

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

To Whom it May Concern,

My name is Carl N. Keseric.

I have resided at 13720 NW Springville Lane, on my family's 10-acre woodlot in Unincorporated West Multnomah County, since 1963.

I have spoken on the telephone and exchanged emails on the Rural Reserve process with the following individuals, among others:

- Sandy Baker, Petitioner, Barkers Five
- David Bragdon, Metro President
- Betsy Johnson, Oregon State Senator District 16
- Charles Beasley, Land Use Planning Director, Multnomah County
- Adam Barber, Land Use Planning Director, Multnomah County
- Michael Cerbone, Land Use Planning Director, Multnomah County
- Jed Tomkins, Senior Assistant Multnomah County Attorney
- Jim Rue, Director Oregon Department of Land Conservation and Development
- Carrie McLaren, Deputy Director Oregon DLCD

I am writing today to urge the LCDC to reject Multnomah County Ordinance No. 1246.

As currently written, Multnomah County Ordinance No. 1246 fails to both directly address and to adequately respond to the remand from the Oregon Court of Appeals in *Barkers Five, LLC et al. v. Land Conservation and Development Commission*, 261 Or App 259 (2014).

In 261 Or App 259 (2014) at 364, the Court stated:

We thus conclude that LCDC erred in concluding that the county's "consideration" of the factors pertaining to the rural reserve designation of Area 9D was legally sufficient. Accordingly, we must remand LCDC's order in that regard. **On remand, LCDC must determine the effect of that error on the designation of reserves in Multnomah County in its entirety.**

And:

*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 designations of reserves in Multnomah County in its entirety.**

However, in Multnomah County Ordinance No. 1246, the County states:

The Error had no effect on the designations of reserves in Multnomah County in its entirety.

And:

More specifically, correcting the Error through adoption of these Supplemental Findings does not result in any change to any reserve designation in Multnomah County, **does not require any change in analysis or analytical approach with respect to application and consideration of the factors and designation of reserves**, does not require the consideration of new evidence, and does not impact any other material aspect of the designation of reserves in Multnomah County beyond correcting an error specific and internal to Area 9D.

And:

Similarly, **if correction of the Error had prompted a change in analysis or analytical approach with respect to application and consideration of the factors and designation of reserves, then, depending on the nature of that change, the propriety of applying such changed analysis or analytical approach to other areas in Multnomah County is conceivable** (albeit quite hypothetical at present). However, here, because no such change in analysis or analytical approach has occurred, there is no effect on the designations of reserves in Multnomah County in its entirety of the nature contemplated in this paragraph.

And:

In conclusion, the Error had no effect on the designations of reserves in Multnomah County in its entirety because, as it turns out, the Error is capable of correction in a manner that is wholly specific and internal to Area 9D.

The Multnomah County assertion that legally sufficient “consideration” of reserve factors “does not require any change in analysis or analytical approach” of those factors as initially outlined in Multnomah County Ordinance No. 1180 is specious, self-serving, and legally indefensible in light of the Oregon Court of Appeals remand.

This point is best illustrated by comparing the court’s rejection of Multnomah County’s consideration of Area 9D in 2014 with the structurally similar justification by the County of Rural Reserve status for Area 9B, as outlined in Multnomah County Ordinance No. 1180 in 2011:

## **EXHIBIT 2 TO ORDINANCE NO. 1180 MULTNOMAH COUNTY**

### Area 9A – 9C Powerlines/Germantown Road-South

#### *How Rural Reserve 9A - 9C Fares Under the Factors:*

While there was conflicting evidence regarding capability of the area for long-term forestry and agriculture, the CAC ranked the area as medium under this factor. MC Rec. 3004-3014. The county agrees that the west edge of area 9B defines a boundary between urbanizing Washington County and the landscape features to the east in Multnomah County. Elements that contribute to this edge or buffer

include the power line right-of-way, Multnomah County wildlife habitat protection, planned Metro West Side Trail and Bond Measure Acquisition Areas, and the urban-rural policy choices represented by the county line. MC Rec. 751; 1125; 3901-3907.

And:

The CAC ranked the area “low suitability” for urban reserve generally, with the exception of areas 9A and 9B. Areas 9A and 9B resulted in a split of the CAC between “low” and “medium” rankings. Most of the area 9A – 9C contains topography that limits efficient provision of urban services, and, should urban development occur, would result in unacceptable impacts to important landscape features. Limiting topographic features include slopes that range from 10% in the majority of area 9B to above 25% in portions of 9C, and stream corridors and ravines interspersed throughout the area. MC Rec. 652.

*Why This Area was Designated Rural Reserve:*

Many areas of Important and Conflicted Agricultural Lands were not designated urban reserve in part because of the presence of steep slopes, bluffs, floodplains, streams and habitat, limiting their suitability or appropriateness for urbanization.

Rural Reserves 9A-9C (Powerlines/Germantown Road-South): steep slopes, many stream headwaters and courses. MultCo. Rec. 11; 329-330; 3004-3015;

Compare this to the entry in the same document for Area 9D:

Rural Reserve 9D (West Hills South): steep slopes, many stream headwaters and courses. MultCo Rec. 2993-3033.

In its remand, the court stated:

261 Or App at 305-06. Accordingly, as did LCDC, we assess the legal sufficiency of the county’s explanation as to why all the land in Area 9D—including Barkers’ property—was designated rural reserve by turning to the submittal itself.

In that regard, Metro and the counties’ submittal explained why Area 9D was designated as rural reserves in conjunction with the explanation pertaining to another area (*i.e.*, Area 9F).

And:

Second, the submittal’s description of why Areas 9D and 9F were designated as rural reserve consists of a single paragraph with broad, unqualified declarations that appear to relate to some of the factors in OAR 660-027-0060(3) pertaining to the designation of rural reserves to protect important natural landscape features. However, it does not meaningfully explain why consideration of the pertinent factors yields a designation of all of the land in Area 9D—including Barkers’ property—as rural reserve.

Again, compare that directly with the “consideration” by the County supporting a Rural Reserve designation for Area 9B:

The proposed rural reserve designation for all of area 9A – 9C recognizes and preserves the landscape features values that are of great value to the county. MC Rec. Oversized Exhibit. The small scale agriculture and woodlots should be able to continue and provide local amenities for the area. Rural reserve for this area is supported not only by the weight of responses from the public, but by the Planning Commission and the regional deliberative body MPAC as well. MC Rec. 4002-4005; 1917 a-j; Oversized Exhibit.

Multnomah County Reserve Recommendations (Attachment to BOCC Reserves Hearing 9/10/09) stated:

Area 7: Powerline/Germantown Rd. - South

Overall CAC Recommendation: Designate as Rural Reserve. If the County must designate Urban Reserve on the west side, the Lower Springville Rd area (Area 9B) is the highest suitability.

And:

The Lower Springville Rd area (Area 9B)... ..is also the most suitable for development on the west side.

Overall Staff Recommendation: No designation in the Lower Springville Rd. area (Area 9B).

Just as in its “consideration” of the reserve factors for Area 9D, Multnomah County has designated Area 9B as Rural Reserve simply because of its inclusion within a larger area - namely Areas 9A - 9C - without providing a **meaningful** explanation of why the Multnomah Planning Staff recommendation of ‘Undesignated’ for Area 9B was overridden by a vote of the County Commissioners.

The only factual assertion seemingly in favor of an Area 9B Rural Reserve designation is the one claiming “Limiting topographic features include slopes that range from 10% in the majority of area 9B...” - however, no factual references supporting that claim are cited.

Multnomah County lists “steep slopes” as the number one factor supporting a Rural Reserve designation for Area 9B, even though it states above that the steep slopes are in Area 9C. It cites “many stream headwaters and courses”, again without directly naming or placing any of those natural features within Area 9B.

Other justifying factors that are mentioned are political:

The county agrees that the west edge of area 9B defines a boundary between urbanizing Washington County and the landscape features to the east in Multnomah County. Elements that contribute to this edge or buffer include the power line right-of-way, Multnomah County wildlife habitat protection, planned Metro West Side Trail and Bond Measure Acquisition Areas, and the urban-rural policy choices represented by the county line. MC Rec. 751; 1125; 3901-3907.

And:

The County no longer has urban plan or zone designations; it contracts with the cities in the county for these services. This means urban services to Areas 9A - 9C would have to come from a city in a position to plan and serve new urban communities.

As far as I know, SB1011 did not recognize “urban-rural policy choices” as a pertinent factor for reserves designation. The planned Metro West Side Trail does not cross Area 9B. Washington County has already breached the power line right-of-way on its side of the UGB. There are no pending Bond Measure Acquisition Areas in Area 9B that I am aware of. Having lived on Springville Road for 54 years, I can assure you that any 10% slopes are far from being in the “majority”. In fact, most of Area 9B is completely flat.

To summarize, there is nothing in the Multnomah County CAC “consideration” that precludes an ‘Undesignated’ status for Area 9B, as recommended by the Multnomah County Planning Staff.

Again, I would like to urge the LCDC to reject Multnomah County Ordinance No. 1246 and to vigorously pursue the Oregon Appeals Court directive that the LCDC determine the effect of Multnomah County’s error on its reserve designations in their entirety.

Thank you.

Carl N. Keseric  
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