

Laurie Rutenberg and Gary Schoenberg

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Testimony to **Portland City Council** on the **Environmental Overlay Zone Map Correction Project, Recommended Draft**

Thank you for the opportunity to testify in writing today about the EZone Map Correction Project as it impacts our property. My husband Gary Schoenberg and I, Laurie Rutenberg, own the property at 10701 SW 25th Avenue, which is tax lot 4500 of map ISIE29DD. The property is currently split zoned RIO and RIOc, and has been approved for a 17 lot single family subdivision. See File No. LU 17-I 12251 LDS AD. We ask that the City refrain from changing the environmental zones on the property. The approved subdivision will create seventeen new houses, and create a 1 1/3 acre large environmental tract surrounding the creek in the west portion of the property. Even though it would have been permitted, we chose to not create any disturbance within this 1 1/3 acre Environmental Conservation Zone. In addition to 16 additional housing units added to the housing supply in the city of Portland, this subdivision will also create a connective street, a stated priority of the City of Portland planning bureaus, particularly Portland Bureau of Transportation and the Bureau of Fire and Safety. The connective street will provide many functions. The connective street will provide safety: fire, ambulance and other emergency safety vehicles will have two ways to enter this subdivision and surrounding neighborhoods during personal emergency or communal disaster. The street will also allow two exits from this subdivision and the surrounding subdivisions in case of fire or medical emergency or communal disaster. The connective street will provide stormwater treatment and mitigate flood damage. Swales and water retention system within the approved connective street will not only provide for care of stormwater that falls on the new subdivision, but it will also collect currently uncaptured stormwater from Maricara Natural Resource and SW 25th Avenue, which are above the grade of our property and our neighbors' properties, and currently floods our property, and uproots its trees, and causes damage to our neighbors' homes from falling trees and flooding. Thankfully, only our neighbors' physical structures have been hurt so far, and not any persons. The connective street will provide pedestrian connectivity to schools, parks and the transportation system of Portland for all residents south of our property, all of which does not exist for them now. Preliminary plat for this subdivision is fully approved. The proposed EZone remapping project will cover about 85% of our property through a proposed expanded c zone and a proposed new p zone,. This would effectively prevent the approved housing from ever getting built, if this subdivision does not get built within the timeframe of its entitlements. This approved subdivision not getting built within the entitlement period is a highly likely outcome because of the well-known onerous, opaque, costly, time-consuming environment for developers that the City of Portland itself has created, especially for developers considering taking on a complex Public Works

Project. This condition of extraordinary risk and expense in terms of time, fees and mitigation requirements for infrastructure development within the City is acknowledged by the City itself. The internal audit of Bureau of Development Services by the City in spring 2021 is the source for this publicly available critique of the current development challenges that exist to developers working within the City of Portland. Our development plan was fully supported by staff of all City Bureaus involved in Planning with BDS. They took three full years of deliberations for us to collectively design a subdivision that they all could approve. The subdivision plan was supported by all City Bureau staff, it was not contested by neighborhood associations, and it was given approval by a Hearings Officer Decision, . In addition to the limited likelihood of our finding an investor willing to develop this subdivision within its allotted entitlement period, the EZone Remapping would also effectively prevent any future plan for housing on this land from being developed because of the onerous and costly and uncertain experience that property owners have to enter into, even to find out if they can develop on EC Zoned property. If we would be told “yes”, i.e., that we can in theory develop in the proposed expanded environmental overlay, the financial requirements of additional city fees and costs of mitigation, and costs of building itself within an EC Zone would almost certainly not make any development under an expanded EZone overlay pencil out. This is especially true given that the Bureau of Transportation is on record, and has been, since 1987, of requiring a connective street through our property. PBOT even required a stump of a street - SW 26th Avenue, and a stormwater pipe, installed in it in 1987, that does nothing other than adjoin the trees on our property. Thees trees on our property were obviously intended by the City at that time to be removed in order to build the planned and required connective street. The proposed remapping will reduce the housing potential for this property. That has been confirmed by conversations with both Stephanie Beckman, Supervising Planner, Land Division/Environmental and Title 33 Teams and Sean Williams, Planner of Bureau of Developmental Services. They have both said that they would have to defer to the requirements of the Bureau of Transportation to know how much more limited the ability would be to develop under the proposed expanded environmental overlay Zones, but they assured us that the amount of development would be significantly less. They made clear that fewer lots would be permitted, and each lot would allow a smaller house footprint, and each house and lot would require mitigation. All told, it is only reasonable to surmise that any development at all would likely be completely unfeasible with the massive costs of building a connective street being required. The ESEE analysis fails to quantify the number of housing units that will be lost by the proposed remapping project. It merely asserts there is plenty of housing capacity in Portland. There is just a passing acknowledgement that “[l]imiting or prohibiting new housing development may result in a slight increase in price to account for site planning or mitigation. This may have a long-term effect on the mix of housing types and size available on the market.” No attempt is made to quantify the price increases or the number of housing units that will be lost, or to describe the social consequences of the adverse impact on the mix of housing types. There is no quantitative evidence to support the ESEE’s conclusion that the new maps will only “have a small negative impact on the overall housing stock.” As the ESEE notes, allowing the “conflicting” housing will “[e]nhance opportunities for housing diversity and affordability.” In this housing crisis, that must be

the City's top priority. The seventeen residential lots do not conflict with natural resources on this property. Rather, over 164 trees are set aside in the EZone, and 137 trees in the EZone are larger than 20" in diameter will be set aside in an environmental tract. There will be an additional 40 some trees for mitigation planted in that tract. That is more than sufficient to protect the delineated resource. The proposed remapping will reduce the housing potential for this property. and therefore the EZone Map Correction Project conflicts with several elements of city policy and the zoning code, and also with state law on needed housing. The legal support for the environmental zones comes from Goal 5 and Title 33.430. Subsection 33.430.040 is especially apt: A. The Environmental Protection overlay zone is applied wherever the City determines that highly significant resources and functional values are present[.] B. The Environmental Conservation overlay zone is applied wherever the City determines that significant resources and functional values are present[.] And the defense for the entire EZone Map Correction Project is that it adds to Public health and safety. These provisions are clearly subjective and therefore cannot be applied to t his residential property. The city proposes to add a new p zone and expand the c zone to cover the remainder of the property, based solely on the determination that "highly significant resources and function values are present." Nonetheless, it has been explained to us by Daniel Soebbing, City Planner responsible for application of the criteria of the EZone Project, that the Project uses only one method to determine its criteria of what constitutes an Environmental Zone: that there is no break larger than 50 feet in tree canopy that is contiguous with a stream. There do exist other considerations that might contradict the worthiness of this criteria , such as the uncontrolled flooding of our property from the Marinara Natural Area and from SW 25th Avenue, which has continuously waterlogged and uprooted trees that fallen on five of our neighbors' properties. Over 20 trees greater than 100 feet tall are dead, laying on the ground, close to neighbors' properties, which could be a cause of fire danger, as they are close to our neighbors homes, and this is not being taken into account in the determination of what is an Environmental Zone, whose underlying justification is public health, safety and welfare. The lack of the EZone Project's willingness to consider criteria on the land that relate to safety undermines the entire validity of the EZone Project. The City Council's lack of willingness, up until now, to weigh seriously that there is another best use of this property for health and safety, and public welfare, that is, the connective street as described above, is an additional reason that undermines all claims to the validity of placing this new environmental overlay on our property. I am not asking that our property be singled out in an exemption from this EZone Project. It would seem logical to also exempt other properties in the city where there has already been a careful analysis, by staff from all Bureaus, of what would create the greatest safety, health and welfare by a particular piece of property, in context of its neighborhood, for the City of Portland. If there are additional properties in the City of Portland that can be similarly characterized, I urge you as a City Council to amend the EZone Map Correction Project to exclude additional environmental overlays that would prevent other measures of health, safety and public welfare from being implemented on those properties as well. Thank you for your attention to these concerns about the taking of the value by the City of our property, as well as the concerns of the safety, health and welfare of our neighborhood. Sincerely, Rabbi Laurie Rutenberg PS. For the record, I would like to

state an omission in the Summary of Testimony regarding our property that was created and posted publicly on the City's website regarding the EZone Project, earlier this month by Daniel Soebbing, within the Documents of the EZone Map Correction Project. There was a glaring omission. No mention was made at all in this Summary on public record of the concerns for fire and emergency access and egress, or the concerns about flooding and trees falling, that are described above in this letter, and were so central to the collective testimony that Mayor Wheeler, after having heard the testimony expressed his concern about it at the end of the City Council Meeting. These are concerns that would be, as described above in this letter, alleviated by the building of the approved connective road through our property.

Testimony is presented without formatting.