

CLACKAMAS COUNTY BOARD OF COUNTY COMMISSIONERS
Sitting/Acting as (if applicable)
Study Session Worksheet

Presentation Date: March 28 **Approx. Start Time:** 10:30 AM **Approx. Length:** 1 hour

Presentation Title: Urban and Rural Reserves Remand

Department: County Counsel and Planning

Presenters: Stephen L. Madkour, Nate Boderman, County Counsel
Mike McCallister, Martha Fritzie, Planning

Other Invitees: N/A

WHAT ACTION ARE YOU REQUESTING FROM THE BOARD? None. This board briefing is for informational purposes only.

EXECUTIVE SUMMARY: The Board has scheduled two public hearings, April 12 and 19, to consider adopting findings establishing urban and rural reserves. The Metro Council is also holding public hearings on the reserves. Multnomah County must also adopt its own set of findings. If the Counties and Metro adopt the findings, the package will be forwarded to the Department of Land Conservation and Development (DLCD) for consideration and eventual acknowledgement through the issuance of an administrative Order. If appealed, the Order would be subject to review by the Court of Appeals.

FINANCIAL IMPLICATIONS (current year and ongoing): The County has committed significant resources to the reserves process.

LEGAL/POLICY REQUIREMENTS: The joint adoption with Metro of revised findings could mark the conclusion of the county's efforts of establishing reserves. For context, a brief history of the County's involvement in designating urban and rural reserves is provided.

Background of Reserves

2007: The 2007 Oregon Legislature authorized Metro and Clackamas, Multnomah and Washington counties ("Partner Governments") to designate Urban Reserves and Rural Reserves following the process set forth in ORS 195.137 – 195.145 (Senate Bill 1011) and implementing rules adopted by the Land Conservation and Development Commission (LCDC) (OAR 660 Division 27). The Legislature enacted the new authority in response to a call by the Partner Governments to improve the methods available to them for managing growth.

2008 – 2010: Metro and Clackamas, Multnomah and Washington counties worked together and with the public to identify Urban Reserve and Rural Reserve lands to serve the region for the next 50 years. Though each county designated its own Rural Reserve lands and Metro designated Urban Reserve lands throughout the metropolitan area, the new statute and rules made agreements among the Partner Governments a prerequisite for those designations. The Partners' four ordinances are based upon

separate, formal intergovernmental agreements (IGAs) between Metro and each county.

The Partner Governments submitted their ordinances with designated reserves to LCDC June 23, 2010. On October 29, 2010, LCDC gave its oral approval to all the reserves designated in Clackamas and Multnomah counties, and to the Rural Reserves and most of the Urban Reserves in Washington County. LCDC, however, rejected the designations of two of Washington County's Urban Reserves and, in order to provide flexibility, also remanded (or sent back) the Rural Reserves in Washington County for further consideration.

Washington County and Metro responded to LCDC's oral decision by revising the IGA between them and adopting ordinances to amend their respective Comprehensive Plan and Regional Framework Plan maps.

2011: LCDC granted final approval of the revised metro-wide Urban and Rural Reserves in early 2011. That decision was then appealed to the Oregon Court of Appeals. (*Barkers Five, LLC v. LCDC*, 261 Or App 259, 323 P3d 368 (2014)).

2014: In February 2014, the Oregon Court of Appeals issued a ruling that reversed and remanded, for further action, the Reserves designation in Clackamas, Multnomah and Washington Counties. The Court of Appeals found error with LCDC's order in the following three respects¹:

1. The application of the rural reserve factors pertaining to agricultural land in Washington County. On remand, the Court advised that LCDC must, in turn, remand Washington County's reserves designation as a whole for reconsideration and remand the submittal to Metro and the counties so that they can ultimately assess whether any new joint designation, in its entirety, satisfies the "best achieves" standard.
2. The "consideration" of the factors pertaining to the rural reserve designation of an area designated as rural reserve in western Multnomah County (referred to as "Area 9D"). The Court advised that on remand, LCDC must determine the effect of that error on the designations of reserves in Multnomah County in its entirety.
3. The failure to demonstrate that LCDC adequately reviewed Stafford's urban reserve designation for substantial evidence. The Court advised that on remand, LCDC should meaningfully explain, why—even in light of the evidence that the Regional Transportation Plan indicates that, by 2035, almost all of the transportation facilities serving Stafford will be failing—the designation of Stafford as urban reserves is supported by substantial evidence.

¹ The Court of Appeals identified an additional procedural error with LCDC's decision. The error, that LCDC could not affirm a local government's decision where its findings are inadequate even if the evidence "clearly supports" the decision, can be addressed by virtue of submitting revised findings that fully address the underlying substantive issues the Court of Appeals identified.

In spring 2014, the state legislature established new Urban and Rural Reserves and adjusted the UGB in Washington County (House Bill 4078). This bill, commonly referred to as the “Grand Bargain,” resulted in additional changes to both Urban and Rural Reserves in Washington County, negotiated and agreed to by Washington County, Metro, and other potentially affected parties. The Grand Bargain effectively resolved the issues identified by the Court of Appeals pertaining to the reserve designations in Washington County. The bill did not address or resolve issues raised by the Court of Appeals regarding the proposed Rural Reserve in western Multnomah County or the proposed Urban Reserve in the Stafford area (referred to as “Areas 4A, 4B, 4C and 4D”) of Clackamas County. As a result, the Urban and Rural Reserves in Clackamas and Multnomah Counties remained unresolved which left Metro, Clackamas County and Multnomah County responsible for responding to the two remaining substantive issues on remand from the Court of Appeals.

2015: On January 15, 2015, the director of DLCD issued a Remand Order (#14-ACK-001861) responding to the Court of Appeals judgment. This order affirmed those portions of its prior decisions that were either not appealed to the Court of Appeals or were affirmed by the Court of Appeals, and further remanded to Multnomah County and Clackamas County, respectively, the portions of the decision found to be in error. DLCD withdrew the Remand Order on February 5, 2015 over objections by Clackamas County and others that the remand directive was inconsistent with the Court of Appeal’s decision because it was too restrictive by its terms. On March 15, 2015, the director of DLCD issued a revised Remand Order affirming those portions of its prior decisions that were either not appealed to the Court of Appeals or that were affirmed by the court, and remanded “... 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 principals expressed in *Barkers Five, LLC v. LCDC*...”.

On remand, at a minimum Metro and Clackamas County are required to meaningfully explain why the designation of Stafford as urban reserves is supported by substantial evidence. Additionally, the Court of Appeals decision and the revised Remand Order from DLCD permit Metro and Clackamas County to consider taking other actions that would be consistent with the principles expressed in *Barkers Five, LLC v. LCDC*. At the time, the County advocated for this specific language to be included in the revised Remand Order because there was concern that the existing configuration and inventory of the urban reserves did not provide enough flexibility for future generations to provide enough land for continued employment growth in Clackamas County. The language in the revised Remand Order removed the question of whether Clackamas County could potentially revise certain reserve designations as part of the remand.

2016: In February 2016, Metro adopted and submitted to Clackamas County for consideration revised Findings to address the issues on remand for Urban Reserve areas 4A, 4B, 4C, and 4D (collectively termed “Stafford”). The County did not respond to Metro’s findings at the time and instead directed staff to study other areas in the County to determine whether changes to the current reserve designations were warranted.

2017: In January 2017, Metro Council President, Tom Hughes, sent a letter to Clackamas County which included a renewed request for the County to consider working with Metro to revise and adopt the Findings related to the Stafford Urban Reserve areas. The County responded by declaring its willingness to affirm the reserves designations that were adopted in 2010 and directed staff to discontinue further work to determine whether changes to the current reserve designations were warranted.

Since receiving that direction, the County has engaged in a robust public outreach program with affected jurisdictions, entities, and citizen. One of the objectives of the outreach has been to achieve consensus with affected entities and avoid the possibility of further legal challenges to the process. Metro has presented the County with a proposed Memorandum of Understanding (MOU). More recent discussions have resulted in a proposal that would involve an Intergovernmental Agreement (IGA) between Metro, Clackamas County, and the cities of West Linn, Lake Oswego, and Tualatin. The cities have yet to present any substantive language to be included in the IGA, but have proposed (1) that the IGA would be appended to the existing IGA between Metro and Clackamas; (2) that the Metro and Clackamas findings be amended to reference the existence of the IGA; and (3) that final adoption of the findings be delayed 90 days to accomplish these tasks.

PUBLIC/GOVERNMENTAL PARTICIPATION: A public outreach schedule has been in place since January. The plan includes efforts to engage the cities of West Linn, Lake Oswego, and Tualatin, the Stafford Hamlet, Metro, interested parties, and affected citizens.

OPTIONS: N/A

RECOMMENDATION:

Proceed to hold public hearings currently scheduled for April 12 and April 19.

ATTACHMENTS: N/A

SUBMITTED BY:

Division Director/Head Approval SM/mg
Department Director/Head Approval _____
County Administrator Approval _____

For information on this issue or copies of attachments, please contact Stephen L. Madkour at 503-655-8362
