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From: Paul Lipscomb [<mailto:judgelipscomb@gmail.com>]

Sent: Monday, April 13, 2015 10:04 AM

To: Reiley Beth; Sen Ferrioli

Subject: SB 748

Please accept this email in lieu of my public testimony as I will not be able to be physically present this afternoon due to the short notice period between the time it was scheduled and the time of the hearing; one single work day.

I am a constituent of Sen. Ted Ferrioli, having moved to the north part of Deschutes Co. in 2010, and I have a lot of personal respect for him. Prior to moving to Deschutes County I was the Presiding Circuit Court Judge in Marion County for many years. In that capacity I was called upon to review many legislative enactments that had become the subject of litigation in my court. I also appeared before many legislative committees to testify on behalf of the Judicial Department on various legislative matters. As a result, I know that Sen. Ferrioli, the sponsor of this bill, always has the best interests of his constituents at heart. Nevertheless, I have serious concerns about this particular bill.

As an initial matter, in my view Senate Bill 748 should be sent back to legislative counsel for revision. The amendments SB 748 seeks to make to ORS 197.732 would make the provisions of the amended statute internally inconsistent. As amended, Section (3) would be in direct conflict with subsection 1(b)(C) of the current statute. That conflict would make statutory interpretation of ORS 197.732 problematical at the local county level, and ultimately in the Oregon Courts. That interpretation problem is then made worse, rather than better, by the amendment made to subsection (b) of the renumbered Section (7), which introduces another uncertainty as to whether the standards of Section (2) or not, while failing to resolve the internal conflict between the two sections.

Additionally, SB 748 would also require LCDC to adopt new rules and guidelines to implement these proposed statutory changes in accordance with their statutory responsibilities pursuant to ORS 197.736. As a practical matter, this would seem to be an impossible task under the current wording of SB 748.

As to the merits of the changes to our statewide land use system addressed by SB 748, in my judgment this would be a step in the wrong direction with little potential to actually generate the intended benefits, and significant potential for adverse unintended consequences. Oregon is currently blessed both with outstanding natural resources and with land use laws that balance economic growth and development with protection of the scenic and recreational resources that promote that economic growth and development. It would be a mistake to upset that statewide balance with new exceptions that would apply only to certain areas of Oregon. And in upsetting this statewide balance, the economic conditions in those local areas could, over the long term, actually decline rather than improve.

As just one specific potential problem, I could envision that the new agreements currently being hammered out with Federal officials to prevent the sage grouse from being listed as an endangered species could well be compromised by this bill. That collaborative agreement process has resulted in comprehensive plan amendments to specifically protect sage grouse habitat in affected counties in Eastern and Central Oregon. The federal decision to refrain from listing the sage grouse as endangered could be upset if the new provisions of those local comprehensive plans could then be simply avoided through the new exceptions provided by SB 748.

I would urge the committee to slow this bill down and to think long and hard about the dangers of unintended consequences before moving this bill forward.

Thank you.

Paul J. Lipscomb