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House Rural Communities Committee  
State Capitol  
900 Court Street NE  
Salem, OR 97301

MEASURE: HB 4078  
EXHIBIT: 17  
2014 H RURAL COMMUNITIES  
DATE: 2/1/2014 PAGES: 3  
SUBMITTED BY: Mary Kaye McCurdy

February 4, 2014

RE: HB 4078

Chair Clem and Committee Members:

Thank you for this opportunity to present testimony opposing HB 4078, legislation that would automatically site an expansion of the Metro urban growth boundary (UGB), while an appeal of that UGB expansion is before the Oregon Court of Appeals.

1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities; protect family farms, forests and natural areas; and provide transportation and housing choice.

### Background

The UGB expansion that this legislation would put in place is tied to Metro's decision to adopt urban and rural reserves. Metro adopted, and LCDC approved, urban and rural reserves for the 3-county area. Many individuals, land owners, developers, farmers, and local governments appealed that decision, for different reasons. The reserves case was argued before the Court of Appeals in January 2013 and we are awaiting its decision.

While that appeal was pending, Metro made another decision - to expand its UGB by approximately 2000 acres, in Washington County. *Metro's UGB decision relies on the legal validity of urban reserves in Washington County, which contain primarily farm land. Metro did not have to structure its decision that way.* That is, Metro did not have to make its decision dependent on the legality of the urban reserves. Instead, Metro could have expanded its UGB the usual way, as it has every 5 years, using existing UGB expansion law. However, if it had made the UGB decision the "regular" way, without relying on urban reserves, then farm land would be the last choice for a UGB, and *some* (but not all) of those 2000 acres might not have qualified for a UGB expansion.

Because Metro tied its UGB decision to the legality of the urban reserves, some appealed the UGB decision, and it is now on hold at the Court awaiting the reserves decision.

*Metro chose not to make a more conservative, smaller UGB expansion that did not rely on urban reserves. So, Metro finds itself right where it put itself.*

### Why We Oppose HB 4078

HB 4078 creates a slippery precedent of legislative involvement in local land use decision making and insertion into a pending judicial proceeding. We oppose HB 4078 for the following reasons:

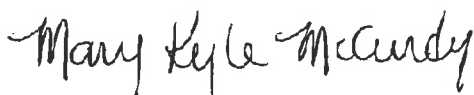
- The ability of citizens to appeal government decisions they believe are illegal is a basic right of our system of government, and not just in the area of land use. This proposed legislation is contrary to the right of citizens to have their day in court.
- Metro agreed to a reserves process that included the right of appeal. Metro then decided to tie its UGB expansion to reserves. If legislation is passed doing an end run around this process, there will be no reason for individuals or organizations to participate in the future in crafting new programs like the reserves program.
- It is contrary to Oregon's land use Goal 1 - citizen involvement.
- It is super-siting; that is, going around the land use laws for specific pieces of land. The legislature has historically frowned on super-siting, and for good reasons. Among other things, what will be the next one?
- Interfering with a court decision while it is still pending before the court sets a very slippery-slope precedent, and not just for land use.
- Metro reviews its UGB every 5 years. Metro is currently in the process of reviewing the UGB to make another UGB decision by the end of 2014. If supporters of individual areas that make up those 2000 acres believe their area merits inclusion, they should participate in this process.

### **Court of Appeals Proceedings on Land Use**

While some are frustrated with the length of time the Court of Appeals has taken on the reserves decision, suggestions that the legislature put limits on the court are unnecessary, in addition to being unwise and potentially unconstitutional, because the Legislature has already taken two very significant steps to address the Court's backlog:

- The Oregon Court of Appeals is the busiest in the nation, according to national court statistics. Many cases, in every area of law, can take a long time at the Court of Appeals, not just land use. Last session the legislature *already took the most important step* it could have to solve this: It added and funded 3 new court positions, and those have been filled. The court had 10 judge positions prior to that, so this is a significant and much-needed increase, which will have a positive impact on the court's handling of all cases, not just land use.
- Last session the legislature also passed HB 2254, and LCDC rulemaking on it has started. This legislation provides a more standardized, faster option for cities to determine whether they need a UGB expansion. Any UGB decisions made under this option go to LUBA, not LCDC, and then to the Court of Appeals. A major problem has been that for the last decade or so, UGB expansion decisions have gone to LCDC and then to the Court. LCDC is a policy body, not a judicial body. It is not well-suited to crafting land-specific judicial-type decisions for judicial review. In contrast, decisions that go from LUBA to the Court have been written by an administrative judicial body, present a clear decision for the court to evaluate, and have been readily decided by the Court. More UGB decisions going through LUBA and then to the Court will help the court's workload.

Respectfully submitted,

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Policy Director and Staff Attorney

## Development on large lots added to the UGB (2002-2009)

		2002 UGB expansion	2004 UGB expansion	2005 UGB expansion	Totals
<b>Entire expansion</b>	Total acres	18,870	2,030	620	21,520
	Large lots	85	10	3	98
	Total acres of large lots	3,320	440	110	3,870
	Large lots fully or partially developed since expansion	6	0	0	6
<b>Non-Title 4 large lots</b>	Large lots developed as residential	4	0	0	4
	Large lots developed as "other"	1 (Sherwood school)	0	0	1
<b>Title 4 large lots</b>	Large lots with Title 4 designation	40	10	3	53
	Title 4 large lots developed as industrial	1 (Genentech in Hillsboro)	0	0	1
	Title 4 large lots developed as non-industrial	0	0	0	0

