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LAND CONSERVATION
AND DEVELOPMENT

OFFICE OF COUNTY COUNSEL

PUBLIC SERVICES BUILDING

2051 KAEN ROAD OREGON CITY, OR 97045

September 8, 2017

Urban and Rural Reserves Specialist
Department of Land Conservation & Development
635 Capitol Street N.E., Suite 150
Salem, OR 97301

RE: Objections to Designation of Urban and Rural Reserves
Clackamas County Ord. 06-2017, Metro Ord. 17-1405

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Dear Urban and Rural Reserves Specialist:

Pursuant to OAR 660-025-0130(4), Clackamas County submits this written correspondence regarding the objection to Clackamas County Ordinance 06-2017 (May 23, 2017) as incorporated in Metro Ordinance 17-1405, submitted by Jeff Bachrach of Bachrach Law P.C. on behalf of Lanphere Construction and Development, LLC (LCD).

Metro Ordinance 17-1405, along with the entire record of the proceedings before Metro, Clackamas County and Multnomah County, were submitted to the Department of Land Conservation & Development (DLCD) on July 24, 2017 (Remand Submittal) in response to the Land Conservation and Development Commission's (LCDC) Remand Order in this matter. See Remand Order 14-ACK-001867. The Remand Order followed the Oregon Court of Appeals decision in *Barkers Five LLC v. LCDC*¹, which, as it pertained to those reserve designations within Clackamas County, found that LCDC failed to demonstrate that it adequately reviewed for substantial evidence the urban reserve designation for Areas 4A, 4B, 4C and 4D (collectively referred to as "Stafford"). The Court advised that on remand, LCDC should meaningfully explain why—even in light of evidence that the transportation facilities serving Stafford could be at an unacceptable level of service by the year 2035—the designation of Stafford as an urban reserve is supported by substantial evidence.

In response to the issue identified by the Court of Appeals related to Stafford Area, LCDC's Remand Order specifically remanded "... Urban Reserve Areas 4A, 4B, 4C and 4D to Metro and Clackamas County for further action consistent with the principles expressed in *Barkers Five LLC v. LCDC*, 261 Or App 259, 323 P3d 368 (2014)." The Remand Order by its terms, consistent with the decision of the Court of Appeals,

¹ 261 Or App 259, 323 P3d 368 (2014).

affirmed the findings and conclusions of LCDC's earlier order acknowledging the Metro area reserve designations², thereby limiting the scope of review to only those areas and issues specifically identified by the Remand Order.

The objection filed by LCD pertains to Rural Reserve Area 5I (Ladd Hill). Furthermore, LCD does not claim that its property in Rural Reserve Area 5I is in any way related to, or adversely impacted by, Areas 4A, 4B, 4C or 4D. As noted above, the only areas subject to the remand proceedings in Clackamas County were Areas 4A, 4B, 4C or 4D. Except for the evidence and testimony submitted by LCD, there are no findings or materials in the recently submitted Remand Submittal related to Area 5I. Metro and the County did not include further findings or discussion related to property owned by LCD or Area 5I generally, since the original designation of Area 5I was affirmed by the Court of Appeals, and because the scope of review established by LCDC limited consideration on remand to only those issues identified by the Court. Elected officials from both Metro and Clackamas County made a clear policy decision that the process on remand would not alter the reserve designations of any property. See, for example, Remand Submittal, Clackamas County Rec. Pgs. 1208, 1245-1246, 1254-1255, and 1272-1273. Instead, the process was intended to fulfill the limited purpose of adopting more thorough findings that were responsive to the issue identified by the Court of Appeals in the *Barkers Five* decision.

Specific findings related to Rural Reserve Area 5I were included as part of the joint submittal from Metro, Clackamas County, Multnomah County and Washington County that was submitted to DLCD on June 23, 2010. See 2010 Record, Pg. 39-40, also attached to this letter. The decision to designate this area as an urban reserve relied exclusively upon the so-called "safe-harbor" provision of OAR 660-027-0060(4). LCD's objection claims that the County and Metro failed to make individualized findings related to LCD's property, and that the County and Metro were not entitled to rely on those safe harbor provisions of OAR 660-027-0060(4). Clackamas County is not aware, and LCD has not specified, whether there were instances of LCD or LCD's predecessor in interest raising these objections during the original proceedings. For the reasons detailed above, Metro and Clackamas County's position has been that the time has long since passed to raise specific issues related to Area 5I, or any issue beyond the scope of the remand from the Court of Appeals and LCDC.

Sincerely,



Nathan Boderman
Assistant County Counsel

Attachment

² Order 12-ACK-001819.

on nearby land. The boundaries of this Urban Reserve have been designed to use natural features to provide separation from adjoining Rural Reserves that contain resource uses.

The Sherwood School District requested an Urban Reserve designation be applied to an area just south of the County line and the City of Sherwood. ClackCo Rec. 2504. Clackamas County and Metro agree to leave this area undesignated. This decision leaves the possibility for addition of this land to the Urban Growth boundary if the School District has a need for school property in the future and is able to demonstrate compliance with the standards for adjustments to the Urban Growth boundary.

B. Clackamas County: Rural Reserves

Rural Reserve 5I: Ladd Hill

General Description: This Rural Reserve Area is located west and south of Wilsonville, and adjacent to the French Prairie Rural Reserve (Area 4J). There is also a small part of this Rural Reserve located north of Wilsonville, extending to the County line, recognizing the Tonquin Geologic Area. The northern boundary of Area 5J is located along the boundary between the delineations of Conflicted and Important Agricultural Land. All of this Rural Reserve is located within three miles of the Portland Metro Urban Growth Boundary.

The area west of Ladd Hill Road contains the steeper slopes of Parrett Mountain, which is identified as an important natural landscape feature in Metro’s February 2007 “Natural Landscape Features Inventory”. The remainder of the area has moderately sloping terrain. The entire area is traversed by several creeks (Mill Creek, Corral Creek, Tapman Creek), which flow into the Willamette River, which also is identified as an important natural landscape feature. FEMA floodplains are located along the Willamette River. Landslide hazards are identified along Corral Creek.

With the exception of the Tonquin Geologic Area, all of Rural Reserve Area 5I is comprised of Important or Foundation Agricultural Land. The part of this area lying south of the Willamette River contains the Foundation Agricultural Land. The area contains a mixture of hay, nursery, viticulture, orchards, horse farms, and small woodlots. The Oregon Department of Forestry Development Zone Map identifies scattered areas of mixed forest and agriculture, and wildland forest (particularly on the slopes of Parrett Mountain).

Conclusions and Analysis: Designation of the Ladd Hill area as a Rural Reserve is consistent with OAR 660, Division 27. Except for the Tonquin Geologic Area, all of Rural Reserve Area 5I contains Important or Foundation Agricultural Land, and is located within three miles of an urban growth boundary. Pursuant to OAR 660-027-0060(4), no further explanation is necessary to justify designation as a Rural Reserve, with the exception of the Tonquin Geologic Area, which is identified as Conflicted Agricultural Land.

Designation of the Tonquin Geologic Area as a Rural Reserve is consistent with the Rural Reserve Factors stated in OAR 660-027-0060(3). This area has not been identified as an area suitable or necessary for designation as an Urban Reserve. The boundaries of the Rural Reserve have been established to recognize parcels that have physical characteristics of the Tonquin

Geologic Area, based on testimony received from various property owners in the area, and the City of Wilsonville. ClackCo Rec. 2608. For these stated reasons and those enunciated below, designation of this part of the Tonquin Geologic Area as a Rural Reserve is consistent with the factors provided in OAR 660-027-0060(3).

Rural Reserve 4J: French Prairie

General Description: This Rural Reserve Area is located south of the Willamette River and the City of Wilsonville, and west of the City of Canby. It is bordered on the west by I-5. This area is generally comprised of large farms. The area is generally flat. The Molalla and Pudding Rivers are located in the eastern part of this area. The Willamette, Molalla and Pudding Rivers and their floodplains are identified as important natural landscape features in Metro’s February 2007 Natural Landscape Features Inventory.”

All of this Rural Reserve is classified as Foundation Agricultural Land (identified in the ODA Report as part of the Clackamas Prairies and French Prairie areas). This area contains prime agricultural soils, and is characterized as one of the most important agricultural areas in the State.

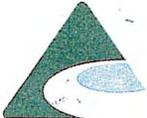
Conclusions and Analysis: Designation of Area 4J as a Rural Reserve is consistent with OAR 660, Division 27. This entire area is comprised of Foundation Agricultural Land located within three miles of an urban growth boundary. Pursuant to OAR 660-027-0060(4), no further explanation is necessary to justify designation of this area as a Rural Reserve.

Rural Reserves 3E and 3H: Oregon City

General Description: This area lies east and south of the City of Oregon City. This area is bounded by the Willamette River on the west. The southern boundary generally is a line located three miles from the Portland Metro Area Urban Growth Boundary. A substantial part of Area 3H also is located within three miles of the City of Canby’s Urban Growth Boundary.

Area 3E, located east of Oregon City, is characterized by a mix of rural residential homesites, small farms, and small woodlots. Most of the area has a moderately rolling terrain. The area includes portions of the Clear Creek Canyon, and Newell and Abernethy Creeks, all of which are identified as important natural landscape features in Metro’s February 2007 “Natural Landscape Features Inventory”. Part of Area 3E also is identified by the Oregon Department of Forestry as a mixed forest/agricultural development zone. Most of Area 3E is identified as Conflicted Agricultural Land. There is an area identified as Important Agricultural Land, in the southeast corner of Area 3E.

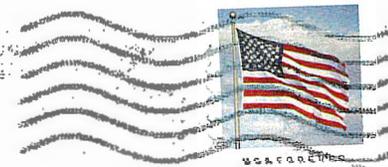
Area 3H, located south of Oregon City, is characterized by larger rural residential homesites, particularly in the western part of this area, and farms. Beaver Creek and Parrot Creek traverse this area in an east-west direction. The Willamette Narrows and Canemah Bluff are identified as important natural landscape features in the Metro’s February 2007 “Natural Landscape Features Inventory” and form the western boundary of Area 3H. The Oregon Department of Forestry designates the Willamette Narrows as wildland forest. All of this area is classified as Important Agricultural Land, except for the area immediately east of the City of Canby, which is designated as Foundation Agricultural Land.



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