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April 18, 2013

To: Senate Committee on Business and Transportation
State Capitol, 900 Court Street NE
Salem, OR 97301

Re: SB 845 – Oppose

Dear Chair Beyer and Committee Members:

1000 Friends of Oregon appreciates the opportunity to testify on SB 845. We have worked collaboratively since the inception of Oregon's land use planning program, at the local, regional, and state levels, to ensure the land use planning program is responsive to the state's economic development interests. We have done that by advocating for policies that ensure land is available, and remains available, in the right places, with infrastructure and near to where people and transportation facilities exist for both workers and products. We have also advocated for protection of the land base critical to the state's #2 industry – agriculture. Oregon's agricultural industry has continued to grow and flourish even during the economic downturns that other industries have experienced.

1000 Friends opposes SB 845. In order to super-site one apparent industrial user, this bill would override Oregon's land use planning program, and the right of citizens to participate in it, including the right to seek redress in court if they believe local or state officials have violated the law. Moreover, SB 845 severely undermines the public's trust in the rule of law in general, if it can be overrun by an anonymous, speculative industrial suitor. Finally, SB 845 is written in a vague and broad way that does not protect the interests of Oregonians, even if one believes that super-siting for one industrial user is a good idea.

SB 845 has been described as necessary because of appeals clouding the status of the site believed to be of interest to "Azalea." However, that is incorrect. Many who appealed the decision, including 1000 Friends of Oregon and local farmers, proposed a compromise in the area north of Hillsboro and south of Highway 26, presumably the focus area of this bill, would have resulted in several hundred acres being designated urban reserve and which would be in the UGB *today*. The reserves law encourages using natural and manmade boundaries - such as creeks, streams, ravines, and major roads – to separate rural and urban reserves. We suggested just that, which would have resulted in the 330 "Azalea" acres, plus several hundred more acres, being in Metro's urban reserve. Even 9 state agencies signed at least two letters describing how Metro and Washington County were misapplying the reserves law, and those agencies also recommended a smaller urban reserve in this Hillsboro area.

However, Washington County and Metro designated, and LCDC approved, a much larger urban reserve – over 2000 acres in the north Hillsboro area alone, resulting in a "boundary" between urban reserve and farming that is simply an invisible line down the middle of a field. LCDC, Metro, and Washington County put themselves in this position. They over-reached in their designation of urban reserves in Washington County *knowing the decision would be appealed.*

Specifics of SB 845

While SB 845 has been described as the bill to make available a particular 330 acres in Washington County for a possible semi-conductor fabrication plant known as “Azalea,” it is actually much broader and contains many vague terms.

- SB 845 applies to *all* lands currently in the Metro UGB, or that might be brought into the UGB, that are planned and zoned for “large-site industrial use.” (p. 1, lines 23-27 to p. 2, line 1)
- SB 845 also applies to any lands in the Metro urban reserves that are brought into the UGB in the future and designated as a “regionally significant industrial area.” (p. 1, lines 23-26)
- The bill does not define “large-site industrial development.”
- The bill applies to all land inside UGB that is “large-lot industrial,” not to this one specific piece of land.

If land meeting these definitions is acquired by “a member of an industry active in a traded sector,” and the land “will create a significant number of full-time jobs” in Oregon and the “member requires certainty in the industrial use for which the land is planned and zoned,” the Governor and the Director of DLCD can enter into a “contract to enable completion of the site acquisition and development.” (p. 2, lines 11-18)

- There is no definition of “significant number of full-time jobs,” or how long they must last.
- “Traded-sector” includes, for example, call centers and financial services businesses that do international work, etc... It is not limited to manufacturing or any other work that requires a large lot or special location characteristics.
- The bill overrides local input to allow the Governor and a state bureaucracy to enter into the contract.
- Many multi-national businesses do work that is commercial, office, and industrial. While this bill seems to be limited to “industrial use,” it is not clear.

SB 845 protects from appeal all “large-site industrial land” inside the current Metro UGB, or that is brought into the Metro UGB from an urban reserve, until “on or after Dec. 15, 2015.” (p. 2, lines 19-22) Then, upon “commencement of the construction of facilities,” SB 845 protects from appeal any “land use decisions” by which the land has come to be so planned and zoned. (p. 2, lines 23-27) Finally, the bill “tolls” any appeals already filed by which these lands have been so planned and zoned. (p. 2, lines 28-29)

- The various provisions overturning existing appeals and precluding future ones are not written clearly, so it is unclear exactly how they interrelate and operate. However, it is clear the intention is to prevent citizens, local governments, business interests, and anyone else from ever appealing any land use related decision having to do with siting a large industrial user in the Metro area.
- The date is meaningless – protects from appeal until “on **or after** Dec. 15, 2015.” There is no termination date for this immunization from appeal.

- “Commencement of construction” is not defined. This could be, therefore, moving some dirt around and then letting the land sit idle.
- The language is vague and could apply to all land-use related decisions, including those of local government and state agencies.

After the "agreement" is entered into, if the "member" has "commenced" construction for a "large-site industrial development that is projected to employ at least 500 full-time employees on the land," the agreement may protect the approved uses "permanently" from any appeal of any of the land use decisions by which the land came to be planned and zoned for this, including its designation as urban reserve and inclusion in the UGB. (p. 3, lines 11-17)

- *“Projected to employ at least 500” is not actually employing 500 or 50 or 5.* Oregon has already experienced industries that have not lived up to the employment promises made in return for various state and local financial incentives.
- SB 845 contains no requirement for what is in the agreement – for example, no minimum number of actual jobs, or wage levels, or amount of time the jobs must stay in that location, etc....
- The bill uses inconsistent language; for example, sometimes “agreement” used, sometimes “contract.”

If a “person” filed an appeal to the underlying land use decision by which the site came to be planned and zoned for “large site industrial use,” then that person can bring an action for “breach of the agreement” by the traded sector member for the “sole and exclusive remedy” to “extinguish[] ... the protection from any appeal granted by this section and the opportunity to resume an appeal tolled by operation of an agreement.” (p. 3, lines 22-29)

- Presumably this allows those who have filed appeals of an underlying land use decision the right to re-instate those appeals if the industry does not fulfill its “agreement.” *But the bill contains no requirements for what is in the agreement, so there is nothing to enforce. This is an illusory “right.”*

SB 845 is not about jobs; it is about Oregon’s land use and environmental laws and the rule of law being set aside by anecdote and anonymity, in what many economists nationally have called a “race to the bottom” and “mutually assured destruction” as industries pit one region of the United States against another. If this is done to land use laws, it could be done to any set of laws.

The right to have one's day in court if one believes the law has been mis-applied has been part of Oregon's land use planning process since the beginning, and is part of a government of checks and balances. The decision prompting this bill, that of Metro and LCDC designating urban reserves, *was appealed by citizens, development interests, local governments, organizations, farmers, and land owners* – all from different perspectives, but who all share the same view that Metro and LCDC violated the urban and rural reserve law by not following it.

Passage of SB 845 will break the trust that many citizens, organizations, and local governments had when they entered into the process of crafting the law authorizing urban reserves in the first place. I doubt we or many others would make that mistake again.

Thank you for consideration of our testimony.

Sincerely,

A handwritten signature in cursive script that reads "Mary Kyle McCurdy". The ink is dark and the signature is fluid and connected.

Mary Kyle McCurdy
Policy Director