

David J. Hunnicutt

28577 S.W. Herd Ln.
Hillsboro, OR 97123

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:

This letter serves as my objection to the inclusion of my property and the property abutting Neugebauer Road and/or Herd Lane in Rural Reserve Area 5C by Washington County, pursuant to OAR 660, Division 27 and ORS 195.137-195.145. The reasons for my objections are set forth below.

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

My objections are based on the following:

My property is zoned AF-5 by Washington County, whose comprehensive plan has been acknowledged by LCDC as being in compliance with the statewide planning goals. The AF-5 zone is a rural residential zone - properties with this zoning designation have been granted an exception from the application of LCDC Goals 3 and 4, and are not considered "agricultural land" as defined in Goal 3, or "forestland" as defined in Goal 4. My property is 2.7 acres, and contains a single family dwelling. My property is not in resource use.

The properties surrounding my property are all zoned AF-5 or AF-10. The AF-10 zone is also considered a rural residential zone by Washington County. Access to our property is via Herd Lane, a private road that serves approximately 10 homes. Herd Lane connects to Neugebauer Road, a public road. Land uses along Herd Lane and Neugebauer Road are residential, with homes on small acreage, consistent with the rural residential zoning in the area. To call the area "agricultural" reflects a complete misunderstanding of what is actually happening on the ground.

The criteria for designating a rural reserve is found in ORS 195.141(3), which lists four criteria, none of which apply to properties along Herd Lane or Neugebauer Road. As the first sentence of ORS 195.141(3) provides, the purpose of the rural reserve designation is "to provide long-term protection to the agricultural industry . . ." That should

immediately eliminate the properties along Herd Lane, as well as the property on Neugebauer Road, as there are no "agricultural" activities on these properties - they are small acreage rural residential properties, each with a single family dwelling, and each zoned for that use.

Regarding the criteria in ORS 195.141(3), none of the properties along Herd Lane or Neugebauer Road are situated in an area that is otherwise potentially subject to urbanization. ORS 195.141(3)(a). My property is more than 10 miles from Hillsboro, Sherwood, and Newberg, the closest cities in the area. I am close, however, to properties with fair market values that significantly exceed agricultural values, including my own. All the properties along Herd Lane and Neugebauer Road fit this definition, as they are rural residential properties with single family dwellings.

None of the properties along Herd Lane or Neugebauer Road, including my own, are capable of sustaining long-term agricultural operations. ORS 195.141(3)(b). If that were the case, they wouldn't be located in an exception area and zoned for rural-residential use. We are not an agricultural area, and will not become one.

The soils on the properties along Herd Lane and Neugebauer Road are sufficient to sustain long term agricultural operations (ORS 195.141(3)(c)), but the parcelization patterns and zoning preclude such a use. I am not aware of whether any of the properties in the vicinity have water rights for agricultural irrigation - my property does not.

Nor are any of properties along Herd Lane or Neugebauer Road suitable to sustain long-term agricultural operations. ORS 195.141(3)(d). There are no large blocks of agricultural or other resource land, no farms, no managed woodlots, and no forest operations. ORS 195.141(3)(d)(A). The adjacent land use pattern is rural residential. ORS 195.141(3)(d)(B). In fact, this requirement seems to imply that only resource lands should be considered for rural reserve designation, not exception areas. Every use along Herd Lane and Neugebauer Road is a nonfarm use.

There is no "agricultural land use pattern" in the area, as there is no agricultural use along Herd Lane or Neugebauer Road. ORS 195.141(3)(d)(C). Nor is there any "agricultural infrastructure" or "forest infrastructure" in the area. ORS 195.141(3)(d)(D).

Nor do any of the properties along Herd Lane or Neugebauer Road serve as a buffer between agricultural areas and urban areas. There is not an urban area for miles around the property.

Moreover, as the Washington County record demonstrates (Rec.at 2976-2980), the area along Herd Lane and Neugebauer Road, including my property, are not "forest land", are included as Tier IV (the lowest Tier) candidates for rural reserve designation as "farmland" (our properties are found in subarea 24 – see Rec. at 3024), are in the lowest (LU) status for future urbanization, and have a high dwelling density.

In short, applying the statutory standards for declaring an area a rural reserve the properties along Herd Lane (including my property) or Neugebauer Road do not meet the criteria set forth in ORS 195.141(3), and should not be included within the rural reserve.

LCDC's administrative rule for designating rural reserves (OAR 660-027-0060) mimics the statutory standards set forth in ORS 195.141(3). The properties along Herd Lane and Neugebauer Road do not meet the standards set forth in LCDC rule for the same reasons as stated above.

In addition, LCDC has also adopted rules allowing for the designation of rural reserve areas intended to protect important "Natural Landscape Features." It appears that the area along Herd Lane and Neugebauer Road is included in Metro's Natural Landscape Features Inventory, although it is impossible to tell for sure, since there doesn't appear to be a description for the parcels included in the inventory, and since the available maps do not bother to label or even show either Neugebauer Road or Herd Lane.

Assuming, for the sake of argument, that the Herd Lane and Neugebauer Road area is in the Natural Landscape Features Inventory (if this is accurate, it is remarkable, since there are no "landscape features" that distinguish this road from any other rural residential area in the tri-county area), the inclusion in the area alone does not mean that the land should be included in rural reserves. In fact, as noted in OAR 660-027-0060(3), lands that do not meet the criteria set forth in that subsection should not be included in rural reserves.

The area along Herd Lane and Neugebauer Road does not meet the criteria listed in OAR 660-027-0060(3). For the reasons stated above, there is no chance that this area will be subject to urbanization in the next 20-30 years - we are 10 miles from the nearest cities (and UGB's) in the area. There are no landslide hazard areas, steep sloped, or floodplains in the area. Washington County's Important Natural Features Overlay map shows that the area has no floodplains, no slopes greater than 25%, streams with low restoration priority, no wildlife habitat, and no significant natural areas. It makes one wonder why the area is included in the Natural Features Inventory in the first place, but nevertheless, it isn't important fish or wildlife habitat, nor is it necessary for water quantity or quality protection. The area contains no buttes, bluffs, islands, or wetlands, no cliffs, rivers, or wetlands that serve as a buffer between urban and rural uses (there are no urban uses for miles around), and does not serve as a buffer between cities. Nor are there any recreational opportunities in the area, since the land in the area is in private ownership.

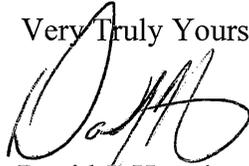
Consequently, the Herd Lane and Neugebauer Road areas, including my property, should not be included as rural reserve due to their non-existent "important natural features."

Since the Herd Lane and Neugebauer Road areas do not meet either the statutory or LCDC rule criteria for inclusion in the rural reserve, it is legal (and policy) error for the County and/or Metro to enter into an intergovernmental agreement specifying that the area should be designated rural reserve, and legal error for Washington County to amend its comprehensive plan maps to show the area as a rural reserve.

The fact that land has been zoned as exception land and has been subjected to a built, committed, or reasons exceptions analysis by LCDC and Washington County is a good indicator that the land is not going to be part of the long term agricultural or forest operations for the area. In fact, it is not considered agricultural or forestland at all. So what's the point of placing it in rural reserves?

I urge the Commission to reject Washington County's designation of Rural Reserve Area 5C, and remand the County's decision.

Very Truly Yours,

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

David J. Hunnicutt

David J. Hunnicutt

28577 S.W. Herd Ln.
Hillsboro, OR 97123

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:

I have reviewed the proposed rural reserve map for Washington County, and find that my property, located at 28577 SW Herd Lane, Hillsboro, is included in rural reserve area 5C. I believe that designation is inconsistent with both the statutory and administrative requirements for inclusion of land into a rural reserve designation, and ask that you reconsider the process with which you have chosen to designate rural reserves.

My property is zoned AF-5 by Washington County, whose comprehensive plan has been acknowledged by LCDC as being in compliance with the statewide planning goals. The AF-5 zone is a rural residential zone - properties with this zoning designation have been granted an exception from the application of LCDC Goals 3 and 4, and are not considered "agricultural land" as defined in Goal 3, or "forestland" as defined in Goal 4. My property is 2.7 acres, and contains a single family dwelling. My property is not in resource use.

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The criteria for designating a rural reserve is found in ORS 195.141(3), which lists four criteria, none of which apply to properties along Herd Lane or Neugebauer Road. As the first sentence of ORS 195.141(3) provides, the purpose of the rural reserve designation is "to provide long-term protection to the agricultural industry . . ." That should immediately eliminate the properties along Herd Lane, as well as the property on Neugebauer Road, as there are no "agricultural" activities on these properties - they are

EXHIBIT 1

small acreage rural residential properties, each with a single family dwelling, and each zoned for that use.

Regarding the criteria in ORS 195.141(3), none of the properties along Herd Lane or Neugebauer Road are situated in an area that is otherwise potentially subject to urbanization. ~~ORS 195.141(3)(a). My property is more than 10 miles from Hillsboro,~~ Sherwood, and Newberg, the closest cities in the area. I am close, however, to properties with fair market values that significantly exceed agricultural values, including my own. All the properties along Herd Lane and Neugebauer Road fit this definition, as they are rural residential properties with single family dwellings.

None of the properties along Herd Lane or Neugebauer Road, including my own, are capable of sustaining long-term agricultural operations. ORS 195.141(3)(b). If that were the case, they wouldn't be located in an exception area and zoned for rural-residential use. We are not an agricultural area, and will not become one.

The soils on the properties along Herd Lane and Neugebauer Road are sufficient to sustain long term agricultural operations (ORS 195.141(3)(c)), but the parcelization patterns and zoning preclude such a use. I am not aware of whether any of the properties in the vicinity have water rights for agricultural irrigation - my property does not.

Nor are any of properties along Herd Lane or Neugebauer Road suitable to sustain long-term agricultural operations. ORS 195.141(3)(d). There are no large blocks of agricultural or other resource land, no farms, no managed woodlots, and no forest operations. ORS 195.141(3)(d)(A). The adjacent land use pattern is rural residential. ORS 195.141(3)(d)(B). In fact, this requirement seems to imply that only resource lands should be considered for rural reserve designation, not exception areas. Every use along Herd Lane and Neugebauer Road is a nonfarm use.

There is no "agricultural land use pattern" in the area, as there is no agricultural use along Herd Lane or Neugebauer Road. ORS 195.141(3)(d)(C). Nor is there any "agricultural infrastructure" or "forest infrastructure" in the area. ORS 195.141(3)(d)(D).

Nor do any of the properties along Herd Lane or Neugebauer Road serve as a buffer between agricultural areas and urban areas. There is not an urban area for miles around the property.

In short, applying the statutory standards for declaring an area a rural reserve the properties along Herd Lane (including my property) or Neugebauer Road do not meet the criteria set forth in ORS 195.141(3), and should not be included within the rural reserve.

LCDC's administrative rule for designating rural reserves (OAR 660-027-0060) mimics the statutory standards set forth in ORS 195.141(3). The properties along Herd Lane and Neugebauer Road do not meet the standards set forth in LCDC rule for the same reasons as stated above.

In addition, LCDC has also adopted rules allowing for the designation of rural reserve areas intended to protect important "Natural Landscape Features." It appears that the area along Herd Lane and Neugebauer Road is included in Metro's Natural Landscape Features Inventory, although it is impossible to tell for sure, since there doesn't appear to be a description for the parcels included in the inventory, and since the available maps do not bother to label or even show either Neugebauer Road or Herd Lane.

Assuming, for the sake of argument, that the Herd Lane and Neugebauer Road area is in the Natural Landscape Features Inventory (if this is accurate, it is remarkable, since there are no "landscape features" that distinguish this road from any other rural residential area in the tri-county area), the inclusion in the area alone does not mean that the land should be included in rural reserves. In fact, as noted in OAR 660-027-0060(3), lands that do not meet the criteria set forth in that subsection should not be included in rural reserves.

The area along Herd Lane and Neugebauer Road does not meet the criteria listed in OAR 660-027-0060(3). For the reasons stated above, there is no chance that this area will be subject to urbanization in the next 20-30 years - we are 10 miles from the nearest cities (and UGB's) in the area. There are no landslide hazard areas, steep sloped, or floodplains in the area. Washington County's Important Natural Features Overlay map shows that the area has no floodplains, no slopes greater than 25%, streams with low restoration priority, no wildlife habitat, and no significant natural areas. It makes one wonder why the area is included in the Natural Features Inventory in the first place, but nevertheless, it isn't important fish or wildlife habitat, nor is it necessary for water quantity or quality protection. The area contains no buttes, bluffs, islands, or wetlands, no cliffs, rivers, or wetlands that serve as a buffer between urban and rural uses (there are no urban uses for miles around), and does not serve as a buffer between cities. Nor are there any recreational opportunities in the area, since the land in the area is in private ownership.

Consequently, the Herd Lane and Neugebauer Road areas, including my property, should not be included as rural reserve due to their non-existent "important natural features."

Since the Herd Lane and Neugebauer Road areas do not meet either the statutory or LCDC rule criteria for inclusion in the rural reserve, it is legal (and policy) error for the County and/or Metro to enter into an intergovernmental agreement specifying that the area should be designated rural reserve, and legal error for Washington County to amend its comprehensive plan maps to show the area as a rural reserve. I am willing to bet that not one person who is responsible for proposing this area for rural reserve designation has been to Neugebauer Road or Herd Lane to examine the area. I urge you to do so.

That is not to say that the area should be included as an urban reserve. We are too far from any incorporated city or UGB to be considered for inclusion in an urban reserve - it would be as silly to declare the area urban reserve as it is to declare it rural reserve. Rather, the appropriate action would be for Metro and Washington County to keep the Neugebauer Road and Herd Lane areas out of either urban or rural reserves. It seems to me that this should be the natural fallback position for every exception area.

The fact that land has been zoned as exception land and has been subjected to a built, committed, or reasons exceptions analysis by LCDC and Washington County is a good indicator that the land is not going to be part of the long term agricultural or forest operations for the area. In fact, it is not considered agricultural or forestland at all. So what's the point of placing it in rural reserves? I would hope that both Metro and Washington County take a close look at all of the exception areas in the County with an eye toward keeping these areas out of the rural reserve designation.

The end result of a rural reserve designation on my property is likely not significant. But citizens have the right to expect that decision will comply with applicable statutory and administrative criteria and that there be some rational policy basis for making a choice. That would not be the case if the Herd Lane and Neugebauer Road areas are included as rural reserves.

Thank you for the opportunity to comment. Please enter these comments in the record.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'D. Hunnicutt', written over a faint dotted line.

David J. Hunnicutt