



Memorandum

Date: January 30, 2015

To: John Kovash, Mayor
Members, West Linn City Council

From: Chris Jordan, City Manager *CJ*

Subject: Stafford Urban Reserve Update

The city's attorney on the matter of the urban reserve litigation has submitted the attached petition to the Land Conservation and Development Commission to have the urban reserve decision remanded back to the counties as well as to Metro. This petition supports the petitions of the counties and should provide for a better opportunity for involvement by the cities in response to the remand.

Also, today we received the attached letter from Clackamas County requesting that Metro, Clackamas County, Tualatin and West Linn agree to mediation to resolve the issue of the designation and future of the Stafford area.

The City Council should discuss how you want to respond to this request.

Attachment

BEFORE THE
LAND CONSERVATION AND DEVELOPMENT COMMISSION OF THE STATE
OF OREGON

Remand Order No. 14-ACK-001861

IN THE MATTER OF THE REVIEW
OF THE DESIGNATION OF URBAN
RESERVES BY METRO AND
RURAL RESERVES BY
CLACKAMAS COUNTY,
MULTNOMAH COUNTY, AND
WASHINGTON COUNTY

**THE CITY OF TUALATIN'S AND THE
CITY OF WEST LINN'S PETITION
FOR COMMISSION REVIEW OF
DIRECTOR'S ACTION**

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The City of Tualatin's and the City of West Linn's Petition for Commission Review of Director's Action

We represent the Cities of Tualatin and West Linn ("Cities") in the above-noted matter. Pursuant to OAR 660-002-0020(1), the Cities seek Commission review of the Director's Remand Order 14-ACK-001861 issued on January 15, 2015 ("Order"). The Cities agree with the positions expressed by Clackamas County in its January 22, 2015, Petition for Reconsideration and with Barkers Five in its January 23, 2015, Petition for Reconsideration, that the language used in the Order could be construed as limiting Metro's, Multnomah County's, and Clackamas County's scope of review on remand as compared to the Court of Appeals' decision in Barkers Five, LLC v. LCDC, 261 Or App 259, 323 P3d 368 (2014) ("Barkers Five").

The Cities attended the November 13, 2014, Commission hearing on remand and do not believe that the Order reflects the Commission's intent. Our perception of the Commission's deliberation and vote was that the Commission expressly declined to decide the issues raised by the parties, but instead determined that that they would simply pass through the Court of Appeals' remand decision so that Metro and the counties could address those issues on remand in the first instance. The Commission could then review a new decision for compliance based upon new findings and new evidence (if Metro and the counties deem the taking of new evidence necessary on remand). This is the appropriate role of the Commission: It is up to Metro and the counties to make the decision in the first instance under the statute, and then for the

Commission to review that decision for compliance with applicable state law, goals, and rules. It is not appropriate for LCDC to dictate the local outcome by limiting the scope of review on remand.¹

The Cities believe that ambiguity can easily be resolved by simply incorporating the Court of Appeals' remand language from Barkers Five. The Cities respectfully request that the Commission amend the second sentence in the first paragraph following "THEREFORE, IT IS ORDERED THAT:" as follows:

"Accordingly, the Commission remands Rural Reserve Area 9D to Multnomah County and Metro and 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)."

See the Court of Appeals' final ruling at 261 Or App at 364.

This language gives Metro and the counties the full range of options that would otherwise be available on remand, from revising the findings to better explain the decision based upon the existing record, to concluding that a prior decision is wrong and adopting a different decision (as the Cities believe is necessary with regard to the Stafford reserve areas). It also reflects the fact that although a county designates rural reserves under ORS 195.141 and Metro designates urban reserves under ORS 195.145, both decisions have to be made in coordination with and concurrently between Metro and the affected county under ORS 195.137 to ORS 195.145. Neither Multnomah County nor

¹ Indeed, because the "law of the case" doctrine does not apply to legislative land use decisions, it would be an error of law for the Commission to do so. See Hatley v. Umatilla County, 256 Or App 91, 106 to 112, 301 P2d 920 (2013).

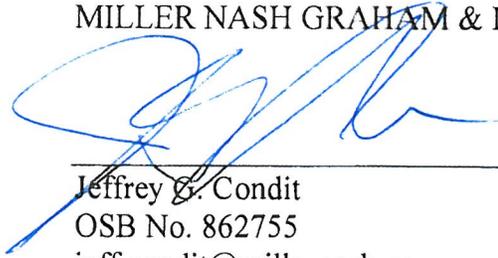
Metro can adopt new findings unilaterally, and so the decision should be remanded to Metro and each county for the respective reserve areas.

For the reasons expressed by Clackamas County, the Cities also support Clackamas County's request that the Commission direct the Director to withdraw or vacate the existing Order pending the Commission's disposition of the petitions.

For these reasons, the Cities respectfully request that the Commission reconsider the Order as described above.

DATED this 27th day of January, 2015.

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I hereby certify that I filed the foregoing The City of Tualatin's and the City of West Linn's Petition for Commission Review of Director's Action by First Class U.S. Certified Mail, postage prepaid, and e-mail on:

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I hereby certify that I served the foregoing The City of Tualatin's and the City of West Linn's Petition for Commission Review of Director's Action by First Class U.S. Mail, postage prepaid, on:

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DATED this 27th day of January, 2015.



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BOARD OF COUNTY COMMISSIONERS

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

January 27, 2015

Chair Tom Hughes
Metro Council President
600 NE Grand Ave.
Portland, OR 97232

Mayor John Kovash
City of West Linn
22500 Salamo Road
West Linn, OR 97068

Mayor Lou Ogden
City of Tualatin
18880 SW Martinazzi Ave.
Tualatin OR 97062

Re: Request to mediate Urban and Rural Reserves appeal

Dear Chair Hughes, Mayor Kovash and Mayor Ogden:

As you know, the Court of Appeals and the Land Conservation and Development Commission (LCDC) have remanded the Metro Urban and Rural Reserves (MURR) decision back to Metro. The remand requires Metro to provide additional findings relative to transportation and potentially other issues in the Stafford area, as a result of the successful appeal by the Cities of Tualatin and West Linn. Clackamas County will ultimately need to jointly adopt any new findings with Metro.

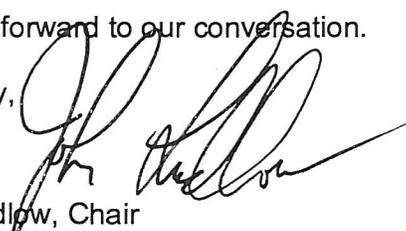
It is almost 5 years since Metro originally designated the Stafford area as an Urban Reserve, pursuant to an Intergovernmental Agreement (IGA) between Metro and the County. The region is now into its second round of Urban Growth Boundary amendments with close to a third of the region's Urban Reserve supply in a state of uncertainty.

Before the Cities, County and Metro spend time and public resources holding hearings, revising findings and potentially gearing up for another round of appeals, Clackamas County requests that the four jurisdictions enter into mediation. The County believes that working together in good faith, we are likely to find a way to move past the current conflict. We would suggest moving forward with mediation even if some of the parties file appeals to the LCDC order.

We would suggest that we have Oregon Consensus facilitate setting up the mediation, but the County would be open to any other suggestions as well.

We look forward to our conversation.

Sincerely,


John Ludlow, Chair

On behalf of the Clackamas County Board of County Commissioners

cc: Sherilyn Lombos
Chris Jordan
Carrie MacLaren, Deputy Director DLCD
Jeff Condit
Roger Alfred