THE JAMES LAWGROUP LLC

ATTORNEYS

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CHRISTOPHER JAMES
CHARLES MARR
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* ADMITTED IN CALIFORNIA AND OREGON

April 27, 2011

VIA ELECTRONIC MAIL AND HAND DELIVERY

Multnomah County Board of Commissioners
501 SE Hawthorne
Portland, Oregon 97214
marina.baker@multco.us
lynda.grow@multco.us

Re: April 28, 2011 Hearing to Consider a Revision to the Supplemental Intergovernmental Agreement concerning Urban and Rural Reserves

Dear Commissioners:

This letter is submitted on behalf of certain owners of property contained within the "L" in Area 9B, to supplement the previous objections submitted by and on behalf of these property owners both individually and as a group. A previous submission to Metro Council and Washington County is attached.[1] We now object to a process involving conclusory factual findings, before any legal order of remand, and without standards or any ability to challenge error, the very core of *bona fide* agency action. We reserve our record as to all errors of the reserve designation process, but wish to highlight certain ones in this letter.

Respectfully, your ordinance conflicts with statutory law and constitutional limitation, and will not survive judicial scrutiny. The standard for judicial review is "unreasonableness, procedural error in adoption, or conflict with paramount state law or constitutional provision." ORS 203.060. Under LCDC's supervision, through the

[1] Additionally, the objections submitted at the local level by the property owners, the objections submitted in connection with the October 2010 hearing before the LCDC by the property owners and by this law firm, and our November 17, 2010 letter to Steven Shipsey are incorporated herein by reference.

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promulgated rules, the relevant counties and Metro were required to provide a framework to identify the property interests that are likely to be impacted, assess the likely degree of the impact on identified property, and to assess whether alternative actions are available that would achieve an underlying lawful governmental objective and would have a lesser economic impact. ORS 197.040(1)(b)[2]. The statute is obligatory. A delegation does not suspend its operation. The rules are only valid to the extent that they are consistent with both the applicable statutes and land use planning goals. Wetherell v. Douglas County, 342 Or. 666, 676, 160 P.3d 614 (2007) (citing City of West Linn v. LCDC, 200 Or.App. 269, 275-76, 113 P.3d 935 (2005), *rev. denied* 339 Or. 610 (2005)). The statutory mandate preempts the rules, and the local governments are bound by the statute, regardless of the rule. See Wetherell, 342 Or. at 682 (holding that LCDC may not require a local government to make land use decisions utilizing standards that do not comply with statutory definitions, and invalidating an OAR that precluded consideration of factors that were appropriate under the statute). Thus, Multnomah County is obligated to perform the assessment and balancing set forth in ORS 197.040 regardless of the language of the OARs. See Jordan v. Douglas County, LUBA No. 2001-045 (Or. LUBA, 2001) (A local government's decision will be reversed or remanded if it fails to follow applicable statutes and procedures.)

Multnomah County's proposed ordinance utterly lacks any compliance with ORS 197.040. Facially, the County did not compare the proposed solution to other solutions region-wide. Further, it is constitutionally invalid because it does not treat similar land similarly. This project was not undertaken with the requisite impartiality, and the result – proposed urban reserves in areas described as the best farmland in the world while other land, admitted by all to be conflicted, not feasibly tillable, and abutting an already urbanized city, is unduly burdened with a rural reserve designation that means fifty years of nonuse – is preposterous.

The "L" area properties have, for example only, less than 10% affected by slopes; in the findings Area 9B is reported as having a majority of the area with slopes in excess of 10-25%. The "L" has no significant landscape features, yet the "L" area contains over five hundred acres, but is condemned by a definition of area boundary to fifty years of "no rights to appeal or change" no matter what the conditions of the present or future may be.

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[2] ORS 197.040(1) further incorporates the overarching principle of equity set forth in ORS 197.010 and requires that the Commission shall adopt rules that it considers necessary to carry out the land use statutory mandate, including, in relevant part, **mandating** that the Commission:

> "(C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
> (D) Assess the likely degree of economic impact on identified property and economic interests; and
> (E) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact." (Emphasis added.)

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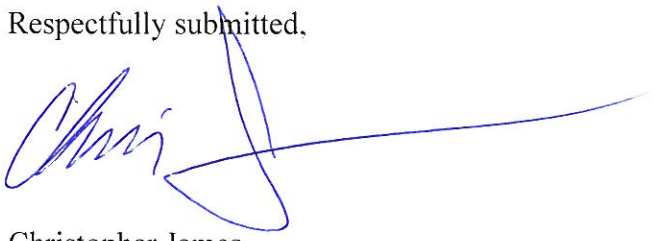
This does not comport with the applicable statutes or constitution. We respectfully submit you are required to confer with Metro and balance the equities – and inequity – visited on these properties, and a result must represent legitimate coordinated planning.

Respectfully submitted,



Christopher James

Cc: Dan Cooper, Esq. (via electronic mail)
Henry Lazenby, Jr., Esq. (via electronic mail)
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March 11, 2011

VIA ELECTRONIC MAIL

Metro Council
600 NE Grand Avenue
Portland, Oregon 97232
reserves@oregonmetro.gov

Washington County Board of Commissioners
County Administrative Office
155 North First Avenue
Suite 300
Hillsboro, Oregon 97214
cao@co.washington.or.us

Re: March 15, 2011 Joint Hearing to Consider a Revision to the Supplemental Intergovernmental Agreement concerning Urban and Rural Reserves

Dear Council Representatives and Commissioners:

This letter is submitted on behalf of certain owners of property contained within the "L" in Area 9B, to supplement the previous objections submitted by and on behalf of these property owners both individually and as a group. These property owners object to the designation process that allows newly proposed "urban reserves" in areas that are designated as farmland by the Department of Agriculture and the Farm Bureau, and are actively utilized for farming, while the designation of the "L" as rural reserve is scheduled to be approved by the LCDC. As discussed herein and in our previous submissions, the inequitable treatment of the "L" exemplifies the inherent flaws in the reserve designation system, the manner in which the Oregon Administrative Rules were applied to this project, and in the Rules themselves. We do not intend to repeat matters previously supplied in our objections to LCDC or our letter of November 17, 2010 to Steven Shipsey, Esq., which has been circulated to the state agencies involved in the

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reserve designation process.[1] We now object to a process involving conclusionary factual findings, before any legal order of remand, and without standards or any ability to challenge error, the very core of *bona fide* agency action. We preserve the record with respect to the errors of the reserve designation process.

Under LCDC's supervision, through the promulgated rules, the relevant counties and Metro were entrusted by statutory mandate to provide a framework to identify the property interests that are likely to be impacted, assess the likely degree of the impact on identified property, and to assess whether alternative actions are available that would achieve an underlying lawful governmental objective and would have a lesser economic impact. ORS 197.040(1)(b)[2]. The statute is obligatory. A delegation does not suspend its operation. The rules are only valid to the extent that they are consistent with both the applicable statutes and land use planning goals. Wetherell v. Douglas County, 342 Or. 666, 676, 160 P.3d 614 (2007) (citing City of West Linn v. LCDC, 200 Or.App. 269, 275-76, 113 P.3d 935 (2005), *rev. denied* 339 Or. 610 (2005)). The statutory mandate preempts the rules, and the local governments are bound by the statute, regardless of the rule. See Wetherell, 342 Or. at 682 (holding that LCDC may not require a local government to make land use decisions utilizing standards that do not comply with statutory definitions, and invalidating an OAR that precluded consideration of factors that were appropriate under the statute). Thus, Metro and Washington County are obligated to perform the assessment and balancing set forth in ORS 197.040 regardless of the language of the OARs. See Jordan v. Douglas County, LUBA No. 2001-045 (Or. LUBA, 2001) (A local government's decision will be reversed or remanded if it fails to follow applicable statutes and procedures.)

Washington County and Metro's proposed IGA utterly lacks any compliance with ORS 197.040. Facially, it does not compare the proposed solution to other solutions region-wide. It is constitutionally invalid because it does not treat similar land similarly. This project was not undertaken with the requisite impartiality, and the result – proposed urban reserves in areas described as the best farmland in the world while other land, admitted by all to be conflicted, not feasibly tillable, and abutting an already urbanized city, is unduly burdened with a rural reserve designation that means fifty years of nonuse – is preposterous.

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[1] The objections submitted at the local level by the property owners, the objections submitted in connection with the October 2010 hearing before the LCDC by the property owners and by this law firm, and our November 17, 2010 letter to Steven Shipsey are incorporated herein by reference.

[2] ORS 197.040(1) further incorporates the overarching principle of equity set forth in ORS 197.010 and requires that the Commission shall adopt rules that it considers necessary to carry out the land use statutory mandate, including, in relevant part, **mandating** that the Commission:

> "(C) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;
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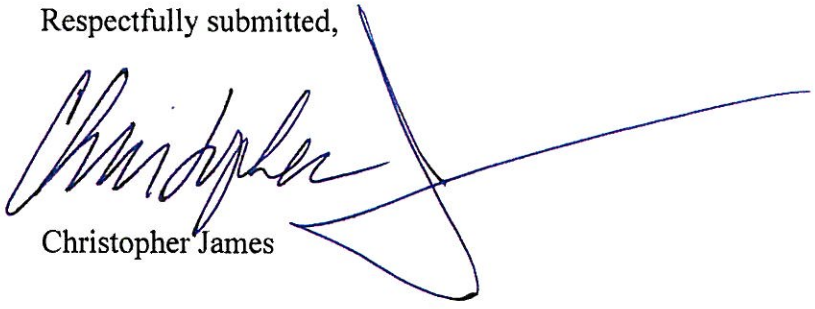
The anticipated response, that Washington County had to look only within its own borders for land suitable for urban reserve, is contradicted by the basic premise of the statutory model. The reserves are intended to be a region-wide planning tool, and limiting the analysis to a politically delineated area improperly ignores the express mandate of the statute and the federal and state constitutions. Applying the criteria in different ways and weighing them differently based upon the land's location in relation to the county line violates both the letter and the spirit of the applicable OARs and ORS 197.

Our clients, as well as the other landowners and citizens of the Portland metropolitan area, deserve a fair and constitutional land use process by which the state's interests are balanced against the economic impact of the governmental actions and decisions made based upon the legislative mandate and appropriately crafted rules, and by which these decisions are made and applied in an equitable, nonpolitical manner. Despite this fundamental constitutional right, our clients have been ignored, marginalized, and their land subjected to arbitrary application of the reserve factors in a manner to which no other land in the reserve designation project was subjected. With each review, and each abdication of responsibility, one can only conclude that this is a willful disregard of constitutional rights.

We respectfully request that Metro and Washington County vote not to approve the proposed Intergovernmental Agreement to Re-Designate Urban Reserves in the County and instead reconsider this decision in a manner that conforms with the Oregon State Legislature's statutory mandate and the constitutional principles of equal protection and due process. Metro's decision to select optimal farmland for urban reserves instead of available exception land that meets all the criteria for "first priority" under OAR 660-021-0030(3)(a) has already been remanded by the Commission. Metro has the opportunity to correct this inequitable use of the urban reserve designation. Further, Metro should recognize and apply, formally and fairly, the required tests of the applicable statutes and constitutions. It is the agency who must impose this responsibility across political subdivisions.

Respectfully submitted,



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