

November 6, 2017

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VIA EMAIL ONLY

Jerry Lidz, Chair
Land Conservation and Development Commission
c/o Department of Land Conservation and Development
635 Capitol Street NE, Suite 200
Salem, OR 97301

**Re: Metro Urban and Rural Reserves Designations
Agenda Item 15, November 15-17, 2017 LCDC Meeting
Exceptions to October 26, 2017 Staff Report**

Dear Chair Lidz and Members of the Commission:

This office represents Metropolitan Land Group (“MLG”), the owner of approximately 38 acres of property in the 607-acre study area known as East Bethany in Multnomah County. The purpose of this letter is to submit written exceptions to the October 26, 2017 staff report (“Staff Report”) prepared by the Department of Land Conservation and Development (“DLCD”) for the Metro Portland urban and rural reserve designations adopted by the Metro Council (“Metro”) and the Counties of Clackamas, Multnomah, and Washington (together, “Counties”). Please place this letter in the official record before the Land Conservation and Development Commission (“LCDC”) in this matter.

MLG reiterates its objections to the reserves decision set forth in its letter dated August 14, 2017. Further, MLG raises the following exceptions to the Staff Report:

- 1. The Staff Report only addresses MLG’s Objections 2-6 in the context of the “best achieves” standard; however, these objections also concern compliance with the quantitative standards of OAR 660-027-0040(2).**

The Staff Report rejects MLG’s Objections 2-6 on the grounds that they raise quantitative concerns that are not relevant to the “best achieves” standard, which is qualitative in nature. The Staff Report misconstrues MLG’s objections.

While MLG raised these objections in relation to the “best achieves” standard, MLG also raised them in relation to Metro/the Counties’ general obligation to ensure that the designated urban reserves are sufficient to serve the region’s population and employment needs during the planning period, as required by OAR 660-027-0040(2). See August 14, 2017 at pp. 3-5. See also May 10, 2017 letter, which is part of MLG’s objection submittal, at pp. 2-3:

- “Metro’s designation of only 23,031 acres of urban reserves is not sufficient to meet the region’s employment and population needs over the planning period, resulting in a decision that is inconsistent with applicable reserves administrative rules.
 - “Metro’s designation of urban reserves is not supported by an adequate factual base because it erroneously relies upon the 2014 Urban Growth Report. That report is based upon flawed reasoning, including the unreasonable projection of urban development of the former city of Damascus and an unreasonable reliance upon the documented economic downturn in the region beginning in 2007.
 - “Metro’s own findings and evidence state that the designated amount of urban reserve acreage is deficient over the 50-year planning period previously selected by Metro and its regional partners.
 - “Metro selectively acknowledges some changes in facts, but fails to take into account additional factual and legal changes that have occurred since the original adoption of reserves, including the loss of over 3,000 acres of urban reserves in Washington County, disincorporation of Damascus, the loss of Hayden Island for future employment use, and Metro’s own documented conclusion that the region lacks an adequate supply of large-lot industrial land. Taken together, these documented circumstances undermine Metro’s conclusion that the proposed supply of urban reserve acreage is adequate.

- “The identified urban reserve acreage in the Stafford area, which constitutes approximately one-quarter of all urban reserves in the Metro region, will not urbanize within the planning period in light of the legitimate policy concerns expressed on the record by both the cities of Tualatin and West Linn and residents of the Stafford Hamlet. More specifically, the unequivocal positions expressed by the cities effectively preclude any finding that urbanization of the proposed Stafford urban reserve area, including the provision of urban levels of facilities and services, can reasonably be expected to occur. As a result, this area will become ‘Damascus II,’ an area of ‘phantom’ acreage that is not actually available to serve the region’s employment and residential needs.”

Notably, as the initial bullet point quoted above states, that string of bullet points alleges that the reserves designations are not “sufficient to meet the region’s employment and population needs over the planning period,” resulting in non-compliance with “applicable reserves administrative rules.” None of the bullet points in this string mention the “best achieves” standard by name or citation. By contrast, the ensuing string of bullet points in that letter, which raises a new allegation of error, directly alleges that the findings do not adequately address the “best achieves” standard. See May 10, 2017 letter at pp. 3-4. Thus, properly construed, MLG’s objection is much broader than interpreted by DLCD staff.

The Staff Report does not respond to MLG’s contention that the urban reserves designations are quantitatively deficient, i.e., will fail to serve the region’s employment and population needs during the planning period, as required by OAR 660-027-0040(2). For example, the Staff Report does not explain why the outdated Urban Growth Report is an adequate factual base. It also does not explain how Metro’s findings are adequate when they expressly admit that the amount of land within urban reserves is not sufficient to serve the region’s 50-year employment and population needs. Finally, the Staff Report does not explain why the changes in facts in Damascus, Washington County, Hayden Island, and Stafford do not undermine the decision not to increase the amount of urban reserves lands.

For these reasons, MLG takes exception to the Staff Report.

2. Even if the “best achieves” standard is solely concerned with qualitative issues, the decision fails to demonstrate that the standard is met.

The Staff Report recommends that LCDC not “speculate” as to how the dis-incorporation of Damascus, the re-designation of Hayden Island, and the lack of support for urbanization of the Stafford area affect the overall balancing of urban and rural reserves in metro Portland. But, MLG’s objection is not asking LCDC to “speculate.” Rather, MLG contends that there is an inadequate factual base to support the conclusion that the selected urban and rural reserves will meet the “best achieves” standard.

Damascus has dis-incorporated and will not urbanize. The Stafford intergovernmental agreements do not mandate that urban services be provided to this area, and in fact, the weight of the evidence in the record reflects that the affected service providers and residents do not want to see urbanization in these areas. These points are not speculation but are political realities. Further, their existence undermines the conclusion that Metro and the Counties are striking the balance required by the “best achieves” standard. In other words, by including so many lands that are “qualitatively” not strong candidates for urbanization, Metro and the Counties cannot find that the region “best achieves” livable communities. The decision by Metro and the Counties to continue to count this “phantom” acreage as adequate to help serve the land needs of the largest city in the state will simply stop growth and force it into areas that cannot accommodate it.

For these reasons, MLG takes exception to the Staff Report.

3. Conclusion.

For these reasons and the reasons set forth in MLG’s August 14, 2017 letter, LCDC should remand the matter to Metro and the Counties to correct the identified errors, including increasing the amount of urban reserve acreage to serve the region’s land needs. Such increase could include designating MLG’s property as an urban reserve because, as stated in the record, it is well-suited for this purpose. The undersigned intends to appear at the November 15-17, 2017 LCDC meeting on behalf of MLG and is happy to answer any questions at that time.

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Thank you for your consideration of the points in this letter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Steven L. Pfeiffer". The signature is fluid and cursive, with the first name being the most prominent.

Steven L. Pfeiffer

cc: Client (via email)