American Planning Association
Oregon Chapter

Making Great Communities Happen

PO Box 28454 Portland, OR 97228
PHONE: (503) 626-8197
oapa@oregonapa.org • http://www.oregonapa.org

Monday, March 13, 2017

Representative Brian Clem, Chair
House Committee on Agriculture and Natural Resources
Oregon State Legislature
900 Court Street
Salem, OR 97301

RE: Oregon Chapter of the American Planning Association testimony to the House Committee on Agriculture and Natural Resources regarding HB 2894.

Dear Chair Clem and members of the Committee,

The Oregon Chapter of the American Planning Association (OAPA) is an independent, statewide, not-for-profit educational organization with 850 members that provides leadership in the development of vital communities by advocating excellence in community planning, promoting education and citizen empowerment, and providing the tools and support necessary to meet the challenges of growth and change.

Our organization has reviewed HB 2894 and oppose the bill as drafted. **We respectfully ask that the Committee do not pass the bill out of committee**.

The provisions of this bill would apply to both the traditional UGB expansion process, as well as the new streamlined process, which the state recently spent several years creating and the Land Conservation and Development Commission adopted rules to implement in December 2015. Where that process is designed to provide certainty for local governments, this bill would greatly increase the uncertainty and ambiguity into the UGB analysis.

Further, this amendment would apply to a legislatively enacted comprehensive plan amendment so as to stifle local government's ability to achieve other statewide land use goal objectives such as needed housing or industrial lands based, for example, on privately negotiated real property restrictions that have nothing to do with land use planning objectives. Such an arbitrary determination as to whether lands are likely "to be developed or redeveloped within the planning period" could, in turn, lead to further complications in a local government's ability to achieve its overall land needs and objectives.

As importantly, the examples in Subsection 2 of criteria to be used to determine whether land is likely to be developed are anything but objective, as the bill claims. Claiming criteria are objective does not make it so. The bill would allow cities to consider "objective criteria," to determine if there is reduced development potential or land would be undevelopable within the study period. The bill provides no guidance, objective or otherwise, from which to determine what degree or condition of nearby lands would make it suitable or unsuitable for development. At what point would the cost of providing facilities trigger an unsuitability

determination? Obtaining evidence to determine whether these vague and entirely subjective criteria in Section (1)(2) of the bill would be difficult or costly to obtain, when the details about demands resulting from potential development or existing natural conditions are not yet known. For example:

- Section (1)(2)(a): This section states a city shall consider the "existing degree and condition of development on or near" the lands and determine the likelihood it will be redeveloped. The bill provides no guidance on what degree or conditions of a nearby property would make the subject land undevelopable. Would a contaminated or brownfield property qualify? What about a vacant lot next to a property next to mobile home park or, taking the other side, a relatively new, intensive, urban mixed use development? How does a city determine whether or not the nearby condition will be cleaned up and the barrier removed over the 20 year period? Does it have to be adjacent? These are conditions to which a local government has very little, if any control.
- Section (1)(2)(b): This section requires analysis of the costs to providing utilities and services. It is extremely time intensive and costly to determine the cost of providing facilities and services in one area as opposed to another, particularly when the details of proposed development are not yet known. And what would be the criteria to determine that an area is too expensive to service? Would a city have to conduct an analysis of the cost of service for all vacant land, at a range of uses, or potentially redevelopable land compared to every other vacant or potentially redevelopable parcel, as well as expansion areas?
- Section (1)(2)(c): This section would require a city to research recorded easements, covenants, conditions or restrictions in a recorded declaration to determine if they could be redeveloped or developed. This criterion is problematic because these types of encumbrances are most often privately negotiated and as a result, their permanence over the planning period is not assured. For example, private easements or other restrictions can be removed with consent of the bound land owners, without notice or consent of the local government. Further, local governments do not have easy access to title records and should not take any role in evaluating whether these, entirely private agreements, could make land undevelopable.
- Section (1)(2)(d): Cities are already allowed to exclude physical, topographical and other impediments to development that relate to natural hazards (steep slopes), wetlands, floodplains. Again, the language in this section would leave it up to a city to determine what physical or topographical elements should be determined to limit developable or redevelopable capacity.

HB 2894 as drafted would greatly add to the complexity, time, and expense to expand an urban growth boundary or engage in a legislative comprehensive plan amendment. It would make the process less uncertain and more ambiguous. It would make the process harder, not easier. We urge the committee not to pass this bill.

Sincerely,

Jeannine Rustad, JD, President
Oregon Chapter of the American Planning Association