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AUG 14 2017

LAND CONSERVATION  
AND DEVELOPMENT

August 14, 2017

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

**RE: Objections to Re-Adoption of Urban and Rural Reserves by Metro and Multnomah County (Metro Ordinance No. 17-1405; Multnomah County Ordinance No. 1246)**

Dear Urban and Rural Reserves Specialist:

My name is Hank Skade, and I am an owner of property located at 14425 NW Springville Road in Multnomah County. This property is located within the "Lower Springville Road" area, also known as the "L," of Reserves Study Area 9B.

I am opposed to Metro Ordinance No. 17-1405 and Multnomah County Ordinance 1246 because they unlawfully designate my property as Rural Reserve. I have previously submitted both written and oral testimony to Multnomah County on May 4, 2017 and to Metro on March 16, 2017 and June 8, 2017, and written testimony to Metro on June 15, 2017.<sup>1</sup> I incorporate here by reference all my previous testimony, evidence, and objections submitted to Multnomah County and Metro, whether submitted individually or together with other landowners in the "L" area. In this letter, I would like to emphasize the following points:

1. LCDC has a duty to apply ORS 197.040 to this process.

ORS 197.040 requires LCDC to "assess whether alternative actions are available that would achieve the underlying lawful government objective and would have a lesser economic impact" upon the property owners of the "L." This analysis was not done by any of the governing bodies in 2010, and it was not done by Metro or Multnomah County in 2017. Not only it is appropriate that LCDC do this analysis now, LCDC is required to do the analysis. Anything less could jeopardize the entire Reserves process and all of the otherwise good work that has been done over the past several years.

There is no doubt that a Rural Reserve designation for the "L" would have severe economic consequences for the landowners for 40 – 50 years to come. An alternative action is available that would have far less economic impact on the landowners, and could still achieve any government objective of preserving natural landscape features of the Abbey Creek watershed. That alternative action is an Urban Reserve designation for the "L."

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<sup>1</sup> My written testimony may be found in the administrative record at MultCo Rec. 20090-20095; Metro Rec. 101-102, 130-132, 691-699.

If the required analysis of ORS 197.040 (1) (b) is done, it is inconceivable that any other conclusion would be made other than to place the “L” into Urban Reserve. LCDC must do this analysis regarding the Reserve designation in Multnomah County and the tri-county area, and then take appropriate action. I believe that the appropriate action would be to remand Ordinance No. 17-1405 to Metro and Multnomah County to designate that portion of Reserves Study Area 9B known as “Lower Springville Road,” and more commonly known as the “L,” as an Urban Reserve.

2. Multnomah County erred by refusing to admit or consider any new evidence or adopt further findings concerning the Urban and Rural Reserve designations adopted under Multnomah County Ordinance 1246.

In its consideration of Ordinance No. 1246, Multnomah County refused to admit any new evidence into the record.<sup>2</sup> Consequently, Multnomah County adopted Ordinance No. 1246 based on an outdated evidentiary record from 2010, and refused to take into consideration substantial new evidence showing that circumstances had changed both in and around the Reserves Study Areas since 2010.<sup>3</sup> In other words, instead of considering the most up-to-date information available to it, Multnomah County chose to exclude new evidence that may have necessitated changes to the area designations. This willful disregard of evidence by Multnomah County is not the process that was envisioned when SB 1011 (2007) was enacted. If Multnomah County had admitted and considered this new evidence—including evidence of rapid urban development adjacent to the “L” in the Bethany area and the availability of existing urban infrastructure to support urban development in the “L”—it would have required Multnomah County to reassess its prior Reserves designations, adopt new findings and conclusions regarding Area 9B and other study areas, and update the Reserves designations accordingly.

For these reasons, the Department should reject the joint submittal and remand the Reserves designations back to Multnomah County and Metro for further proceedings.

3. Multnomah County’s decision to designate the “L” of Area 9B as Rural Reserve is factually and legally flawed.

The following facts are well documented in Multnomah County’s own staff report, the 2009 Multnomah County Urban and Rural Reserve Factors Analysis<sup>4</sup>:

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<sup>2</sup> The Agenda Placement Request (APR) for the May 4, 2017 meeting of the Multnomah County Commission stated that “there is no need to re-open the evidentiary record in this matter and the hearing on this matter has been scheduled to proceed on the existing evidentiary record.” The APR is available at [http://multnomah.granicus.com/MetaViewer.php?view\\_id=3&clip\\_id=1554&meta\\_id=105554](http://multnomah.granicus.com/MetaViewer.php?view_id=3&clip_id=1554&meta_id=105554) (last accessed on 8/12/17).

<sup>3</sup> By contrast, the Metro Council admitted new evidence when it considered Metro Ordinance No. 17-1405. Thus, Metro adopted its ordinance based on different (and more recent) information than what was relied upon by Multnomah County.

<sup>4</sup> See Attachment C to Multnomah County Resolution 09-153, at 73-84.

- A. The “L,” or Lower Springville Road area, has distinctly different characteristics, and is much more suitable for urbanization than the broader Study Area.
- B. The “L” did “not appear to be a good fit with key landscape features factors” of OAR 660-027-0060 “and should be ranked low” for Rural Reserve.
- C. The “L” was rated “medium on most of the factors” of OAR 660-027-0050 for Urban Reserve.

Notably, the Staff Summary and Conclusion of Multnomah County staff report states that “rankings on key factors of sewer efficiency, off-site transportation, and governance remain unclear or do not appear to be resolvable.”<sup>5</sup> These findings were reiterated by Multnomah County and Metro in their 2010 Reserve ordinances as a reason for designating Area 9B as Rural Reserve.<sup>6</sup> However, this finding was flawed because key evidence was ignored

It was clearly established in 2009, and still remains the case, that Beaverton and Washington County were prepared to provide governance and urban services to the “L.” Furthermore, Clean Water Services had agreed to provide utilities to the area, and the adjacent development of North Bethany has now brought public utilities to the western border of the “L.” So, these key factors supporting an Urban Reserve designation were, and continue to be, satisfied in fact.

This land is “conflicted agricultural land,” the lowest priority of agricultural lands to preserve. Further, an examination of topographical maps will show that any “important natural landscape features” of the Abbey Creek watershed are almost entirely to the north and east (i.e., outside) of the “L.” All that said, even if it was determined that there are any “important natural landscape features” within the “L,” those features could easily be preserved in an Urban Reserve in accord with OAR 660-027-0050(7).

The “L” satisfies all of the Urban Reserve factors and criteria under ORS Chapter 195 and OAR 660-027, but is a very poor fit with the Rural Reserves factors under those rules. Multnomah County designated all of Area 9B as Rural Reserve while ignoring both clear evidence in the record and additional new evidence that strongly supports an Urban Reserve designation for the “L.” The joint submission by Metro and Multnomah County should therefore be rejected and remanded for further proceedings that require Multnomah County to reconsider the evidentiary record (as supplemented with new information of changed circumstances) regarding the suitability of the “L” for Urban Reserve.

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<sup>5</sup> *Id.* at 83.

<sup>6</sup> See Exhibit E to Metro Ordinance No. 10-1238A, at 38 (“As was the case when the Metro considered addition of lands in Multnomah County on the west slope of Tualatin to the UGB in 2002, *there is not a city in a position to provide urban services to Areas 9A to C.*”) (emphasis added).

4. The decision by Metro and Multnomah County to designate the “L” as Rural Reserve was driven by politics, rather than being based on the applicable factors and criteria.

On February 25, 2010, the Multnomah County Board reversed its previous recommendation to the Core 4 in December of 2009 that the Area 9B should remain undesignated. The Board decided by a 3-2 vote that Area 9B should be designated as Rural Reserve. At that February 25<sup>th</sup>, 2010 hearing, one of the 3 commissioners who voted to change the designation of 9B to Rural Reserve stated that she had received nearly 700 letters, emails, and phone calls from the public in favor of a Rural Reserve designation for 9B, and that she took that public opinion into consideration when casting her vote. This improper basis for designating my property was also expressed in Multnomah County’s explanations for why it designated 9B as Rural Reserve, stating that “[r]ural 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.”<sup>7</sup>

Multnomah County’s decision to rely on public opinion in determining whether 9B should be designated as rural reserve is arbitrary and improper under the applicable rules, and violated my due process rights under the Constitution.

5. The designation of Area 9B as Rural Reserve violated the Equal Protection Clause of the Constitution.

Multnomah County and Metro treated the landowners in Area 9B differently than other similarly situated landowners in Multnomah County, Clackamas County, and Washington County. For example, Area 1C in Multnomah County has similar characteristics to Area 9B, in that it is bounded by the Urban Growth Boundary, has few topographical limitations on development, contains a stream corridor that flows through the area, and local agencies indicated the ability to provide the area with urban services. However, Multnomah County and Metro designated 1C as Urban Reserve, but designated 9B as rural reserve. Such examples of differential treatment of similar situated areas can also be seen throughout the tri-county area. Under an objective application of the Reserves factors to the evidence in the record, there is no adequate support for the County’s and Metro’s decisions to designate Areas 1C, 8C, or 4A as Urban Reserve while designating Area 9B as Rural Reserve. This differential treatment of 9B is unjustified, and violates the Equal Protection Clause of the Fourteenth Amendment of the Constitution.

6. Multnomah County failed to provide adequate due process in adopting Ordinance No. 1246.

Multnomah County violated Due Process under the Constitution by failing to provide myself and other interested parties with a meaningful opportunity to present and rebut evidence to an impartial tribunal. As discussed above, the County Board’s

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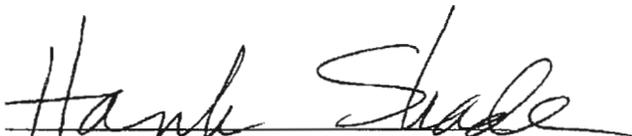
<sup>7</sup> Exhibit B to Metro Ordinance No. 17-1405, at 74.

decision in 2010 to designate Area 9B as Rural Reserve was not an impartial decision based on the reserves factors, but rather was influenced by political considerations. Furthermore, the County refused to accept any new evidence into the record in its consideration of Ordinance 1246, but instead relied on the evidentiary record from 2010. The County also limited my testimony to merely 2 minutes, which is wholly inadequate to meaningfully present evidence showing how the County's decision is contradicted by clear evidence in the record. And from the comments of the County Commissioners at the County Board meeting on May 4, 2017, it is clear that the Board was predisposed to simply reaffirm the County's prior Reserves decisions without truly considering the merits of the many objections I and others have made to the County and Metro since 2010. The County failed to provide adequate procedural protections to interested parties in rendering its decision, and as a result reached the wrong conclusion and violated my rights to due process and equal protection under the law.

For all of the above reasons—as well as those discussed in my previous testimony to Multnomah County and Metro on March 16, May 4, June 8, and June 15, 2017, and the objections submitted by Christopher James on August 14, 2017 on behalf of certain East Bethany landowners—the joint submittal by Metro and Multnomah County should be rejected and remanded for further proceedings to correct the extensive factual and legal deficiencies in the designation of the “Lower Springville Road” area, also known as the “L,” of Reserves Study Area 9B.

Thank you very much.

Respectfully submitted,

  
Hank Skade

**Hand -Delivered**

**8/14/17**

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