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## Fwd: FW: Written Testimony and exhibits, for the Record, Related to the Urban And Rural Reserves Designation for Area 9D

1 message

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**Board Clerk** <boardclerk@multco.us>  
To: GROW Lynda <lynda.grow@multco.us>  
Bcc: Board Clerk <boardclerk@multco.us>

Wed, May 3, 2017 at 10:32 AM

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**From:** Peter Watts

**Sent:** Wednesday, May 03, 2017 9:27 AM

**To:** 'board.clerk@multco.us'

**Cc:** Matthew D. Lowe; 'sandy baker'; Steven Barker; 'Steve Baker'

**Subject:** Written Testimony and exhibits, for the Record, Related to the Urban And Rural Reserves Designation for Area 9D

Dear Chair Kafoury and Members of the Multnomah County Commission

Please include this email, and the attachments, in the Record related to Urban and Rural Reserves Ordinance, before the Commission on May 4, 2017. I object to the Ordinance on behalf of my clients Barkers Five, LLC, and urge the Commission not to adopt the Ordinance as drafted. The record does not support a Rural Reserve Designation for the southern portions of Area 9D.

On January 15, 2015, the Land Conservation and Development Commission ("LCDC") remanded Rural Reserve Area 9D to Multnomah County, for **further** findings under ORS 195.141 and 195.145, and OAR 660, division 27." (emphasis added). Multnomah County has taken no new evidence, and has erred by not reopening the record, as required by OAR 660, division 27. Metro adopted the 2014 Urban Growth Report ("UGR") on November 12, 2015. Oregon Administrative Rule ("OAR") 660-027-0040(2) specifies that reserves are calculated using "the most recent inventory, determination and analysis performed under ORS 197.296." Therefore, the most recent UGR is to be utilized during the pendency of the Urban and Rural Reserve process.

Metro, in its hearing related to the Clackamas County Urban Reserves reopened the record, in part, to add the 2014 UGR and other analysis into the record. Property owner representatives, including myself, have also submitted materials that have been accepted into the record by Metro regarding whether HB 4078 implicates ORS 195.145(4) or OAR 660-027-0040(10), and whether there are sufficient Urban Reserves regionally, and in Multnomah County, post HB 4078, which reduced the net number of Urban Reserves acres in Washington County.

In fact, the global look at reserves, and the potential that a change in designation could have a “cascading effect” regionally is acknowledged by Assistant County Attorney, Jed Tompkins, in Exhibit 2, Section B, p. 7. Mr. Tompkins writes:

“if correction of the Error had resulted in a change in the reserve designation of Area 9D (or any other area), then, due to the coordinated manner in which reserves are designated (e.g., ORS 195.143 (the designation of Rural Reserves is coordinated with the designation of Urban Reserves)), it is possible that there could be some cascading effect on the designation of reserves in Multnomah County or the Metro region in their entirety.”

Given that HB 4078 had the effect of decreasing the net total number of Metro region Urban Reserves by 11.3%, the “cascading effect” described above has happened. As pointed out by counsel above, the applicable statutes, and OARs contemplate regional coordination. As such, a change in one county’s map necessitates changes in the other two maps. The Record fails to demonstrate that Multnomah County has taken notice of, or addressed, the regional impact of a statistically significant loss of Urban Reserves.

Failure to reopen the record, to add the most recent UGR, and related documents, results in Multnomah County making decisions based on 2010 data, instead of the most relevant data regarding housing and housing demand in Multnomah County and the Region. It also results in the county not responding to the loss of 11.3% of regional Urban Reserves. The substantial changes related to housing demand, housing inventory, and housing preference are not in front of the Multnomah County Commissioners.

Additionally, “Exhibit 2,” which sets forth the Multnomah County’s findings and analysis for area 9D’s classification as an rural reserve, is substantially identical to Multnomah County’s Opening Brief, submitted to LCDC on September 25, 2014 . While,

occasionally a word is changed, or the order of arguments is adjusted, with the exception of the seven paragraphs under Section B, there are no meaningful differences between Exhibit 2 and the arguments that Multnomah County previously submitted to LCDRC, in 2014. In a decision dated January 15, 2015, LCDRC remanded the case, ordering "the Commission remands Rural Reserve 9D to Multnomah County... for **further** findings under ORS 195.141 and 195.145, and OAR 660, division 27." (emphasis added).

The Commission requested resubmittal be completed by October 2015. I have included a copy of Exhibit 2, with a comparison Multnomah County's Opening Brief, to LCDRC, that cross references the pages of the Opening Brief. There are no meaningful differences between what is in front of the Multnomah County Commission, and what LCDRC has already remanded, with the exception of Section B. Section B addresses why reserve areas, other than 9D. Thus, it is not the "further findings" ordered by LCDRC. There are not "further" findings. Given that substantially similar arguments, were remanded, more than two years ago, it seems highly likely that they will be remanded again.

For the reasons above, I urge you not to adopt the Ordinance related to Area 9D. Thank you for your time and consideration.

Peter

**Peter O. Watts | Attorney**

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