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October 9, 2014

To: The Land Conservation and Development Commission of the State of Oregon  
Oregon Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540  
Attn: Casaria Taylor

re: Petitioner's Response Brief for LCDC Review of the Designation of Urban Reserves  
by Metro and Rural Reserves by Clackamas County, Multnomah County, and  
Washington County

Dear Commissioners,

The Land Conservation and Development Commission has requested briefings that  
address issues identified by the court in *Barkers Five, LLC v. LCDC*, 261 Or App 259  
(2014) at 363-364.

This brief addresses the second error:

“Second, LCDC’s order is unlawful in substance to the extent that it concluded  
that Multnomah County’s “consideration” of the factors pertaining to the rural  
reserve designation of Area 9D was legally sufficient. On remand, LCDC must  
determine the effect of that error on the designation of reserves in Multnomah  
County in its entirety.” 261 Or App at 364.

The brief also responds to the commission’s related question “Whether there is  
substantial evidence in the record that clearly supports a conclusion that Multnomah  
County applied the reserves factors to Area 9D.”

This brief supports Multnomah County’s designation of Rural Reserves in Area 9D.

Standing

I was a petitioner to the Court of Appeals in *Barkers Five, LLC v. LCDC* (A152351),  
relating to Washington County decisions.

I testified at the Oregon Senate and House hearings on SB 1011, and attended all of the workgroup meetings chaired by former Commissioner Marilyn Worrix where Administrative Rules for Urban and Rural Reserves in the Portland Metropolitan Area (OAR 660-027) were developed.

I subsequently served as a member of the Multnomah County Reserves Citizen Advisory Committee (CAC) and submitted verbal and written testimony at numerous Urban and Rural Reserves hearings held by Metro, Multnomah County, and Washington County.

I was also a party to an Objection R-21(295-301)<sup>1</sup>, submitted to LCDC by Daniel Kearns of Reeve Kearns PC, on behalf of Forest Park Neighborhood Association, myself, and several other individuals, which supported the Rural Reserve designations of areas 9A, 9B, 9C, 9D, and 9F but argued that the County's<sup>2</sup> adopted findings in support of those designations were somewhat weak, that the county had not explained fully why and how these Areas qualify for Rural Reserve designations. The Objection asked that the findings be supplemented with additional citations to evidence and arguments in the record that supported the findings.

#### Purpose

I agree with the Multnomah County and Metro arguments made in their Opening Briefs submitted to LCDC IN THE MATTER OF THE REVIEW OF THE DESIGNATION OF URBAN RESERVES BY METRO AND RURAL RESERVES BY CLACKAMAS COUNTY MULTNOMAH COUNTY, AND WASHINGTON COUNTY, September 25, 2014. Metro and Multnomah County argue that evidence in the record clearly supports the designation of all of Area 9D as a rural reserve for the reasons explained by Multnomah County and Metro in their opening briefs. I incorporate by reference the arguments presented by Multnomah County and Metro on this issue.

I'm not a lawyer, and I'm going to leave the legal arguments to Multnomah County and Metro. My purpose in submitting an Opening and Response brief is to provide supporting citations into the record, from someone who was an active participant throughout all stages of the reserves process.

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<sup>1</sup> This brief's document reference scheme is as follows:

Documents in the Joint Excerpt of Record are cited as "JER-," followed by the page number. Documents in the Record are cited as "R-," followed by the Attachment letter or Item number, file number, and then page number. For example, R-(D)(15)(9299) refers to Record Attachment D (Washington County), File 15, Page 9299, or R-12(77), which refers to Record Item 12, Page 77.

<sup>2</sup> References to "the County" or "County" mean Multnomah County.

I respectfully request that LCDC exercise its new authority under HB 4078 to affirm the existing rural reserves designation of Area 9D because there is evidence in the record that clearly supports those designations, instead of remanding the matter back to Multnomah County.

### Summary of my Opening Brief Arguments

In my Opening Brief, I offered three arguments. The first argument showed that the County's explanation of why Area 9D was designated as rural reserves failed, in part, because it did not provide sufficiently ground the explanation in the geography and topology of Area 9D. Multnomah County's Opening Brief provides the needed references to correct this deficiency.

My second argument showed that important information that better supported rural reserves designations in western Multnomah County arrived late in the process for the County's Reserves Citizen Advisory Committee (CAC). The late information cited (my Opening Brief, page 6 – additional information about the application of Rural Reserve factors 660-027-0060(2a) and (3a) about "potentially subject to urbanization" and an updated map of the region's Natural Features) more strongly supported rural reserve designations and influenced the CAC's final reserves recommendations.

The final decision by the Multnomah County Board of Commissioners to designate all of Areas 9D and 9F as Rural Reserves was based upon all the input they had received from the CAC, County staff, the public (written and oral testimony and online input), and other parties involved in the Reserves process. The Board was provided with a report that showed how the CAC analyzed each reserves study area with respect to the factors (full report for the Board of Commissioners Hearing on Sept 10, 2009 R-C(2)(1227-1326), factor analysis for Area 5 R-C(2)(1281-1287), for Area 6 R-C(2)(1288-1298), for Area 9 R-C(2)(1316-1322), the same report was also provided for the Board's Dec 10, 2009 hearing R-C(3)(158-257)), so the Board of Commissioners were aware of the factors as they decided to designate Area 9D as a rural reserve.

The Board of Commissioners also had the Phase 4 January 2010 Public Comment report with the results of an online survey R-C(3)(1182-1237) that was completed after the CAC's final report. The survey collected public input about several "option" areas around the region. The rural reserve designation of Area 9D was not considered controversial, so it wasn't included in the survey, but there were questions about the rural reserves on either side -- Areas 9A, 9B, and 9C to the east, and an area roughly corresponding to the final Area 9F to the west. The report show that 74% of respondents supported a rural reserve designation of 9F, 13% supported no designation, and 13% supported a smaller rural reserve near Scappoose R-C(3)(1186). Rural reserves for Areas 9A, 9B, 9C also had strong support. The summary results for areas 9A, 9B, 9C, and 9F are available at R-C(3)(1186), the map and individual public comments at R-C(3)(1228-1233). The survey results show strong public support for rural reserve designations across western Multnomah County, including the Multnomah Channel area, showing the importance of the area to the public's sense of place (OAR 660-027-0060(3)(e)).

My third argument showed that there is evidence in the record that clearly supports the rural reserve designation for Area 9D by providing citations into the record for evidence supporting all of the factors for rural reserves for natural features (OAR 660-027-0060(3)(a-h))<sup>3</sup>. I cited numerous locations in the staff report on Recommendations from

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<sup>3</sup> Citations for these two items were inadvertently left out of my Opening Brief (p. 12), so are supplied here.

Exhibit C to Metro Ordinance No. 02-987A FOR THE PURPOSE OF AMENDING THE URBAN GROWTH BOUNDARY TO ADD LAND IN THE BETHANY AREA, adopted December 12, 2002 says:

“The inclusion of all of areas 84-87 allows Abby (sic) Creek and the adjoining riparian zone to form a natural buffer separating the Bethany area from the resource land and existing rural neighborhoods to the north, and it utilizes the powerlines and also the Multnomah County line as clear demarcations along the expansion area’s eastern border.” (page 2)

“The Bethany expansion area will have clear boundaries that serve to both visibly highlight the line separating urban and rural uses, and to also serve as a buffer between urban development and rural uses. NW 185<sup>th</sup> Avenue, Abby (sic) Creek and its adjoining riparian zone and slopes and the powerline easement coupled with the Multnomah County boundary line all serve to clearly demarcate and buffer the proposed expansion area. “ (page 9)

R-C(3)(360)

These same elements were also cited as buffers in the Oregon Court of Appeals decision affirming the North Bethany UGB expansion area (text is paraphrased from an email from Jim Emerson to Chuck Beasley on April 16, 2009):

Case # A122169 (which decision was consolidated with case #'s A122246 and A122444,) “City of West Linn et al V. LCDC et al” was decided by the Oregon Court of Appeals on September 8, 2005. In affirming the inclusion of Areas 84-87 (North Bethany) into the UGB, the Court said:

“The Bethany expansion area will have clear boundaries that serve to both visibly highlight the line separating urban and rural uses, and to also serve as a buffer between urban development and rural uses. NW 185<sup>th</sup> Ave., Abby (sic) Creek and its adjoining riparian zones and slopes and the powerline easement coupled with the Multnomah County boundary line all serve to clearly demarcate and buffer the proposed expansion area.”

R-C(1)(751)

the Citizens Advisory Committee and County Staff on Urban and Rural Reserves in Multnomah County, provided for the Board's Dec 10, 2009 hearing R-C(3)(158-257). I also cited numerous locations in R-C(1)(1-1391) and R-C(2)(1-422), these are all materials from CAC meetings, so were available for consideration. The evidence cited in the factor analysis is a small sample of the supporting evidence in the record. Of the citations in my factor analysis, only the JER citations, R-C(3)(361), R-C(4)(108) were not available to the CAC at our meetings.

And I'm going to give you one more new citation that's typical of Area 9D. R-C-(1)(726) is a photo of elk at Abbey Creek Stables submitted by Joe Rayhawk. Abbey Creek is in back of the elk, and urbanizing North Bethany is beyond the creek. The Rayhawk's property is at the southern edge of Area 9D and borders the Barker's Five LLC property on two sides. R-C-(1)(725-30) This photo applies to several rural reserve for Natural Features factors -- the potential for urbanization, wildlife habitat , the sense of place, and the separation factor.

This argument showed that there was ample evidence in the record for all the factors for rural reserves for Natural Features.

### Conclusion

There is ample evidence in the record that "clearly supports" designating area 9D as a Rural Reserve for natural features, especially given its importance for wildlife habitat, water quality, and sense of place in the context of the West Hills, Forest Park, and wildlife corridors.

For the foregoing reasons, I respectfully ask that LCDC utilize its new authority under HB 4078 to affirm the existing rural reserves designation of Area 9D because there is evidence in the record to clearly support those designations, instead of remanding the matter back to Multnomah County.

Thank you for your consideration.



Carol Chesarek