

OREGONIANS IN ACTION

DEPT OF

JUL 14 2010

LAND CONSERVATION
AND DEVELOPMENT

Valid
297

July 14, 2010

Urban and Rural Reserve Specialist
Department of Land Conservation and Development
635 Capitol St. NE, Suite 150
Salem, OR 97301

Re: Objection to Decision of Washington County Designating Urban and Rural Reserves

Dear Sir or Madam:

Oregonians In Action (OIA) objects to the designation by Washington County of Rural Reserves, pursuant to OAR 660, Division 27 and ORS 195.137-195.145. The reasons for our objections are set forth below.

OIA participated in the local process by submitting written comments, attached as Exhibit 1.

Our objections are based on the following:

1. On June 15, 2010, the Washington County Board adopted Resolution and Order 10-62, which adopts findings to support the County's designation of urban and rural reserves in Ordinance 733-A. A copy of Order 10-62 is attached as Exhibit 2. In the County's findings, the County analyzes eight different areas of the county for rural reserve designation, and applies the criteria in OAR 660-027-0060 to each area. Unfortunately, the County makes no attempt in its findings to distinguish between those properties in each of the study areas that are not "agricultural land" as defined by Goal 3, or "forest land" as defined by Goal 4. The end result is that the County applies the factors in OAR 660-027-0060 without regard to the zoning of the property. This is error.

By definition, land for which an exception to Goals 3 and 4 has been taken and acknowledged by LCDC is not "agricultural land" or "forest land" and is not needed for long-term protection of agricultural or forest operations. If it was, it wouldn't be exception land, as land that is "necessary to permit farm practices to be undertaken on adjacent or nearby land" must be zoned as agricultural land under Goal 3. Many of the criteria for inclusion of land in a rural reserve are applicable only to "agricultural land" and not exception land. For example, OAR 660-027-0060(2)(b) applies to "agricultural land" under Goal 3 and "forest land" under Goal 4, not exception land or non-resource

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land. OAR 660-027-0060(2)(c) applies only to Goal 3 and 4 lands, not exception areas, as does OAR 660-027-0060(2)(d)(A). Unfortunately, in its findings, Washington County makes no effort to distinguish between their Goal 3 and 4 lands in each study area and the exception or non-resource lands in each study area.

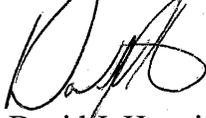
Unless it is needed to protect “important natural landscape features,” land that is not “agricultural land” as defined by Goal 3 or “forest land” as defined by Goal 4 does not meet the definition of “rural reserve” under ORS 195.137(1) or OAR 660-027-0010(9) and should not be included. The findings prepared by the County do not indicate that the County has studied these exception areas individually to determine if they are needed to create a buffer between Goal 3 and 4 parcels and urban areas – in fact, it appears as if the County has made some generalized findings without any individualized analysis of how each exception area fits within the definition of “rural reserve” under statute or administrative rule. The Commission should remand the County’s decision and require the County to conduct a more detailed analysis that addresses and distinguishes, if necessary, those areas within each study area that are exception areas and non-resource areas and those that are resource lands under Goals 3 and 4.

2. The Rural Reserve designations are inconsistent with Goal 2 and ORS 197.732. Nothing in ORS 195.137-145 authorizes Washington County to adopt rural reserves in violation of the statewide planning Goals or state statute. ORS 197.732 and Goal 2 allow property owners to seek exceptions to the applicability of a statewide planning goal if certain factors can be met. OAR 660-027-0040(5) prohibits a county from allowing exceptions in areas designated as rural reserve. This rule is inconsistent with SB 1011 and ORS 197.732 and is thus outside the scope of LCDC’s rulemaking authority. By designating rural reserves, Washington County is required to apply OAR 660-027-0040(5). By doing so, the County violates Goal 2 and ORS 197.732, which the county cannot do. As a result, Washington County cannot adopt rural reserves until OAR 660-027-0040(5) is repealed.
3. The “important natural landscape features” (OAR 660-027-0060(3)) findings are hopelessly overbroad. The County findings seem to indicate that any property at an elevation exceeding 350 feet will automatically be deemed as a rural reserve as an “important natural feature.” This is not what that term means in either ORS 195.137(1) or OAR 660-027-0060(3). Rural reserve areas can include “important natural landscape feature” areas, but only if those areas, “limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes, and floodplains”. ORS 195.137(1). In its findings, the County includes areas of land as rural reserves based solely on their “important natural landscape features” that are defined by the County as under low threat of urbanization and which contain no Goal 5 resources. The Commission should remand the

County's decision and require the County to conduct a more detailed analysis within each study area of which lands contain "important" natural landscape features, and of those areas, which are needed to act as boundaries for urbanization, or as important fish and wildlife habitat, steep slopes, or floodplains.

Please enter our objections into the record.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'D. Hunnicutt', written in a cursive style.

David J. Hunnicutt
President

OREGONIANS IN ACTION

June 15, 2010

Washington County Board of Commissioners
155 N. First Ave.
Suite 300
Hillsboro, OR 97124

VIA FACSIMILE TRANSMISSION (503) 846-4545 AND FIRST CLASS MAIL

Re: A-Engrossed Ordinance 733 – Urban and Rural Reserves

Dear Commissioners:

Thank you for scheduling a public hearing on A-Engrossed Ordinance 733. This letter serves as our testimony for that public hearing. Please enter it into the record.

We are very concerned with the proposed rural reserve designation that is being proposed in Ordinance 733-A. We encourage the Board to take a more deliberative approach to designating rural reserves – in short, to spend the time on rural reserves that you have spent on designating urban reserves.

Unlike Clackamas County, it appears that Washington County has simply placed nearly all of its rural land that is not slated for urban reserve designation into a rural reserve designation. This is not warranted by either Senate Bill 1011 (2007) or OAR 660-027-0060, which contain the factors for designation of rural land as rural reserves. Moreover, it is inconsistent with sound planning principles, and is another example of how rural property owners are treated on less than equal terms with their urban counterparts.

Our objections are based on the following:

1. Each of the eight rural reserve areas designated by Washington County contain land zoned for a variety of purposes, including significant areas of exception land. By definition, land for which an exception to Goals 3 and 4 has been taken and acknowledged by LCDC is not “agricultural land” or “forest land” and is not needed for long-term protection of agricultural or forest operations. If it was, it wouldn’t be exception land. Thus, unless it is needed to protect “important natural landscape features,” it does not meet the definition of “rural reserve” under SB 1011 (2007) and should not be included. The findings prepared by the County do not indicate that the County has studied these exception areas individually to determine if they are needed to create a buffer between Goal 3 and 4 parcels and urban areas – in fact, it appears as if the County has made some generalized findings without

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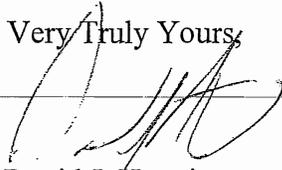
EXHIBIT 1

any individualized analysis of how each exception area fits within the definition of “rural reserve” under SB 1011 or OAR 660-027-0060(2) or (3). For example, the majority of rural reserve areas studied by Washington County are approximately 25,000 acres in size, and contain property with a variety of different zones and uses and a tremendous variation in parcel sizes. The County should conduct a more detailed analysis.

2. The Rural Reserve designations are inconsistent with Goal 2 and ORS 197.732. Nothing in SB 1011 authorizes Washington County to adopt rural reserves in violation of the statewide planning Goals or state statute. ORS 197.732 and Goal 2 allow property owners to seek exceptions to the applicability of a statewide planning goal if certain factors can be met. OAR 660-027-0040(5) prohibits a county from allowing exceptions in areas designated as rural reserve. This rule is inconsistent with SB 1011 and ORS 197.732 and is thus outside the scope of LCDC’s rulemaking authority. Moreover, application of the rule would require Washington County to violate Goal 2 and ORS 197.732, which the county cannot do. As a result, you cannot adopt rural reserves until LCDC repeals OAR 660-027-0040(5). Moreover, from a planning perspective, why would you want to do so in the first place? Exceptions act as an important safety valve in the rural planning process, and reflect an understanding that a statewide planning system with a significantly overbroad definition of “agricultural land” in Goal 3 and “forestland” in Goal 4 will result in miszoning of lots or parcels that technically meet the definition of “ag land” or “forestland” in the Goals, but which cannot be farmed or forested for a variety of factors. Removing these safety valves for the next 50 years is poor planning, and will create dissension amongst rural property owners who have to live with the fact that they will be stuck with miszoned land for the next 50 years. This is the absence of planning, and you should reject it.
3. The “important natural landscape features” findings are hopelessly overbroad. The County findings seem to indicate that any property at an elevation exceeding 350 feet will automatically be deemed as a rural reserve as an “important natural feature.” This is not what that term means in either SB 1011 or OAR 660-027-0060(3). In fact, by doing so, you are including thousands of acres of exception areas that are not included in any Goal 5 inventory, and are similar to any other rural residential area throughout the county. At a minimum, the term “important natural landscape features” requires some finding that a particular area is significant compared to other rural areas within the county. By making such large study areas, the County has been too broad in its analysis and has included areas that have no threat of being urbanized, in violation of OAR 660-027-0060(3). This is unacceptable.

For these reasons, we urge the County to step back from the ledge and do the proper planning work necessary to justify its rural reserves. The end result should be a much smaller area of rural reserve and a much larger area of undesignated land.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'D. Hunnicutt', is written over a horizontal line. The signature is stylized and cursive.

David J. Hunnicutt
President

1 IN THE BOARD OF COUNTY COMMISSIONERS

2 FOR WASHINGTON COUNTY, OREGON

3 In the Matter of Adopting) RESOLUTION AND ORDER
4 Legislative Findings in Support)
of A-Engrossed Ordinance No. 733) No. 10-62

5 This matter having come before the Washington County Board of Commissioners at its
6 meeting of June 15, 2010; and

7 It appearing to the Board that the findings contained in Exhibit "A" summarize relevant facts
8 and rationales with regard to compliance with the Statewide Planning Goals, Oregon Revised
9 Statutes and Administrative Rules, Washington County's Comprehensive Plan, and titles of Metro's
10 Urban Growth Management Functional Plan relating to A-Engrossed Ordinance No. 733; and

11 It appearing to the Board that the findings attached as Exhibit "A" constitute appropriate
12 legislative findings with respect to the adopted ordinance; and

13 It appearing to the Board that the Planning Commission, at the conclusion of its public hearing
14 on April 21, 2010, made a recommendation to the Board, which is in the record and has been
15 reviewed by the Board; and

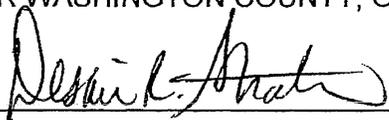
16 It appearing to the Board that, in the course of its deliberations, the Board has considered the
17 record which consists of all notices, testimony, staff reports, and correspondence from interested
18 parties, together with a record of the Planning Commission's proceedings, and other items submitted
19 to the Planning Commission and Board regarding this ordinance; it is therefore,

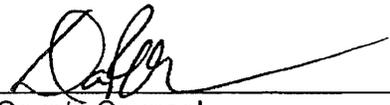
20 RESOLVED AND ORDERED that the attached findings in Exhibit "A" in support of
21 A-Engrossed Ordinance No. 733 are hereby adopted.

22 DATED this 15th day of June, 2010.

	AYE	NAY	ABSENT
BRIAN	—	—	✓
SCHOUTEN	✓	—	—
STRADER	✓	—	—
ROGERS	✓	—	—
APPROVED AS TO FORM:			
DUYCK	—	—	✓

23 BOARD OF COUNTY COMMISSIONERS
24 FOR WASHINGTON COUNTY, OREGON

25 
Chairman

26 
27 County Counsel
28 For Washington County, Oregon

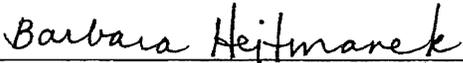
26 
27 Recording Secretary

EXHIBIT 2