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Board of County Commissioners
Clackamas County

Members of the Board:

Adoption of an Ordinance to Accept Revised Findings that Affirm the Designation of Urban and Rural Reserves in the Metro Region in Response to the Remand by the Oregon Court of Appeals and the Oregon Land Conservation and Development Commission (LCDC)

Purpose/Outcome	Adopt an ordinance for purposes of responding to Oregon Land Conservation and Development Commission (LCDC) Remand Order 14-ACK-001867.
Dollar Amount and Fiscal Impact	None
Funding Source	Not applicable
Safety Impact	None anticipated
Duration	Indefinite
Previous Board Action/Review	Board of County Commissioners held a policy session on March 28, 2017 and public hearings on April 12, 19 and 26, 2017.
Contact Person	Nate Boderman, 503-655-8364
Contract No.	None

BACKGROUND:

The Board's adoption of an ordinance is necessary to accept the revised findings that support the designation of urban and rural reserves in the Metro region. The revised findings to be adopted by ordinance are responsive to the remand by the Oregon Court of Appeals and the Land Conservation and Development Commission (LCDC) resulting from the 2011 appeal of the original reserve designations. *Barkers Five, LLC v. LCDC*, 261 Or App 259, 323 P3d 368 (2014).

In February 2016, Metro adopted Ordinance 16-1368 which contained revised findings to address the issues on remand for Urban Reserve areas 4A, 4B, 4C, and 4D (collectively termed "Stafford"). On March 2 and March 16, 2017, Metro held two separate public hearings to consider additional findings in response to the remand by the Oregon Court of Appeals and LCDC. Metro formally adopted the additional findings on April 13, 2017 as Ordinance 17-1397.

Oregon Administrative Rule 660-027-0040 requires Clackamas County and Metro to adopt a single, joint set of findings of fact, statements of reasons and conclusions that explain why the urban and rural reserve designations are consistent with state law. Clackamas County held public hearings on April 12, 2017 and April 19, 2017 at which time the Clackamas County Board of County Commissioners accepted testimony related to the findings of fact, statements of reasons and conclusions adopted by Metro in Ordinance 16-1368 and Ordinance 17-1397. The revised findings focus on three primary issues:

- 1) Whether the Stafford Area designation as urban reserve is supported by substantial evidence, particularly in light of evidence in the record suggesting that primary transportation facilities currently serving the area will be failing by 2035, and in light of claims made that sewer and water service cannot be efficiently and cost-effectively provided to the Stafford Area;
- 2) Whether the proposed region-wide urban reserve designations continue to meet the "amount of land" standard; and
- 3) Whether the proposed region-wide urban reserve designations continue to meet the "best achieves" standard.

Clackamas County held an additional public hearing on April 26, 2017 at which time the Clackamas County Board of County Commissioners voted 5-0 to direct staff to draft an ordinance adopting findings of fact, statements of reasons and conclusions, and to add language to the findings referencing an intergovernmental agreement between Clackamas County, Metro and the cities of Lake Oswego, Tualatin and West Linn as evidence that the Stafford area can be served by urban level public facilities and services efficiently and cost-effectively, as required by state law.

The findings attached to the ordinance have been updated to include a reference to the intergovernmental agreement as directed by the Board, and to correct a typographical error on page 62 of the findings. The following finding has been added to page 41 of the findings attached to the ordinance:

- 8) The Cities of Lake Oswego, Tualatin, and West Linn have testified extensively regarding their concern that designation of Stafford as urban reserve will create pressures for urbanization before the required public facilities, particularly with regard to transportation, are planned for and can support urban development. This concern is based upon the fact that designation of Stafford as urban reserve

will make it first priority for inclusion in the Metro UGB under ORS 192.298 and the fact that Metro must consider expansion of the Metro UGB every six years under ORS 197.299. So even though the planning period for urban reserves is twenty to fifty years into the future, Stafford will become eligible for inclusion each time Metro considers an urban growth boundary expansion. To alleviate these concerns Metro, Clackamas County, and the three Cities have entered into a five-party intergovernmental agreement ("IGA") that provides for governance of Stafford by the cities, requires concept planning and public facilities planning prior to the addition of Areas 4A, 4B and/or 4C to the urban growth boundary, and a requirement for robust citizen involvement and preservation of community character pursuant to the concept planning process. This IGA, which is incorporated into the record, will ensure that Stafford "can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments," "can be served by . . . urban level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers," and "can be designed to preserve and enhance natural ecological systems" and "important natural landscape features." Acknowledging the constraints to urbanization discussed above, the existence of the IGA and the promises contained therein support the determination by Metro and Clackamas County that the designation of Stafford Areas 4A, 4B and 4C as urban reserve is, on balance, supportable under the urban reserve factors contained in ORS 195.145(5) and OAR 660-027-0050.

The following finding has been added to page 44 of the findings attached to the ordinance:

- 9) The Cities of Lake Oswego, Tualatin, and West Linn have testified extensively regarding their concern that designation of Area 4D, in conjunction with Areas 4A, 4B, and/or 4C, as urban reserve will create pressures for urbanization before the required public facilities, particularly with regard to transportation, are planned for and can support urban development. For the same reasons as expressed under Finding 8 for Areas 4A, 4B and 4C, the execution of the of the five-party IGA and the promises contained therein support the determination by Metro and Clackamas County that the designation of Area 4D as Urban Reserve is, on balance, supportable under the urban reserve factors contained in ORS 195.145(5) and OAR 660-027-0050.

As mentioned previously, the ordinance specifically incorporates the findings that the Board considered at its prior public hearings with the inclusion of the two additional findings set forth above. The ordinance also acknowledges Multnomah County's revised findings, which are attached to this staff report. This acknowledgment is for the purpose of complying with Oregon Administrative Rule 660-027-0040, which requires Metro and the affected counties to adopt a single, joint set of findings. Oregon Administrative Rule 660-027-0080 separately requires Metro and the applicable counties to jointly and concurrently submit their adopted ordinances implementing the urban and rural reserve designations to the Oregon Land Conservation and Development Commission for

review. For purposes of fulfilling the requirements of that particular administrative rule, the ordinance specifically authorizes Metro to assemble the adopted findings and make the joint submittal to LCDC on behalf of Clackamas County.

RECOMMENDATION: Staff recommends the Board adopt the attached ordinance.

Respectfully submitted,

Nate Boderman
Assistant County Counsel

Attachments: Clackamas County Ordinance No. 06-2017

 Public Hearing Staff Report to the Board of County Commissioners

 Intergovernmental Agreement with Metro, and the cities of Tualatin,
 Lake Oswego and West Linn

 Multnomah County's findings of fact, statements of reasons and
 conclusions.