

MULTNOMAH COUNTY BOARD OF COMMISSIONERS' MEETING  
PUBLIC COMMENT SIGN-UP SHEET

Please complete this form and return to the Board Clerk  
\*\*\*This form is a public record\*\*\*

MEETING DATE: 5/11/17

AGENDA ITEM # R.1 OR NON-AGENDA SUBJECT: \_\_\_\_\_

FOR: \_\_\_\_\_ AGAINST: X

*-written testimony only;  
no oral testimony.*

NAME: Christopher James

CONTACT INFORMATION (optional):

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**IF YOU WISH TO ADDRESS THE BOARD IN PERSON:**

1. Fill out this form and submit to the Board Clerk 15 minutes before meeting begins.
2. Comment for Non-Agenda items will be called immediately after the vote on the Consent Agenda.
3. Comment for Agenda items will be called during that item's presentation, before the vote is taken.
4. Commenters are called to testify in the order forms are received. The Presiding Officer may re-arrange the order of the agenda and the order in which testimony is given or ask Invited Guests or Elected Officials to speak first.
5. When your name is called, come forward and be seated at the presenter's table; state your name for the record and speak into the microphone.
6. Public comment is limited to **3 minutes or less** per person unless otherwise directed by the Chair, who is the Presiding Officer.
7. A buzzer will signify the end of your allotted time.
8. If submitting handouts to be given to the Board, seven (7) copies are required. If only one (1) copy is provided, it will be received for the file and electronically shared with the Board and County Attorney after the meeting.
9. All meetings are audio and video recorded and captioned and can be viewed at [http://multnomah.granicus.com/ViewPublisher.php?view\\_id=3](http://multnomah.granicus.com/ViewPublisher.php?view_id=3)
10. The Chair has authority to keep order and may impose reasonable restrictions necessary for the efficient and orderly conduct of a meeting. Any person who fails to comply with the Rules of Conduct, or who creates a disturbance, may be asked or required to leave and upon failure to do so, becomes a trespasser and will be treated accordingly. The Rules of Conduct are posted and available in back of the room.

**IF YOU WISH TO SUBMIT WRITTEN COMMENTS TO THE BOARD IN LIEU OF GIVING ORAL COMMENTS:**

1. Complete this form and submit it along with your written testimony to the Board Clerk at the meeting, or by e-mail at: [boardclerk@multco.us](mailto:boardclerk@multco.us)
2. Written testimony will be entered into and remain a part of the official permanent record.

ATTORNEYS:  
CHRISTOPHER JAMES  
AREK FRISTENSKY  
EXECUTIVE ASSISTANT:  
LISA SMITH



May 11, 2017

VIA HAND DELIVERY

Multnomah County Board of Commissioners  
501 SE Hawthorne Blvd, Suite 600  
Portland, Oregon 97214  
[boardclerk@multco.us](mailto:boardclerk@multco.us)

**Re: Supplemental Submission Opposing Ordinance No. 1246 – Request for Separate Consideration – May 11th, 2017**

Dear Chair Kafoury and Commission Members:

This submission is on behalf of landowners with property located in Multnomah County, in what is known as Study Area 9B, and more specifically within what has been called the “L” or the Lower Springville Road area in Area 9B. The landowners are Springville Investors, LLC, Katherine Blumenkron, David Blumenkron, Burnham Farms, LLC, and Bob Zahler (collectively, the “Owners”). Together they own approximately 225 acres within the “L” location.

The Owners oppose Ordinance No. 1246 (referred hereafter as the “Ordinance”) that would designate their property (a portion of Area 9B) as rural reserve. Their opposition is based on both factual and legal defects underlying Ordinance No. 1161, dated May 13, 2010, as amended by Ordinance Nos. 1150 and 1180. Those ordinances—which are reaffirmed, continued, and re-adopted by Ordinance 1246—designated the Owners’ properties as rural reserve.

This submission supplements the Owners’ respective submissions and testimony presented to the Multnomah County Board of Commissioners on May 4, 2017.

**I. The Owner’s properties are currently able to be served by urban services and utilities.**

At the time Multnomah County adopted Ordinance No. 10-1151, there was clear evidence in the record that Area 9B could be served by financially-capable urban service providers. In a letter dated September 4, 2009, the City of Beaverton informed Multnomah County that “Beaverton City is willing to provide governance and urban services to the East Bethany area,” should Multnomah County designate the area as urban reserve. MC Rec. 2768-2769. Similarly, Tom Brian, the chair of the Washington County Board of County Commissioners delivered a letter to Multnomah County on February 17, 2010 informing the County that the “L,” if developed, is “likely to receive services from Washington County and one or more of its service districts due to its topography and proximity to urban services on the west side of the Multnomah/Washington County line. MC Rec. 3922. Other parties have also submitted evidence and testimony to Multnomah County that the East Bethany area including the “L” could be efficiently served by urban services.<sup>1</sup>

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<sup>1</sup> See Attachment 1, at 2-3.

That was in 2010. Since that time, the urban Bethany area immediately adjacent to the “L” has developed rapidly, and the availability of urban infrastructure to service the “L” has only grown more apparent.

**II. The Owner’s properties do not have any features which cannot be protected by urban reserve designation.**

The “L” in Area 9B can be developed at urban densities while at the same time protecting and preserving Abbey Creek and its riparian habitat. Indeed, the Multnomah County Board recommended to the Core 4, on December 10, 2009, that the area should remain undesignated in order to allow for further consideration of a development concept “that would leverage revenue from more intensive development east of N. Bethany to support lower density development in targeted areas to the east and acquire other land for public ownership.” Attachment A to Multnomah County Resolution No. 09-153, at 2. The County found that “this approach *could both protect landscape features by sensitive use of development and open space together with public ownership, while contributing to urban capacity.*” *Id.* (emphasis added). Similarly, Metro designated Area 8C, which includes mapped natural landscape features (see Exhibit 2), as urban reserve subject to Metro’s “Integrating Habitats” program, which “utilizes design principles to improve water quality and provide wildlife habitat.” Exhibit B to Metro Ordinance No. 11-1255, at 66. Such design principles and careful planning can also be applied to the “L” in Area 9B.

Additionally, it is important to note that rural reserve designation does not, by itself, ensure that natural landscape features will be protected and preserved to any greater extent than can be achieved under an urban reserve designation, or even after inclusion in the urban growth boundary.

**III. To the extent that Area 9B has characteristics that would qualify it for rural reserve designation, the “L” does not. Its primary characteristics fit an urban designation.**

Following a protracted analysis of the area, County staff, the Multnomah County board, Metro, and the Core 4 all agreed that the “L” should not receive a rural reserve designation. The “L” should not have been, and should not again be, considered together with the other lands comprising Area 9B that are more suitable for rural reserve designation.

**IV. Inclusion of the “L” land in study Area 9B together with land which does not share designation criteria is contrary to the intent of the reserves statute, and independently violates the Owner’s property rights under the US Constitution.**

The process by which individual study areas (e.g. Area 9B) were delineated and analyzed by Multnomah County was arbitrary. The selection of study areas in Multnomah County was explained as follows:

“The approach to developing the proposed reserve plans began with analysis of the study area by the [Citizen’s Advisory Committee, or “CAC”]. The county study area was divided into areas corresponding to the four affected county Rural Area Plans, and further segmented using the Oregon Department of Agriculture (ODA) mapping *and CAC discussion* for a total of nine county subareas.”

Exhibit E to Metro Ordinance 10-1238A, at 33 (emphasis added). This area selection process yielded overbroad study areas that encompass properties with distinctly different characteristics.

Indeed, one of the reasons the Board is considering the Ordinance before it today, seven years after Ordinance 10-1151 was adopted, is that Multnomah County failed to adequately explain why the broadly-defined Area 9D was designated as rural reserve notwithstanding the dissimilar characteristics of properties located across the study area.<sup>2</sup>

Multnomah County can and must correct the error of designating the “L” as rural reserve by considering the “L” separately from the remainder of Area 9B and applying the appropriate designation. Nothing prevents the County from undertaking this process except the alleged “honoring” of the prior Board’s decisions. That Board, in 2009, recommended to the Core 4 that Area 9B should not be designated as either rural or urban reserve, because “not designating this area allows for further consideration of the viability of [a unique development concept] and time for potential governance of this area to become clearer.” in order to await ‘future circumstances (quote from resolution)’. Attachment A to Multnomah County Resolution No. 09-153, at 2. The inconsistency is obvious.

If the Ordinance is adopted without a bona fide recognition and treatment of the “L” consistent with constitutional requirements and the Federal Court’s assumption of ‘a meaningful opportunity’ for equal treatment,<sup>3</sup> it will have needlessly put in jeopardy the entire reserves legislation. The Owners again assert the right to have their properties be evaluated separately from Area 9B or alternatively receive a separate designation within Area 9B based on the statutory criteria, and including the requirements of ORS 197.040.

Respectfully Submitted,

THE JAMES LAW GROUP, LLC

Christopher James

On behalf of:  
Springville Investors, LLC  
Katherine Blumenkron  
David Blumenkron  
Burnham Farms, LLC  
Bob Zahler

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<sup>2</sup> The Oregon Court of Appeals, in *Barkers Five, LLC et al. v LCDC*, 261 Or.App. 259, 364 (2014), held that Multnomah County failed to “meaningfully explain why consideration of the pertinent factors yields a designation of all land in Area 9D” as it did, notwithstanding that “a significant amount of land in [the] area . . . is dissimilar from the rest of the land in that area as demonstrated by the county’s application of the factors.”

<sup>3</sup> See *Blumenkron v. Eberwein*, 2015 U.S. Dist. LEXIS 129837, \*22, 2015 WL 5687869 (D. Or. Sept. 28, 2015) (stating that “a meaningful opportunity remains for Plaintiffs to convince Multnomah County and Metro to change the designation of Area 9B.”).

**Christopher James**, OSB #74151  
cjames@jameslawgroup.com  
THE JAMES LAW GROUP  
121 SW Morrison Street, Suite 910  
Portland, Oregon 97204  
Telephone: (503) 228-5380  
Facsimile: (503) 228-5381  
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**KATHERINE BLUMENKRON**, an individual; **DAVID BLUMENKRON**, an individual; **SPRINGVILLE INVESTORS, LLC**, a limited liability company,

Case No. 3:12-cv-00351-BR

**DECLARATION OF THOMAS VANDERZANDEN**

**PLAINTIFFS,**

v.

**BARTON EBERWEIN, HANELY JENKINS, TIM JOSI, GREG MACPHERSON, CHRISTINE M. PELLETT, JOHN VANLANDINGHAM, MARILYN WORRIX, and DAVID BRAGDON** all in their official capacities as a member of the Land Conservation and Development Commission; **DAVID BRAGDON, SHIRLEY CRADDICK, CARLOTTA COLLETTE, CARL HOSTICKA, KATHRYN HARRINGTON, REX BURKHOLDER,** and **BARBARA ROBERTS**, all in their official capacities as Metro councilors; and **MULTNOMAH COUNTY,**

**DEFENDANTS.**

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1 – DECLARATION OF THOMAS VANDERZANDEN

I, Thomas Vanderzanden, declare:

1. I have been involved in Oregon land use matters since 1972 at Columbia Region Association of Governments...the prelude to Metro. During this period, I had extensive involvement in the drafting of the first regional Urban Growth Boundary (UGB) and related land use planning experiences.

2. I have served as a Director of Development for Clackamas County and other positions during my career, and I have been exposed to inter-county (intergovernmental) agreements for the provision of utilities by one county to serve areas and properties in another county or city. These intergovernmental agreements are necessitated by topography, proximities, and efficiencies that make them practically suitable and efficient. For example only, if a neighboring county has a larger capacity installation closer to the property to be served, or at a superior location for other reasons (example: sewer service and surface water treatment is directly related to drainage basins and not political boundaries), it is typical for the counties to simply execute an intergovernmental agreement for such service.

3. Since 2000, I have been fully engaged in the regional UGB and Reserves planning processes as a private consultant, serving as a principal owner in Ir-Van Consulting Group, LLC. I was retained by a group of owners in the "L" in East Bethany to identify how it could be planned as urban, including infrastructure provision, as a part of the regional planning process.

4. In connection with the land area known as 9B and including the "L" area of East Bethany, such services can be provided by Washington County and the Tualatin Valley Water District. I submitted testimony and other proof to Multnomah County planning staff on August 10, 2009 and later dates that the East Bethany area could be efficiently served by urban services.

2 – DECLARATION OF THOMAS VANDERZANDEN

11. Area 9B is identified by the Oregon Department of Agriculture as low-value “conflicted” agricultural land.

12. I am unfamiliar with the concept, in the context of land use implementation, of a “buffer” exceeding 50 to 100 feet.

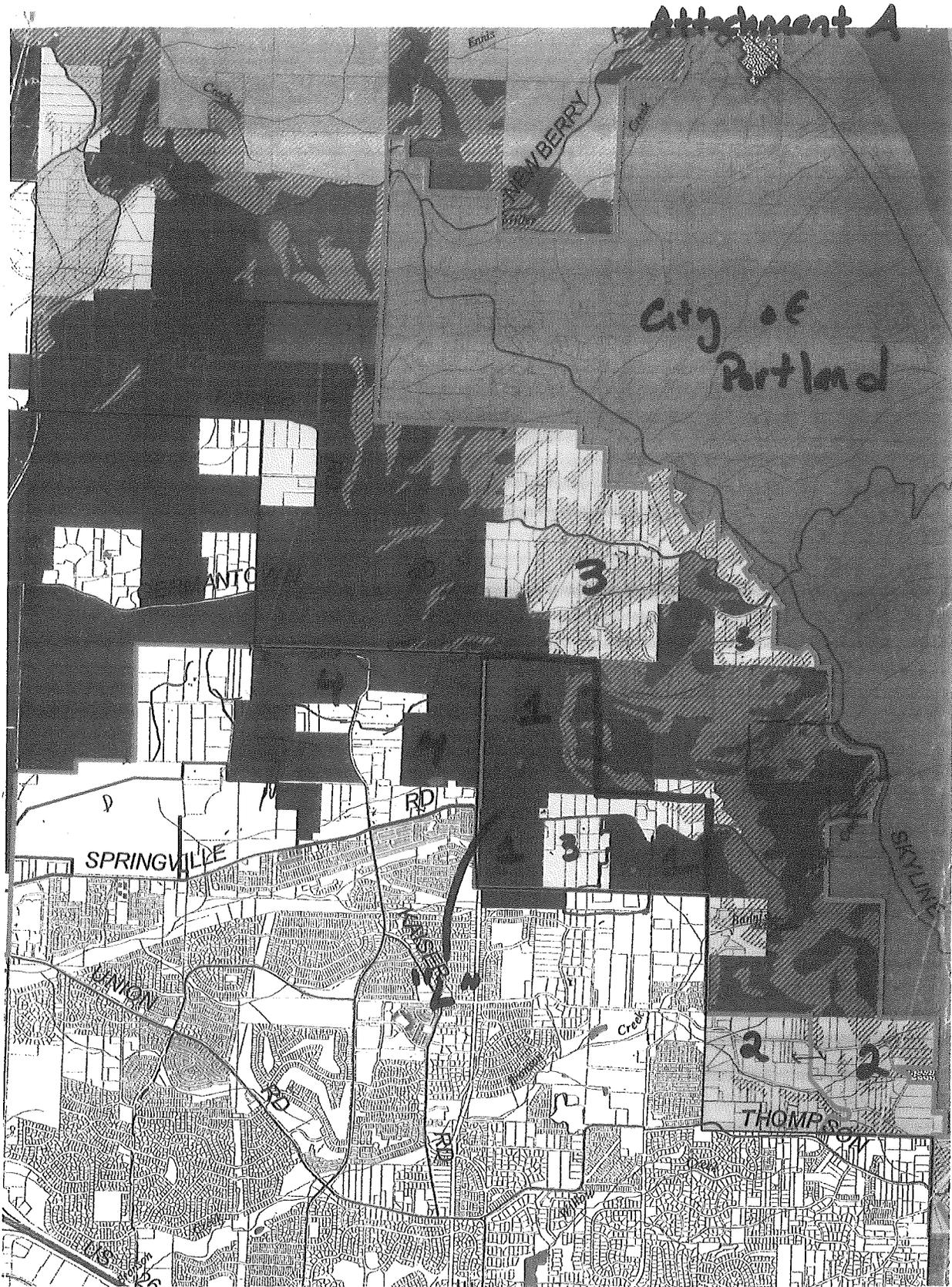
13. There were numerous changes to proposed urban and rural reserve designations after initial designation proposals had been issued by the counties. Most of those late changes did not derive from the application of the urban and rural reserves factors and criteria. For example, Clackamas County proposed that the Stafford area (Areas 4A, 4B, 4C) for rural reserve designation. Although Area 4A was identified as conflicted agricultural land, it did not have immediate access to urban services, and has significant natural landscape features. However, Metro strongly asserted that the Stafford area should be designated as urban reserve, and Clackamas County ultimately agreed.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on August 31, 2015.

By:   
THOMAS VANDERZANDEN

4 - DECLARATION OF THOMAS VANDERZANDEN





Board Clerk <boardclerk@multco.us>

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## barkers five testimony may 11th

2 messages

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**sandy baker** <sjhb1503@gmail.com>  
To: Board Clerk <boardclerk@multco.us>

Wed, May 10, 2017 at 9:41 AM

Hello,

I wanted to let you know that I wish to testify at the public hearing for urban and rural reserves.

Name is Sandy Baker, Barkers Five LLC.

I am not done with my oral testimony, but wanted to get my name on the list.

Thank you so much! Please confirm you received this and let me know what other things I my need to know or bring.

---

**Board Clerk** <boardclerk@multco.us>  
To: sandy baker <sjhb1503@gmail.com>

Wed, May 10, 2017 at 9:48 AM

got it, Sandy.

Lyn

[Quoted text hidden]



Board Clerk &lt;boardclerk@multco.us&gt;

---

## Attn: Urban and Rural Reserve Testimony

2 messages

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**mramsey13** <mramsey13@gmail.com>  
To: boardclerk@multco.us

Thu, May 4, 2017 at 4:03 PM

Hi,

Just wanted to include this conversation in the testimony, as it pertains to my father's right to fall tress for personal use.

Please reach out with any questions or concerns. Also, I was wondering if the meeting today had a potential effect on the land use of my family home.

Thank you,  
Merlin Ramsey  
[707-721-6192](tel:707-721-6192)

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Merlin Ramsey <mramsey13@gmail.com>

Date: 5/1/17 5:52 PM (GMT-06:00)

To: [Lcramsey01@gmail.com](mailto:Lcramsey01@gmail.com), Merlin Ramsey <mramsey13@gmail.com>, Lena Bowie <l\_bowie@hotmail.com>

Subject: Fwd: Logging for personal use

----- Forwarded message -----

From: **Merlin Ramsey** <mramsey13@gmail.com>

Date: Fri, Jun 3, 2016 at 8:53 PM

Subject: Fwd: Logging for personal use

To: [l\\_bowie@hotmail.com](mailto:l_bowie@hotmail.com)

This is a pretty concrete answer, that should help to alleviate any of my dad's anxiety around his ability to cut firewood, great news!

----- Forwarded message -----

From: Adam BARBER <adam.t.barber@multco.us>

Date: Thursday, June 2, 2016

Subject: Logging for personal use  
To: Merlin Ramsey <[mramsey13@gmail.com](mailto:mramsey13@gmail.com)>  
Cc: Michael CERBONE <[michael.cerbone@multco.us](mailto:michael.cerbone@multco.us)>

Merlin,

Thanks for sending me the address. I think I may be able to help alleviate anxiety you or your dad might be feeling on this issue.

The property is zoned Rural Residential (RR) with an environmental overlay for Significant Environmental Concern related to Wildlife Habitat (SEC-H). The crux to your question is how the SEC-H rules relate to personal use firewood cutting?

Multnomah County Code section 33.4510(A) states the "location and design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit." What this means is that establishing a new use (like building a new home, barn or garage for example) requires an environmental review. This SEC-H review is not designed to say yes or no to a proposal, but guide it to the most appropriate location on the property having the least amount of impact. But you are not proposing to establish or alter a use so this doesn't fully answer your question.

The most relevant reference above is the exceptions in 33.4515. Under 33.4515(A)(2), the following activity is listed as NOT subject to a SEC permit: "The propagation of timber or the cutting of timber for public safety or personal use or the cutting of timber in accordance with the State Forest Practices Act."

In conclusion, planting trees and the associated cutting of firewood for personal use (home heating is the scenario we talked about) does not require a SEC permit and is not a regulated land use. I will add a note in our database for this property reiterating this conclusion so the other staff in our office in the future know that this is what we discussed.

Zoning maps and associated regulations can change over time and there is potential for that to happen in the future for properties across our entire jurisdiction. There are no specific draft rules which I can forward to you at this point because none have been drafted. However, we are required by the state to (and will) send mailed notice to all involved property owners when zoning maps and/or zoning regulations are proposed to be amended in any way which could impose new restrictions on properties which I understandably suspect you are concerned with.

I will keep this issue in the back of my mind as we move forward and will expect to speak with you again if you receive notice of any proposed rule changes on your property so we can assess together.

It may be helpful for your own record to have access to the current rules which I have

attached. The relevant SEC section begins with 33.4500. Thanks again for participating in the Planning Commission process and letting us know how we can help.

Take care.

--

Adam Barber, CPESC  
Senior Planner & DCS Emergency Preparedness Coordinator

Multnomah County Land Use Planning Division  
1600 SE 190th Avenue, Suite 116  
Portland, Oregon 97233  
[503-988-0168](tel:503-988-0168)  
[adam.t.barber@multco.us](mailto:adam.t.barber@multco.us)

On Thu, Jun 2, 2016 at 12:27 PM, Merlin Ramsey <[mramsey13@gmail.com](mailto:mramsey13@gmail.com)> wrote:

>

> Hi Adam,

> Thanks so much for looking in to this for us! Our address is 3026 NW Skyline Blvd. Portland, 97229, and yes we're wondering how current zoning treats logging small numbers of trees for personal use, as well as how the proposed zoning could potentially affect it in the future.

> Thank you,

> Merlin Ramsey

> On Wed, Jun 1, 2016 at 1:54 PM, Adam BARBER <[adam.t.barber@multco.us](mailto:adam.t.barber@multco.us)> wrote:

>>

>> Merlin,

>>

>> Thanks for being in touch. What is your father's address? I wanted to look up the zoning before replying.

>>

>> My understanding is that you are looking for an answer to how tree cutting for personal firewood use aligns with current zoning regulations, correct?

>>

>> Sincerely,

>> --

>> Adam Barber, CPESC

>> Senior Planner & DCS Emergency Preparedness Coordinator

>>

>> Multnomah County Land Use Planning Division

>> 1600 SE 190th Avenue, Suite 116

>> Portland, Oregon 97233

>> [503-988-0168](tel:503-988-0168)

>> [adam.t.barber@multco.us](mailto:adam.t.barber@multco.us)

>>

>>

>>

>> On Wed, May 25, 2016 at 9:24 AM, Merlin Ramsey <[mramsey13@gmail.com](mailto:mramsey13@gmail.com)> wrote:

>>>

>>> Hi Adam,

>>> I'm very sorry for the delay in reaching out, I had meant to do so much sooner, and I'm hoping that you might still be willing to help us find some kind of an answer concerning my father's right to log for personal use on his land. Thank you again for taking the time to speak with me and my father after the meeting, especially on your wife's birthday. It was very a very kind and generous use of time. I look forward to hearing from you soon!

>>> Thanks,

>>> Merlin Ramsey

>>> cell- [707-721-6192](tel:707-721-6192)

>>

>>

>> --

>> Adam Barber, CPESC

>> Senior Planner & DCS Emergency Preparedness Coordinator

>>

>> Multnomah County Land Use Planning Division

>> 1600 SE 190th Avenue, Suite 116

>> Portland, Oregon 97233

>> [503-988-0168](tel:503-988-0168)

>> [adam.t.barber@multco.us](mailto:adam.t.barber@multco.us)

>

--

Adam Barber, CPESC

Senior Planner & DCS Emergency Preparedness Coordinator

Multnomah County Land Use Planning Division

1600 SE 190th Avenue, Suite 116

Portland, Oregon 97233

[503-988-0168](tel:503-988-0168)

[adam.t.barber@multco.us](mailto:adam.t.barber@multco.us)

---

**Board Clerk** <boardclerk@multco.us>

Mon, May 8, 2017 at 12:12 AM

To: Michael CERBONE <michael.cerbone@multco.us>, Adam BARBER  
<adam.t.barber@multco.us>

I leave the responses to you, Gentlemen! :)

If you need the packet, it is here: [http://multnomah.granicus.com/GeneratedAgendaViewer.php?view\\_id=3&event\\_id=583](http://multnomah.granicus.com/GeneratedAgendaViewer.php?view_id=3&event_id=583)

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**MULTNOMAH COUNTY BOARD OF COMMISSIONERS' MEETING  
PUBLIC COMMENT SIGN-UP SHEET**

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**FOR:** \_\_\_\_\_ **AGAINST:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

CONTACT INFORMATION (*optional*):

ADDRESS: \_\_\_\_\_

CITY/STATE/ZIP: \_\_\_\_\_

PHONE: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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2. Written testimony will be entered into and remain a part of the official permanent record.



Board Clerk &lt;boardclerk@multco.us&gt;

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## Testimony for Board of Commissioners re: Ordinance 1246 (Urban and Rural Reserves)

1 message

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**King, Seth J. (Perkins Coie)** <sking@perkinscoie.com> Wed, May 10, 2017 at 3:24 PM  
To: "boardclerk@multco.us" <boardclerk@multco.us>  
Cc: "Pfeiffer, Steven L. (Perkins Coie)" <SPfeiffer@perkinscoie.com>, "Jed TOMKINS  
(jed.tomkins@multco.us)" <jed.tomkins@multco.us>

Please include a copy of the attached letter in the record for Multnomah County Ordinance 1246 (Urban and Rural Reserves) and please place copies before the Board members prior to tomorrow morning's meeting. Thank you.

**Seth King** | **Perkins Coie LLP**

PARTNER

1120 N.W. Couch Street Tenth Floor

Portland, OR 97209-4128

D. +1.503.727.2024

M. +1.503.944.9380

E. [sking@perkinscoie.com](mailto:sking@perkinscoie.com)

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NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

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**20170510 Ltr to Multnomah County re\_ Reserves Remand.pdf**  
154K

May 10, 2017

Steven L. Pfeiffer  
SPfeiffer@perkinscoie.com  
D. +1.503.727.2261  
F. +1.503.346.2261

**VIA EMAIL**

Chair Deborah Kafoury  
Board of Commissioners  
Multnomah County  
501 SE Hawthorne Boulevard  
Suite 600  
Portland, OR 97214-3587

**Re: Multnomah County Ordinance No. 1246 (Urban and Rural Reserves)**

Dear Chair Kafoury and County Commissioners:

This office represents Metropolitan Land Group (“MLG”), the owner of approximately 38 acres of property in the “Lower Springville Road Area” of Multnomah County (“Property”). This letter is written in opposition to Multnomah County Ordinance No. 1246 (“Ordinance”), which is scheduled for consideration by the Board of Commissioners on second reading at tomorrow’s meeting.

The deficiencies in the Ordinance and its related findings are extensive and range from both re-adoption of errors first adopted with the original reserves proposal to new errors committed for the first time on remand.

As an example of re-adopted errors, the County again wrongfully designates the Property as a rural reserve. This decision reflects poor policy and poor planning and misconstrues the law for reasons already discussed exhaustively on the record.

There are new errors too. For example, the County erroneously concludes that its error in analyzing and explaining how the reserves factors apply to Area 9D can be addressed by adoption of new findings without modification of any reserves designations. This is not the case because the County’s entire analytical approach is flawed by grossly generalizing the characteristics of certain portions of Area 9D to the entirety of Area 9D, which leads to incorrect conclusions about the appropriate reserve designations for at least portions of this area.

Chair Deborah Kafoury  
Multnomah County Board of Commissioners  
May 10, 2017  
Page 2

Further, the County's error has the cascading effect discussed in the staff report because it is repeated throughout the County. By failing to conduct the correct analysis for Area 9D and other reserve areas, the County does not even know whether it has applied the correct reserves designations to properties in the County. A reassessment of all reserves is needed to ensure confidence in and defensibility of the outcome.

Additionally, the County's process is flawed and prejudices the substantial rights of MLG by not allowing the submittal of new evidence on remand when the evidence relied upon by the County from the record is now years-old and thus out of date. The County needs to and should want to open up the process to allow consideration of new evidence pertaining to reserves designations.<sup>1</sup>

The County also errs by adopting as its own the findings adopted by Metro and Clackamas County in support of their reserves ordinances. By adopting Metro's findings, and submitting those as the region's joint findings to DLCD, the County is complicit in the errors first made by these partner agencies.

The errors in the Metro and Clackamas County findings include the following:

- 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.

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<sup>1</sup> See Recital I. of the Ordinance, which states that “\* \* \* the Board remains open to considering all arguments in support of or opposition to this ordinance, including any part thereof and any designation therein.”

- 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.
- The findings erroneously conclude that the proposed urban and rural reserves designations, in their entirety, best achieves livable communities, the viability of the agricultural and forest industries, and protection of the important natural landscape features that define the region for its residents.
  - Contrary to the findings, Metro, Clackamas County, and Multnomah County are proposing to adopt a “new joint designation” of reserves, as contemplated by the Court of Appeals in *Barkers Five, LLC v. Land*

*Conservation and Development Commission*, 261 Or App 259, 323 P3d 368 (2014) because no such joint designation is currently in place in these two counties due to the remand. As a result, Metro and these counties are obligated to address the “best achieves” standard in conjunction with this “new joint designation.”

- Contrary to the findings, HB 4078, which resulted in a reduction of 3,000 urban reserves acreage, did not, as a matter of law, override or otherwise fulfill Metro and the counties’ obligation to apply and demonstrate compliance with the “best achieves” standard. In fact, the legislative history for HB 4078 refutes the Findings on this point. The -12 amendments to HB 4078 proposed to add a provision stating that the reserves designations would meet the “best achieves” standard; however, the Legislature did not adopt this amendment. The decision not to adopt this amendment and not to directly address the “best achieves” standard in HB 4078 confirms a legislative intent to leave this issue to further action by Metro and the counties.
- The interpretation and application of the “best achieves” standard in the findings is inconsistent with the purpose and intent of SB 1011, the implementing administrative rules, and the findings themselves given that it does not result in an adequate supply of needed employment land during the planning period.
- As explained above in response to the “amount of land” standard, the urban reserves designated in the Stafford area are effectively “phantom” acres that will not urbanize within the planning period due to the legitimate policy concerns expressed by hamlet residents and adjacent cities.
- Metro’s conclusion that the “best achieves” standard is met is not supported by an adequate factual base and is undermined by evidence in the record.

Chair Deborah Kafoury  
Multnomah County Board of Commissioners  
May 10, 2017  
Page 5

Until Multnomah County and its regional partners address these issues, the designation of reserves by Metro and the counties will be subject to further legal challenge. Please include a copy of this letter in the official record for this matter. Thank you for your consideration of this testimony.

Very truly yours,



Steven L. Pfeiffer

SJK

cc: Board Clerk (via email)  
Mr. Jed Tomkins (via email)  
Client (via email)



Board Clerk &lt;boardclerk@multco.us&gt;

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## urban and reral reserve testimony

4 messages

**Hope Boyce** <HBoyce@dadco.com>

Fri, May 5, 2017 at 12:02 PM

To: "boardclerk@multco.us" &lt;boardclerk@multco.us&gt;

Cc: "McCoy, Gregory" &lt;gmccoy@orclinic.com&gt;, Hope Boyce &lt;HBoyce@dadco.com&gt;, "hboyce16@gmail.com" &lt;hboyce16@gmail.com&gt;

Matter#PC-08-010

To Whom It May Concern:

We were sent a Public Hearing Notice Matter #PC-08-010 and would like more specific information.

We have not been able to pull up the pertinent information as it pertains to our property located at **5020 SW Humphrey Boulevard. Portland, OR. 97221**

Will you please forward the specific information so we may review the proposed ordinance. We would also appreciate any additional information

as it pertains to our property and/or neighborhood.

My email address is : [hboyce@dadco.com](mailto:hboyce@dadco.com) & phone number is [503-721-4164](tel:503-721-4164).

We look forward to hearing back from you at your earliest convenience.

Cordially,

Hope Boyce + Gregory McCoy

HOPE MENAKER BOYCE, CWS ®

SENIOR VICE PRESIDENT. FINANCIAL ADVISOR

503.721.4164 Direct, 1.800.439.0999 Toll Free, 503.525.3595 Fax

[hboyce@dadco.com](mailto:hboyce@dadco.com)



D|A|DAVIDSON

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<https://www.dadavidson.com>

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**Board Clerk** <boardclerk@multco.us>  
To: Hope Boyce <HBoyce@dadco.com>  
Cc: Michael CERBONE <michael.cerbone@multco.us>

Mon, May 8, 2017 at 12:10 AM

Hope Boyce & Gregory McCoy:

Hi. I am copying the planner so that he can assist you with your question. As to the packet, I am providing a link. This will take you directly to our agenda. All items in the packet are linked, including helpful maps. [http://multnomah.granicus.com/GeneratedAgendaViewer.php?view\\_id=3&event\\_id=583](http://multnomah.granicus.com/GeneratedAgendaViewer.php?view_id=3&event_id=583)

It is the only item on the regular agenda and we begin Thursday at 9:30 am.

You are welcome to attend. You can submit your testimony in advance by e-mail, or bring it with you on paper. One copy will suffice, as we can it, and send it out to the Commissioners and their Chiefs.

If you have other questions, let me know.

Lynda Grow, Board Clerk

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**Michael CERBONE** <michael.cerbone@multco.us>  
To: Board Clerk <boardclerk@multco.us>

Mon, May 8, 2017 at 12:18 PM

I just spoke with Hope.

Thanks,

MC

**Michael Cerbone, AICP**

Planning Director  
Multnomah County  
503.988.0218

<https://multco.us/landuse>



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**Board Clerk** <boardclerk@multco.us>  
To: Michael CERBONE <michael.cerbone@multco.us>

Mon, May 8, 2017 at 1:09 PM

thanks!

[Quoted text hidden]



Board Clerk &lt;boardclerk@multco.us&gt;

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## Written testimony for Board Meeting of May 4 2017

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**Anne Sigrun** <annesigrunpdx@gmail.com>

Wed, May 10, 2017 at 8:57 AM

To: District 1 <district1@multco.us>, Board Clerk <boardclerk@multco.us>, mult.chair@multco.us, district2@multco.us, district3@multco.us, district4@multco.us, michael.cerbone@multco.us

Dear Ms. Meieran

To characterize the Oregon Court of Appeals mandate to the LCDC as "a request for more information" is symptomatic of the attitude adopted by Multnomah County towards its legal obligations under SB-1011.

The Court ruled that the LCDC had "acted illegally" in accepting Multnomah County's Reserves submission, citing Multnomah County's almost complete lack of factual evidence supporting its decisions.

In spite of years of manipulation by a CAC that was seeded from the beginning with 1000 Friends supporters, the Multnomah County Land Use Planning Staff recommended that Area 9B should receive 'Undesignated' status.

That recommendation was overruled at literally the last minute by the Multnomah County Board, with Commissioner Kafoury saying that she had received "1000 emails on this subject".

Why was it so important to the people of Multnomah County that Area 9B receive a Rural designation rather than an Undesignated status?

I have lived on NW Springville Road for over fifty years and I can tell you that less than fifty people live in Area 9B.

Metro President David Bragdon resigned after three years of Reserve hearings, saying that land use planning in Oregon was "a popularity contest".

The 1000 Friends of Oregon 'watchdog' group was responsible for those emails through a coordinated effort by their members.

Attached find a screen shot of Area 9B from a satellite mapping app - can you find the County line?



The purpose of SB-1011 was to use terrain features to establish Reserves boundaries, not political 'lines'. How can anyone look at the attached map and conclude that Multnomah County has acted in good faith?

This is the view from my kitchen window:



It is unfair to establish an individual's property line as the Urban Growth Boundary. To do so flies in the face of the intention and substance of SB-1011.

I urge you to reconsider your intention to vote for the ordinance in question.

Thank you,  
Carl Keseric

On Tue, May 9, 2017 at 4:28 PM, District 1 <[district1@multco.us](mailto:district1@multco.us)> wrote:

Dear Carl,

Thank you for message about Multnomah County's urban and rural reserves designation; I appreciate you taking the time to communicate your thoughts and concerns to me.

As you are likely aware, designations pertaining to the urban/rural reserves in Multnomah County have been before the Board of County Commissioners several times since the beginning of the decade. On Thursday, May 4, the County Board met for a public hearing about proposed supplemental findings to respond to the Oregon Court of Appeals and State Land Conservation and Development Commission, which remanded the County's designations with a request that the County provide additional information. A second second public hearing and final vote of the Board is scheduled for Thursday, May 11.

I believe the County's urban and rural reserves designations, which have received substantial review and input from the public, protect natural features and farm and forestland. During the hearing last week, I listened carefully to testimony and have followed up with staff about questions that came up for me. Unless I hear new information, I expect to support the proposed supplemental findings when the Board votes on Thursday.

I encourage you to come to this next meeting, which will be held in the Multnomah County Building at 501 SE Hawthorne Boulevard in Portland and continue to make your voice heard. Thank you again for contacting me.

Sincerely,

Sharon Meieran  
Commissioner, Multnomah County District 1

On Wed, May 3, 2017 at 10:14 AM, Anne Sigrun <[annesigrunpdx@gmail.com](mailto:annesigrunpdx@gmail.com)> wrote:

[Quoted text hidden]

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**Office of Commissioner Sharon Meieran**

Multnomah County District 1  
501 SE Hawthorne Blvd. Ste 600  
Portland, OR 97214  
[503-988-5220](tel:503-988-5220)  
[district1@multco.us](mailto:district1@multco.us)

*Keep up with Commissioner Meieran on [Facebook](#), [Twitter](#), or her [MultCo webpage](#)*

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Sent from my Kaypro II.