substantively identical, the Cities refer to the "Metro Findings" or "Metro Decision" for convenience.

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The Cities did not participate in any of the proceedings on remand before Washington County or Metro and do not express an opinion on the merits of Washington County's submittal. LCDC's remand and analysis of Washington County's submittal, however, affects or amplifies the Cities' prior objections with regard to designation of the Stafford Area as Urban Reserve. We address those issues here.

1. The Department Has Applied a Different Scope of Review to Washington County Than to the Rest of the Region.

In the Cities' prior July 14, 2010, and October 4, 2010, objections, we objected to the very deferential scope of review of Metro and the Counties' decisions that the Department claimed applied under ORS 195.137 to 195.145 and OAR 660 Division 027. Consequently, the Cities argued that the Department failed to adequately address the Cities' objections, did not appropriately determine whether its decision was supported by an adequate factual base as required by Goal 2, and otherwise failed to adequately address the objections and evidence submitted by the Cities.

When the Commission considered the Washington County Urban and Rural Reserves, however, it rejected the deferential scope of review proffered by the Department and applied what the Cities believe is the correct standard of review: Is Washington County's decision, considering all of the evidence in the record—including the conflicting evidence presented by the objectors—in compliance with the criteria for designation of Urban and Rural Reserves in ORS 195.141 and 195.143? The Commission concluded that the answer was "no" and remanded the decision.

In its July 28, 2011, Report on Washington County's decision on remand, Metro applies a level of scrutiny and analysis that is substantially different than it applied to the Cities' objections or to other objections in Clackamas and Multnomah Counties: It directly addresses all of the objections, expressly considers the conflicting evidence submitted by the objectors, and makes recommendations based on that analysis. This is what Metro and the Commission should have done on a region-wide basis.

The Commission must apply a consistent scope of review to the entire region and must specifically address the substantial conflicting evidence submitted by the Cities with regard to the Stafford Area. It has failed to do so, and/or it has failed to differentiate why objections in Clackamas and Multnomah Counties should be treated differently than objections in Washington County. Failure to meaningfully address these issues will inevitably result in remand on appeal if not addressed by the



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Commission in its final decision. See, e.g., 1000 Friends of Oregon v. LCDC, 237 Or App 213, 239 P3d 272 (2010) (Woodburn).

2. In the Time That Has Passed Since the Commission's October Hearing, the Regional Transportation Plan Has Been Adopted and Acknowledged.

One of the Cities' chief objections to designation of the Stafford Area as an Urban Reserve involved Metro's finding that the Stafford Area could be adequately served by public transportation facilities under ORS 195.145(5)(a), (c), or (d), and the related factors under OAR 660-027-0050. The Cities cited Metro's own Regional Transportation Plan ("RTP") as evidence to the contrary. The RTP contains an analysis indicating that urbanization of the Stafford Area would not and could not be served by existing or planned transportation facilities during the RTP planning period. (The RTP extends to 2035 and overlaps the Urban Reserve Planning Period.) The Cities argued that Metro's findings with regard to transportation service to the Stafford Area created inconsistent planning documents and were essentially refuted by its own RTP.

One of the comments made by Metro and Clackamas County was that the RTP was not acknowledged and so did not have to be considered by the Commission. Subsequently, the RTP has been approved by the Department (on November 24, 2010, according to Metro's Web site). We request that LCDC take official notice of the adopted RTP and modify its preliminary decision to exclude the Stafford Area from designation as an Urban Reserve and to leave it undesignated.

Alternatively, if the Commission affirms its preliminary decision to designate the Stafford Area as an Urban Reserve, the Cities submit that the evidence in the record requires LCDC to require Metro and Clackamas County to include a provision in their planning documents as follows: The Stafford Area may not be considered for inclusion in the Metropolitan Urban Growth Boundary until 2035, or until the RTP is amended to indicate that adequate transportation facilities can or will be provided sufficient to accommodate the development of the Stafford Area at urban densities without resulting in failure of the transportation system.

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3. Metro Failed to Balance Urban and Rural Reserves and Failed to Apply the Urban and Rural Reserve Factors "concurrently and in coordination with one another."

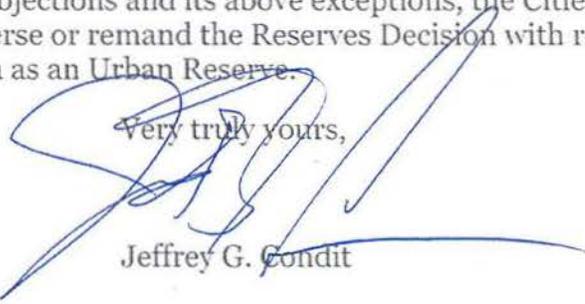
In the Cities' October 7, 2010, Exceptions, the Cities argued that the analysis of the Urban Reserve factors should be the same as the similarly worded Goal 14 factors: They needed to be considered and balanced against one another. Metro and the Counties failed to do so. 1000 Friends of Oregon, et al, makes similar objections as described on pages 21 to 23 and on pages 32 to 33 of the July 28 Report with regard to specific decisions in Washington County. The Cities agree and adopt 1000 Friends' analysis of the legal requirements, but argue that the Commission failed to appropriately apply these requirements on a region-wide basis.

The Cities otherwise reiterate their objections in their July 14, 2010, and October 7, 2010, submittals.

CONCLUSION

Based on its July 14 objections and its above exceptions, the Cities respectfully request that LCDC reverse or remand the Reserves Decision with regard to the designation of the Stafford Area as an Urban Reserve.

Very truly yours,


Jeffrey G. Condit

cc: Sherilyn Lombos, City of Tualatin
Chris Jordan, City of West Linn
Laura Dawson Bodner, Metro
Maggie Dickerson, Clackamas County
Chuck Beasley, Multnomah County
Steve Kelly, Washington County