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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.

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of new evidence on remand when the evidence relied upon by the County from the record is now years-old and thus out of date.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.[1]

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.

[1] See Recital l. 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.

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)