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Senate Committee on Human Services and Early Childhood
Oregon State Capitol
900 Court St. NE, Room 347
Salem, Oregon 97301
via email: shsec.exhibits@state.or.us

Re : SB 1533, SB 1548, SB 1575

Dear Chair Gelser and Members of the Committee :

Thank you for the opportunity to comment on Senate Bills 1533, 1548, and 1575. Reforms to Oregon's land use regulations affecting affordable housing are much needed, and each of these bills has something to contribute. Each also has its weaknesses. I hope these hearings will help you take from each what Oregon needs and leave the rest for recycling.

Rather than detailed comments on each bill, I would like to offer you my perspective on Oregon's state land use program and affordable housing based on my experience as an Oregon land use lawyer from shortly after adoption of Senate Bill 100 through my retirement in 2010.

Oregon's commitment to affordable housing for all Oregonians is clearly expressed in our Statewide Housing Goal (Goal 10). I hope it will be your touchstone as you listen to testimony and consider these and other housing bills.

Goal 10 requires local comprehensive plans and zoning regulations to provide sufficient buildable residential lands to ensure

“the availability of adequate numbers of needed housing units at price ranges and rent levels which are **commensurate with the financial capabilities of Oregon households** and allow for **flexibility of housing location, type and density.**”

These are obligations of each and every Oregon community, not just the towns down the road. In one of its earliest decisions, LCDC recognized the importance of each community accommodating its “fair share” of housing need, as follows:

“The housing goal clearly says that municipalities are not going to be able to do what they have done in metropolitan areas in the rest of the country. They are not going to be able to pass the housing buck to their neighbors on the assumption that some other

community will open wide its doors and take in the teachers, police, firemen, clerks, secretaries and other ordinary folk who can't afford homes in the towns where they work." **Seaman v. City of Durham**, 1 LCDC 283, 289 (1978).

I am a big fan of the Housing Goal. I have represented housing agencies and nonprofits on affordable housing projects over the years. Goal 10 and Oregon's Needed Housing Statutes, have been critical to my ability to get affordable housing projects approved. They have also enabled me to secure key decisions from LUBA and Oregon's courts requiring local governments to consider regional impacts of local zoning, to adopt clear and objective standards and simple procedures for permitting needed housing, and to remove a variety of impediments to affordable housing from local land use codes and plans.

Unfortunately, the housing goal and related "needed housing" statutes have been unevenly enforced I call Goal 10 LCDC's **almost** goal. Affordable housing is **almost** always **almost** as important as something else, whether it be "smart development," traffic, farmland, wildlife habitat, historic preservation, tree cover, neighborhood character, school capacity, property values, upscale housing—you name it.

These competing values have built-in advocates—stakeholders protecting their stakes. The people who will live in yet-to-be built affordable housing? Not so much. We don't know who they are. They usually don't know who they are. Most don't have the time, money, or other resources to do anything about it anyway.

Not surprisingly, there's been slippage at all levels--state, regional, and local. The slippage takes many forms. One form is the use of stereotypes and assumptions that have proven to be baseless. Among the worst offenders are these:

1. Typecasting: It is a convenient untruth that one class of housing types—multifamily—is a meaningful proxy for affordability. It is not. Little if any of the unsubsidized multi-family transit-oriented development that has gone up in Portland or anywhere else in Oregon is available "at price ranges and rent levels which are commensurate with the financial capabilities" of low-income Oregonians. There is simply no nexus between that assumption and reality.

2. Transit Equals Affordability: Another convenient untruth is that one class of housing locations—centrally-located transit-oriented development—gives the poor all the flexibility of housing location, type and density that is good for them. It does not. Public transit is often inadequate to meet key needs, even when it is just outside the door. Many of Oregon's working and learning poor need cars to get from homes they can afford in places like Redmond, Gresham, Lebanon, and Woodburn, to places where they work or study, like Corvallis, Bend, Lake Oswego, and even Portland, especially if they have multiple jobs, daycare, health issues, and grocery shopping to do.

3. **Edges are always bad.** There's a myth that the poor always need to be near transit or within walking distance of services, as if none of them have, need, or deserve cars. Most providers know that is a myth. In fact, our best providers of subsidized housing make a special effort to provide a diversity of locations to meet a diversity of needs.

Housing like Woodleaf Village at the southern edge of the Eugene UGB (see attached photo, map, and text) provides affordable housing in a safe, healthy setting near good schools, with free parking (unavailable downtown), all within the same UGB that as their daily destinations.

As the permitting attorney, I can tell you Woodleaf Village probably wouldn't exist without the help of Goal 10 and Oregon's needed housing statutes.

Do the families who live there feel "pushed to the edge?" I don't think so. Woodleaf is an example of a community trying not to push the poor "beyond the edge," to Veneta, Junction City, or Cottage Grove.

Edges have other advantages, often including better affordability for taxpayers and providers with little or no adverse financial impact on landowners and builders. Land just outside UGBs is the only affordable future urbanizable land in Oregon, a direct consequence of our tight UGBs. As it happens, that creates an opportunity. Affordable housing providers and land banks can acquire it at prices that save scarce tax dollars and still give owners whose land is otherwise unlikely to come in a significant increase in value. There's no taking because it's completely voluntary. The same steep value gradient has enabled Portland Metro to buy a lot of peripheral parkland at reasonable prices. It could, if you allow it, make more Woodleafs possible by cutting land costs. Why not do for affordable housing what we do for recreation?

3. Only Metro Needs a Real 20-year Urban Growth Boundary. It is largely a myth that Urban Growth Boundaries (UGBs) outside of Portland Metro have ample, 20-year supplies of land planned and zoned for residential use.

There are two Oregons when it comes to land supplies. Only Portland Metro and its member cities have regularly-maintained 20-year supplies. That's because current statutes treat Portland Metro very differently from the rest of the state. Currently Portland Metro is required by statute to update its 20-year supply every five years. Outside of Metro, there is no such requirement.

As a result, non-Metro Oregon cities frequently neglect to update their land supplies and urban growth boundaries.

When they do try to update, they often run into delays because of the complexity of the process and the sheer number of opportunities "get it wrong." Sometimes they just give up. Sometimes they spend years redoing their homework. Either way, they end up with land supplies for planning periods much shorter than 20 years.

Even these theoretical supplies are compromised in various ways. Here are just a few:

1. The rigid “priorities” statute adopted in the 1990’s effectively preempts sound planning principles embedded in LCDC’s original Urbanization Goal. The priorities statute makes farmland the “decider.” It trumps the Urbanization Goal’s balancing approach to competing factors listed in the Goal, such as social consequences (including impact on housing affordability) environmental consequences, energy consequences (including interurban traffic increases) economic consequences (including inability to recruit and retain employees), and efficient and orderly extension of city services.

The result has been, even within Metro, to bring in land that that is hard to service, remotely located, or otherwise unsuited for development. Not surprisingly, much of that land doesn’t get developed, for affordable housing or otherwise, in time or in a manner to meet identified needs. Not surprisingly, that entirely predictable result is spun by some as evidence that UGB expansions don’t do any good.

2. Builders of upscale homes of all types get almost exclusive access to what additional capacity becomes available, whether through UGB expansions or density increases. They also enjoy most of the benefits that come from state housing laws that require clear and objective standards, simple procedures, and short time limits for “Needed Housing.” Unlike Goal 10, these statutes conveniently define “Needed Housing” to include all housing types and to avoid all references to affordability.

As a result, although these benefits are justified by the need for affordable housing, they are broadly applied to include upscale housing of all kinds. Because they can capture these benefits without actually having to build affordable housing, high-end homebuilders have no incentive to include any affordable housing units in their projects.

Mandatory inclusionary zoning could enable cities to recapture and transfer at least part of the value of these regulatory benefits to the purposes for which they were created.

Another approach would be to limit fast-tracking and simplified standards to projects with significant voluntary inclusionary zoning.

3. The two-Oregon problem is about to get worse. The state’s new UGB “streamlining” statute and rules, for cities outside Metro, goes in the opposite direction from the same state’s 5-year-UGB-update mandate to Metro. It reduces the planning period to 14 years. It prohibits updates until that reduced supply is cut in half. It excuses jurisdictions that don’t want to grow from the requirements of the Needed Housing Statute requiring cities to periodically evaluate and update their buildable lands inventories based upon a reality-based housing needs analysis.

You have a big job ahead, and you won't complete it this session. But please make a start. The land use program created by this legislature over 40 years ago has accomplished much. It has also been and will continue to be part of the problem and part of the solution to Oregon's many-faceted affordable housing problems. Well-crafted adjustments are necessary to help ensure more consistent and effective implementation of the affordability elements of our state housing goal and a return to the balanced approach to urban growth reflected in the statewide urbanization goal as originally adopted in 1974.

The proposed bills before you today, and others in the pipeline, offer a variety of solutions. None will solve a crisis which is long in the making and in which land use plays a limited role. That is not a reason for despair or delay. We must accept that improvement will be incremental and that there will continue to be trade-offs. On the bright side, this is a real opportunity for bipartisan problem-solving. You are dealing with a mix of regulatory and market failure. Both Adam Smith's invisible hand and the helping hand of government seem to have lost their grip. Fortunately, Goal 10 is at least as much deregulatory as regulatory, so there's something in it for everyone.

My short list:

We need mandatory inclusionary zoning, without so many sideboards that it sinks the boat.

We need UGB expansions that prioritize land dedicated to affordable housing over land for upscale houses and cornfields. Require permanent and meaningful dedications, backed up with deed restrictions. Don't require immediate serviceability. Encourage acquisition of UGB edge land by land banks, housing trusts, other providers, for the long term. This problem isn't going away.

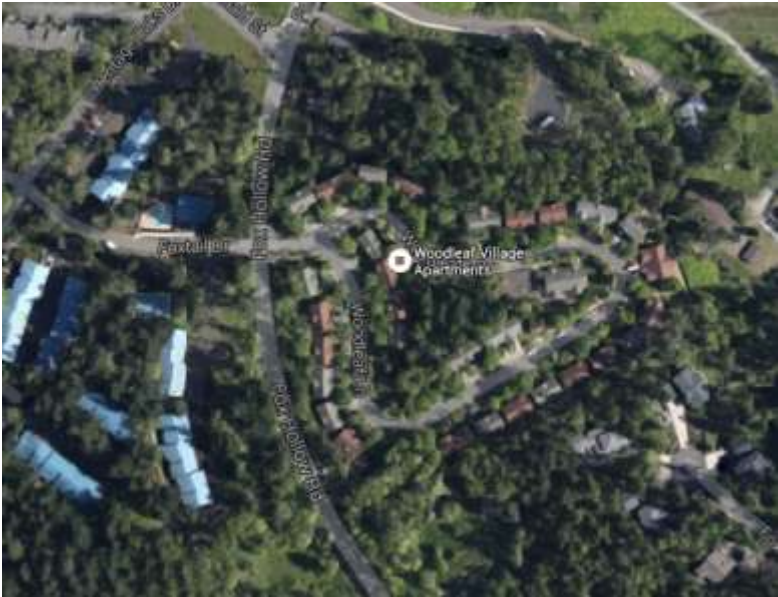
Please get us back to One Oregon when it comes to UGBs. That means real 20-year land supplies inside and outside Portland Metro. It also means a realistic link between land supplies and identified needs. I think that link is already required, but it never hurts to repeat it.

Since the adoption of Senate Bill 100, it has been my belief that the overriding goal of our state land use program is "Livability" for all Oregonians. I wish you the best in your efforts to move us toward that goal.

Thank you,

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WOODLEAF VILLAGE



This community, offering 60 units, is nestled in the hills of Eugene, near 40th and Donald Streets. This development offers housing to families and individuals with annual income amounts at or below 50% of area median income. Woodleaf Village has two and three-bedroom townhouses, with four accessible units. Rent depends on income levels and household size.

