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April 30, 2010

Lane County Board of Commissioners
125 East Eighth Avenue
Eugene, OR 97401

Re: Proposal for Lane Code Chapter 12 Amendment

Dear Commissioners:

Attached please find our proposal for an amendment to Chapter 12 of the Lane Code. The purpose of the amendment is to provide a set of clear and objective criteria for land need studies that form the basis for expansion of urban growth boundaries or designation of urban reserves. Since these actions have cumulative effects on the county as whole, we encourage the Board to take its statutory coordination duties seriously and become more proactive in providing guidance to Lane County's cities. The Board is the only body with the authority and responsibility to balance the needs of the county as a whole with each city's need for local control. The suggested criteria emphasize sound decision-making and efficient use of land. These things naturally lead to better affordability, an enhanced quality of life and conservation of productive farm and forest land for future generations.

Since the Board must co-adopt these studies, it is only fair that cities be given advance notice of the Board's expectations. We suggest a new Lane Code section 12.070 titled "Studies Related to Land Need Determinations" that contains a list of criteria cities can refer to when crafting their studies. In this way, cities can have some assurance that the underpinnings of their studies are consistent with Board expectations. These criteria can be updated periodically as the Board refines its policies regarding urban development.

Following is a brief explanation of each proposed criteria:

(a) Assumptions shall be clearly identified and described in a separate section of the study. The way each assumption influences the study's outcome shall be explained.



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The assumptions made at the beginning stages of a land needs study can have large impacts on the outcomes. However, assumptions are different than facts; oftentimes they are essentially just policy choices. As policymakers for the county, the Board has a responsibility to consider the reasonableness and desirability of these assumptions. Since it is often difficult to determine what the assumptions are, when viewing a 100-page study, the proposed criterion requires the assumptions to be restated in a separate section of the study. It also requires the study to spell out how each assumption affects the results of the study. This additional information will make it easier for the Board, and the public, to assess whether or not they agree with the assumptions. This will facilitate sound decision-making.

(b) Predicted growth rates in excess of historic trends must be justified by substantial evidence that higher rates are more reasonable than continuation of historic trends.

Adequate proof should be provided if a city believes it will grow faster than it has in the past.

(c) The study shall include substantial evidence that the provision of infrastructure needed to support predicted growth is feasible and reasonably likely to occur.

As pointed out recently by the Lane County Homebuilders in its critique of Springfield's residential land need study, without this inquiry, studies can create "phantom capacity" that appears to provide adequate housing opportunity, but which never materializes due to lack of infrastructure.

(d) When a study proposes accommodating future growth by expanding the urban area, substantial evidence must demonstrate that the unit cost for infrastructure on newly urbanized land will be less than the unit cost on land already inside the urban area. For residential uses, the unit of measure shall be cost per dwelling unit. For employment uses, the unit of measure shall be cost per job.

Expansion of a UGB is inefficient and undesirable if it leads to higher development costs. Not only would citizens bear the consequences of sprawl and loss of productive resource lands, but they would pay more for housing and business space as a result.

(e) The analysis of redevelopment potential shall consider land and improvement values, location, current uses, and expected economic changes.

All relevant factors affecting redevelopment potential should be considered, not just one or two.

(f) Assumed infill potential of developed lots or parcels shall meet or exceed

the safe harbor provisions of OAR 660-024-0050 (2) and (3).

The OAR safe harbor is a reasonable baseline standard that all cities should be able to meet.

(g) When a study proposes accommodating a future employment use by adding new land to the urban area, substantial evidence must demonstrate that the proposed use will utilize the new land efficiently. A use shall be considered inefficient if it does not provide at least as many jobs per acre as the current average employment density within the existing urban area.

Cities have a great deal of choice when it comes to deciding which industries to try to attract. Not all industry is in the public interest. When a city wants to expand onto county lands, the Board can and should require that those county lands be used efficiently. One measure is whether the number of jobs per acre will be at least as high as that currently seen in the city.

(h) State, regional and county trends shall be analyzed to determine the percentage of employment growth reasonably expected to be captured for the planning area in each category of use, based on the assessment of community economic development potential pursuant to OAR 660-009-0015(4).

This is a DLCD-recommended practice found in OAR 660-009-0015(1).

(i) Notwithstanding OAR 660-009-0005(2), environmental contamination, infrastructure deficiencies and parcel fragmentation shall not be a basis for excluding land from commercial and industrial land inventories unless substantial evidence demonstrates that such constraints cannot be resolved within the 20-year planning period.

When these three constraints limit the use of land already inside a UGB, they should be resolved instead of used as justification for passing over those sites in favor of new greenfield development. However, the criterion provides a safety value in the event that timely resolution is not feasible.

(j) Notwithstanding OAR 660-008-0005(2), residential land that is over 25 percent slope, and any land that is within the 100-year flood plain, shall be considered suitable and available to the extent that local, state and federal regulations permit development.

Land need studies commonly exclude floodplain and land over 25 percent slope from the buildable inventory because the OAR allows (but does not require) this practice. However, in reality these lands are usually buildable, and after the land need study is done, the city goes on to build out these areas. In Springfield, for example, several hundred acres of otherwise buildable land were excluded from the inventory solely due to slope, despite ongoing subdivision activity on essentially identical land. The same is true for floodplains. This criterion seeks to ensure that

land is treated the same way in an inventory as it will be treated in real life. This facilitates sound, reality-based planning.

(k) Land set aside in a residential study for streets, parks and school facilities shall not exceed the allowance for these uses provided by the safe harbor provisions of OAR 660-024-0040(10) unless substantial evidence demonstrates that:

- (1) A greater allowance is reasonable and necessary;***
- (2) Parks will be located on otherwise undevelopable lands wherever feasible;***
- (3) School site needs are based on educational program needs, not arbitrary site sizes; and***
- (4) Rights of way have been reduced to the minimum feasible width.***

The OAR safe harbor is a reasonable standard; however this criterion allows a city to exceed this allowance upon a showing that its developable land is being used efficiently.

Thank you for allowing us to submit these suggestions; we look forward to the opportunity to present this proposal to the Lane County Land Use Task Force.

Sincerely,



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Attachments: Proposed LC 12.070 amendments
References to cited OARs

1000 FRIENDS OF OREGON PROPOSAL FOR NEW LANE CODE SECTION 12.070

12.070 Studies Related to Land Need Determinations.

(1) Notwithstanding any other provisions of this Chapter, all studies related to land need determinations for urban growth boundary expansions or urban reserves designations shall comply with the following additional approval criteria:

(a) Assumptions shall be clearly identified and described in a separate section of the study. The way each assumption influences the study's outcome shall be explained.

(b) Predicted growth rates in excess of historic trends must be justified by substantial evidence that higher rates are more reasonable than continuation of historic trends.

(c) The study shall include substantial evidence that the provision of infrastructure needed to support predicted growth is feasible and reasonably likely to occur.

(d) When a study proposes accommodating future growth by expanding the urban area, substantial evidence must demonstrate that the unit cost for infrastructure on newly urbanized land will be less than the unit cost on land already inside the urban area. For residential uses, the unit of measure shall be cost per dwelling unit. For employment uses, the unit of measure shall be cost per job.

(e) The analysis of redevelopment potential shall consider land and improvement values, location, current uses, and expected economic changes.

(f) Assumed infill potential of developed lots or parcels shall meet or exceed the safe harbor provisions of OAR 660-024-0050 (2) and (3).

(g) When a study proposes accommodating a future employment use by adding new land to the urban area, substantial evidence must demonstrate that the proposed use will utilize the new land efficiently. A use shall be considered inefficient if it does not provide at least as many jobs per acre as the current average employment density within the existing urban area.

(h) State, regional and county trends shall be analyzed to determine the percentage of employment growth reasonably expected to be captured for the planning area in each category of use, based on the assessment of community economic development potential pursuant to OAR 660-009-0015(4).

(i) Notwithstanding OAR 660-009-0005(2), environmental contamination, infrastructure deficiencies and parcel fragmentation shall not be a basis for excluding land from commercial and industrial land inventories unless substantial evidence demonstrates that such constraints cannot be resolved within the 20-year planning period.

(j) Notwithstanding OAR 660-008-0005(2), residential land that is over 25 percent slope, and any land that is within the 100-year flood plain, shall be

considered suitable and available to the extent that local, state and federal regulations permit development.

(k) Land set aside in a residential study for streets, parks and school facilities shall not exceed the allowance for these uses provided by the safe harbor provisions of OAR 660-024-0040(10) unless substantial evidence demonstrates that:

- (1) A greater allowance is reasonable and necessary;
- (2) Parks will be located on otherwise undevelopable lands wherever feasible;
- (3) School site needs are based on educational program needs, not arbitrary site sizes; and
- (4) Rights of way have been reduced to the minimum feasible width.

REFERENCES:

OAR 660-24-0050(2): As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(13), may use the following assumptions to inventory the capacity of buildable lands to accommodate housing needs:

(a) The infill potential of developed residential lots or parcels of one-half acre or more may be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling and assuming that the remainder is buildable land;

(b) Existing lots of less than one-half acre that are currently occupied by a residence may be assumed to be fully developed.

OAR 660-24-0050(3): As safe harbors when inventorying land to accommodate industrial and other employment needs, a local government may assume that a lot or parcel is vacant if it is:

(a) Equal to or larger than one-half acre, if the lot or parcel does not contain a permanent building; or

(b) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is occupied by a permanent building.

OAR 660-09-0005(2): "Development Constraints" means factors that temporarily or permanently limit or prevent the use of land for economic development. Development constraints include, but are not limited to, wetlands, environmentally sensitive areas such as habitat, environmental contamination, slope, topography, cultural and archeological resources, infrastructure deficiencies, parcel fragmentation, or natural hazard areas.

OAR 660-08-0005(2): "Buildable Land" means residentially designated land within the urban growth boundary, including both vacant and developed land likely to be redeveloped, that is suitable, available and necessary for residential uses. Publicly owned land is generally not considered available for residential uses. Land is generally considered "suitable and available" unless it:

(a) Is severely constrained by natural hazards as determined under Statewide Planning Goal 7;

(b) Is subject to natural resource protection measures determined under statewide Planning Goals 5, 15, 16, 17, or 18;

(c) Has slopes of 25 percent or greater;

(d) Is within the 100-year flood plain; or

(e) Cannot be provided with public facilities.

OAR 660-024-0040(10): As a safe harbor during periodic review or other legislative review of the UGB, a local government may estimate that the 20-year land needs for streets and roads, parks and school facilities will together require an additional amount of land equal to 25 percent of the net buildable acres determined for residential land needs under section (4) of this rule, and in conformance with the definition of "Net Buildable Acre" as defined in OAR 660-024-0010(6).