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EXHIBIT: C  
LAND CONSERVATION & DEVELOPMENT  
COMMISSION  
DATE: 1-23-08  
PAGES: 13  
SUBMITTED BY: City of Portland

January 10, 2008

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

Dear Commissioners:

**RE: Portland Testimony on the Urban and Rural Reserves Rule**

I am grateful for the opportunity to have served on your administrative rule workgroup, and support the adoption of the January 8 draft rule. I would, however, like to offer some clarifying language designed to improve the internal consistency of the rule.

**The Objective is the Most Important Part of the Rule**

The inclusion of a clearly stated objective resolved my last remaining difficulty with the rule. Unfortunately, the objective appears as the last sentence in the second paragraph of the Section 0005 of the draft (page 1, lines 19-22). I propose the objective be given its own paragraph, and that the section heading highlight the objective. The amended section would read as follows.

**660-027-0005**

**Purpose and Objective**

(3) The objective of this division is a balance in the designation of urban and rural reserves that, in its entirety, best achieves livable communities, the viability and vitality of agriculture and forest industries and protection of the important natural landscape features that define the region for its residents.

Subsequent references to 660-027-0005(2) would need to be changed to 660-027-0005(3).

In a nutshell, the obligation under the rule is to apply a set of discretionary factors in a way that achieves this objective. The word "best" may be the most important part of this rule. Under earlier drafts, any plausible application of the factors would suffice, and alternatives configurations of urban and rural reserves need not have been considered.

Any adopted rule should require Metro and the Counties to achieve the stated objective, and provide the Commission sufficient authority ensure the objective has been achieved. I think the draft rule may do this, but am offering some clarifying amendments designed to make sure.

**Clarity for Criteria and Factors**

The rule contains criteria, factors, and a standard for review, but employs a confusing variety of verbs describing on how these provisions should to be employed. To avoid this confusion, I would suggest that each of the Section 0040 criteria be "met," that the 0050 and 0060 factors be "applied," and most importantly, that the Section 0005 objective be "achieved" The draft rule is also confusing because it does not clearly state which obligations apply to Metro, which to the counties, and which to both. The following are proposed revisions.

Section 0005(1); Strike lines 9 and 10 on page 1, and insert in their place:

This division also prescribes the criteria that a county and Metro must meet, and the factors that a county and Metro must apply when choosing lands for designation as urban or rural reserves.

Section 0040 Heading: Strike the existing heading on line 36 of page 3, and insert in its place:

#### Criteria for Designating Urban and Rural Reserves

Section 0040(8), (9) and (10); In the January 8 draft rule three sequential paragraphs all combine Metro and county obligations. The proposed language reorganizes and clarifies existing content so that Metro obligations are expressed in paragraph (8), county obligations in (9), and joint obligations in (10). The proposed amendments would strike existing lines 30-46 of page 4, and insert in their place:

(8) When identifying, considering, evaluating, comparing and designating land for urban reserves Metro shall apply the factors of OAR 660-27-0050 in coordination with any local government, state agency, special district, or school district that might be expected to provide urban services to these reserves after they are added to the urban growth boundary.

(9) When identifying, considering, evaluating, comparing and designating land for rural reserves a county shall apply the factors of OAR 660-27-0060 in coordination with any city adjoining or within three miles of a rural reserve.

(10) Metro and any county that has entered into agreement with Metro under this division shall apply the factors of OAR 660-27-0050 or OAR 660-27-0060 concurrently and in coordination with one another. These local governments shall jointly adopt a single set of findings of fact, statements of reasons, and conclusions explaining why areas were chosen as urban or rural reserves and how these designations achieve the objective stated in OAR 660-27-0005(3).

Section 0080(4); Add the word "and" to the end of line 28 of Page 8; strike existing lines 30-36 on page 8, and insert in their place.

- (b) Compliance with applicable administrative rules; this includes, but is not limited to:
  - (i) Meeting the criteria for designating urban and rural reserves provided in OAR 660-027-0040;
  - (ii) Application of the factors provided in OAR 660-027-0050 and OAR 660-027-0060; and
  - (iii) Achievement of the objective stated in OAR 660-27-0005(3).

#### Selecting One Process or the Other

Should the Commission adopt the draft rule Metro would have two ways to designate urban reserves, the exiting way provided in Division 21 or the new way provided by Division 27.

Since urban reserves are, by definition, designed to meet urban needs beyond the twenty-year accommodation of jobs and housing provided by the regional urban growth boundary, it will not be necessary to designate them more than once anytime soon. The rule work group recognized this, and all earlier drafts of the rule contained the restriction, "If Metro designates urban reserves under this division, it may not designate reserves under OAR chapter 660, division 21."

A curious change has appeared in the January 8 draft. The word "simultaneously" has appeared between the words "not" and "designate" in the agreed-upon language (line 2, page 3 of the January 8 draft). This amendment was never discussed by the work group, and changes what was supposed to be a restriction to a *de facto* authorization.

For example, the Metro Council would be able to adopt Division 27 urban reserves as Item 1 of its agenda and Division 21 urban reserves as Item 2 on that same agenda.

While the agreed-upon limitation may have been too sweeping, the January 8 proposal would eviscerate an important consensus of the work group. I offer the following alternative in the spirit of compromise:

If Metro designates urban reserves under this division, it may not also designate reserves under OAR chapter 660, division 21 within five years of the acknowledgement of any designation made under this division.

Joint designation of urban and rural reserves is arguably the most significant improvement ever made to Oregon's land use planning program. It is important that we do it, and do it right. We need to stay focused, and the opportunity to switch back and forth from one process to another provides an unneeded and potentially harmful distraction.

I thank you for the opportunity to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'G. Kelley', with a long horizontal line extending to the right.

Gil Kelley, Planning Director