

**BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION
OF THE STATE OF OREGON**

IN THE MATTER OF REVIEW)
OF THE CITY OF PORTLAND’S) **PERIODIC REVIEW ORDER**
PERIODIC REVIEW TASK 2) **14-WKTSK-001850**

This matter came before the Land Conservation and Development Commission (Commission) on September 26, 2013, as an appeal of the director’s decision (DLCD Order 001837) approving the City of Portland’s Periodic Review Task 2. The appeal is pursuant to ORS 197.633(5)(b) and OAR chapter 660, division 25. The City of Portland (Portland) Task 2 “Land Use Inventory and Analysis” submittal consists of an Economic Opportunities Analysis (EOA), a Housing Needs Analysis, an Infrastructure Condition and Capacity Analysis, a Natural Resource Inventory Report, a Buildable Lands Inventory Report, and Buildable Lands Inventory Maps. The EOA is the only amendment that is subject to the appeal; the director did not receive any objections to the remainder of the city’s Task 2 submittal. The Commission, having fully considered the work task submittal from Portland; the report and order of the director of the Department of Land Conservation and Development (department); the appeal, written objections and exceptions; and oral arguments of the appellant and Portland, now enters its:

Findings of Fact

1. On September 30, 2009, the department approved the Portland periodic review work program. DLCD Order 001773.
2. On October 3, 2012, Portland adopted Ordinance No. 185657 to fulfill all requirements of the city’s periodic review work program Task 2. The new EOA and Buildable

Lands Inventory were adopted as part of Portland's Comprehensive Plan and other documents and maps were adopted as official Comprehensive Plan supporting documents.

3. On December 24, 2012, Portland issued a notice of decision pursuant to OAR 660-025-0140(1) and submitted its Comprehensive Plan update for review pursuant to OAR 660-025-0130.

4. On January 14, 2013, the department received a letter of objection from Schnitzer Steel Industries, Inc. (Schnitzer). The letter presented five objections, all related to the EOA portion of Portland's Periodic Review Task 2 submittal. The department found the Schnitzer objections to be procedurally valid under OAR 660-025-0140(2).

5. On May 29, 2013, by written DLCDC Order 001837, the department director denied Schnitzer's objections and approved Portland's Task 2 submittal in its entirety pursuant to OAR 660-025-0150(1)(a). The department found that the amendments to the Portland Comprehensive Plan and adoption of supporting documents – an EOA (five parts), a Buildable land Inventory (two parts and two maps), a Housing Needs Analysis (five parts), a Natural Resource Inventory (two parts), an Infrastructure Condition and Capacity Analysis and 51 Buildable Land Inventory Maps – comply with applicable statewide planning goals, related statutes and implementing rules. The department notified the city and Schnitzer pursuant to OAR 660-025-0150(2) of the director's decision.

6. On June 19, 2013, Schnitzer timely filed an appeal of DLCDC Order 001837 to the Commission as provided for in OAR 660-025-0150(6).

7. On August 30, 2013, the department issued its report to the Commission and mailed a copy thereof to Portland and Schnitzer pursuant to OAR 660-025-0160(3) and (4).

8. On September 9, 2013, the department received timely exceptions to the department's report from Schnitzer and Portland, pursuant to OAR 660-025-0160(5).

9. On September 11, 2013, the department issued its response to exceptions and revised report to the Commission followed by two addendums to the report on September 20, 2013 and September 23, 2013 pursuant to OAR 660-025-0160(5), all of which were transmitted to Portland and Schnitzer pursuant to OAR 660-025-0160(4).

10. On September 26, 2013, the Commission held a hearing on the appeal. The Commission heard a staff report from the department and oral argument from Schnitzer and from Portland. The Commission denied the appeal and adopted the department recommendation to approve Task 2, with specific guidance to Portland to address in the course of (Periodic Review) Task 3 the substance of the first two objections which is to give special attention to the different characteristics of Harbor Access lands and the probability of brownfield redevelopment given the superfund designations. The Commission authorized the director to issue an order approving the Task 2 submittal, pursuant to OAR 660-025-0160(7) (a) and OAR 660-002-0010(6).

11. On April 10, 2014, Portland notified the department by letter that it was requesting withdrawal of the 2012 Economic Opportunities Analysis, City of Portland Ordinance No. 185657, Exhibits A1-A5, for reconsideration in light of changes affecting the factual underpinnings to that analysis. Portland did not propose a date for resubmitting an EOA to complete work task 2, but stated the intent to re-submit the EOA as part of its Task 3 and 4 submittals.

Jurisdiction

The Commission has exclusive jurisdiction for review of the completed Task 2 submittal. ORS 197.644(2); OAR 660-025-0040(1).

Standard of Review

The Commission reviews the Task 2 submittal for compliance with the applicable statutes, statewide land use planning goals and administrative rules pursuant to ORS 197.633(3)(c) and OAR 660-025-0040. For periodic review submittals under ORS 197.628 to 197.650, “compliance with the goals” means the submittal “on the whole, conform[s] with the purposes of the goals and any failure to meet individual goal requirements is technical or minor in nature.” ORS 197.747; ORS 197.633(3) (c). For this submittal, the Commission focuses its review on the Goal 2 requirement of an adequate factual base and on the relevant portions of the goals and administrative rules associated with housing and residential land needs (Goal 10 and OAR chapter 660, division 7), infrastructure condition and capacity analysis (Goals 11 and 12 and OAR chapter 660, divisions 11 and 12), and natural resource inventory (Goal 5 and OAR chapter 660, division 23). Portland has withdrawn the EOA; therefore, any Commission review related to economic development and employment land needs (Goal 9 and OAR chapter 660, division 9) is limited to the degree that the remaining portion of the Task 2 submittal implicates those provisions.

Substantive Review and Conclusions of Law

In their January 14, 2013 objection, June 19, 2013 appeal, and September 9, 2013 exception, Schnitzer raised concerns regarding the EOA and compliance with Goal 9 and its implementing rules and the adequacy of the factual basis for the EOA. Because Portland has withdrawn the EOA as a proposed amendment to the comprehensive plan, the Commission finds that the underlying basis for the Schnitzer appeal is no longer before the Commission. However, as guidance for Portland in undertaking a new EOA and proceeding to the next tasks of its periodic review work program, the Commission’s motion denying the appeal did note that

consideration of the distinct characteristics of Harbor Access lands and the influence of the Portland Harbor Superfund designation to brownfield redevelopment potential were issues raised in the Schnitzer appeal that may serve to inform the new EOA.

The department did not receive any objections and no appeal was filed regarding the other elements of the Task 2 submittal; the director approved the work task. DLCD Order 001837 at 4. The director made a determination that the Task 2 submittal complies with the statewide planning goals and applicable statutes and administrative rules. OAR 660-025-0140(4). The Commission finds the amendments to the Portland Comprehensive Plan to include a Housing Needs Analysis (five documents), Infrastructure Condition and Capacity Analysis, Natural Resource Inventory Report (two documents), Buildable Lands Inventory Report (four documents), and Buildable Lands Inventory Maps (fifty-one maps), complies with the applicable statewide planning goals, related statutes and implementing administrative rules, based on the department's review.

The Commission further finds that modification of Portland's approved work program is necessary to accommodate Portland's April 10, 2014 request to withdraw the 2012 Economic Opportunities Analysis, City of Portland Ordinance No. 185657, Exhibits A1-A5, for reconsideration in light of changes affecting the factual underpinnings to that analysis. Under its rules, the Commission may direct the modification of an approved work program when, *inter alia*, issues related to economic development were omitted from the work program but must be addressed in order to ensure compliance with the statewide planning goals. OAR 660-025-0170(1)(d). The Commission finds that the recent decision by the Port of Portland to withdraw their annexation application for a marine terminal at West Hayden Island, creates an issue related economic development that must be addressed for purposes of goal compliance. Portland did not

propose a date for resubmitting an EOA to complete work task 2, but stated the intent to re-submit the EOA as part of its Task 3 and 4 submittals. Because the Portland work program is organized to carry out the comprehensive plan update in three procedural phases, *see* DLCDC Order 001837 at 2-3, the Commission modifies the submittal dates for Tasks 3, 4 and 5 as provided in this order to afford time for the inventory and analysis work of the new EOA to occur.

Conclusion

Based on the foregoing findings, the director's written and oral reports, the exceptions and oral argument from both Schnitzer and Portland, the Commission concludes that Portland's Periodic Review Task 2 submittal including all of the documents, reports, and maps identified in DLCDC Order 001837 with the exception of the 2012 Economic Opportunities Analysis, City of Portland Ordinance No. 185657, Exhibits A1-A5, complies with the statewide goals and rules.

The Commission approves, pursuant to OAR 660-025-0160(7)(a), a portion of Portland's Task 2 submittal. The Commission modifies the submittal dates for Tasks 3, 4, and 5.

THEREFORE, IT IS ORDERED THAT:

The Portland Periodic Review Task 2 is approved in its entirety with the exception of the 2012 Economic Opportunities Analysis, City of Portland Ordinance No. 185657, Exhibits A1-A5.

The Portland Periodic Review Work Program, DLCDC Order 001773, is modified as follows: the EOA subtask and product is deleted from Task 2 and included in Task 3; the "and employment" language from Task 2, subtask B is deleted and the complete subtask, excluding "housing", together with additional language is included in task 3; the Estimate of Remaining Employment Capacity product is deleted from Task 2 and included in Task 3; the "and

employment” and “jobs and” language from Task 2, subtask C is deleted and modified language is included in Task 3; the revised submittal date for Task 3, Alternative Patterns of Development, is July 31, 2015; the revised submittal date for Task 4, Policy Choices, is July 31, 2015; the revised submittal for Task 5, Implementation is December 31, 2015.

DATED THIS 11TH DAY OF JUNE 2014.

FOR THE COMMISSION:



Jim Rue, Director
Department of Land Conservation and Development

NOTE: You may be entitled to judicial review of this order. ORS 197.650(1); OAR 660-025-0040(3). Judicial review may be obtained by filing a petition for review within 21 days from the date of this order. Judicial review is pursuant to the provisions of ORS 197.651(2). The record supporting this order is available for review at the department's office in Salem.