

Allen L. Johnson
2522 NW Crossing Drive
Bend, OR 97703
541-687-1004
alj250@gmail.com

To: Rep. Brian, Clem, Chair, and members of
the House Committee on Agriculture and Natural Resources
Re: HB 2893 and 2894
Date: March 14, 2017

I am writing in support of House Bills 2893 and 2894, not because they bring something new to Oregon's land use system but because they represent a return to first principles, as reflected in the original statewide land use goals, adopted in 1974 under the watchful eye of the program's founding mothers and fathers.

These bills are returns to the balanced vision of the original statewide land use goals, not departures from that vision.

HB 2894 would simply clarify and confirm existing law, which requires cities to demonstrate based upon realistic assumptions of yield that they can meet projected needs for urban lands within their planning periods. They cannot assume, under current state laws, goals, and rules, that planned unit developments on large lots with golf courses are going to intensify during the planning period where the local record shows that such intensifications and conversions are restricted by covenants. Homeowners pay for those restrictions, which are typically immune to change except by a unanimous or near-unanimous vote of all property owners. That just doesn't happen, and it is unrealistic, even dishonest, to count such land as available. DLCD and LCDC have recognized this reality in their recent acknowledgment of the Bend Urban Growth Boundary. This statute is needed only to eliminate unnecessary litigation to establish what is already state policy and practice.

HB 2893 would simply enable a city like Bend to include lands of the poorest soils in its balancing process. That doesn't mean these lands will end up in Urban Growth Boundaries. One of Goal 14's seven factors, that must be balanced with all of the other considerations, from housing affordability to orderly extension of urban services, is compatibility with nearby agricultural and forest activities occurring on farm and forest land. Another is environmental consequences, which might include the effects of irrigating marginal lands where water supplies are scarce and existing irrigation demands have degraded streams like the upper Deschutes and its tributaries.

I'd like to offer some historical perspective. I am now retired after almost four decades as an Oregon land use attorney, with a wide variety of public and private clients across the state. In the late 1970's, a few years out of law school, I had the privilege of serving as the LCDC's hearings official before the creation of the Land Use Board of Appeals.

During that time I became convinced of the wisdom of the Commission in adopting the Urbanization Goal that governed the creation of urban growth boundaries statewide. The original Urbanization Goal required the careful balancing of relevant "factors," including orderly and economic provision of services, protection of rural resource land, and the impacts of different choices on the whole range of energy, economic, social, and environmental consequences.

I was equally impressed by the realism of the Commission, which recognized from the beginning that long-range planning for urban areas had to be realistic. If all but a tiny percentage of Oregon's developable lands were to be reserved for agricultural and forest uses, then that tiny percentage had to be genuinely suitable and adequate to meet anticipated urban needs. From the beginning, that meant 20-year land supplies. It also meant realistic assessments of likely yields during those 20-year planning periods. That realism included "market imperfections," meaning that it was not only appropriate but necessary to consider anything that would be likely to affect actual yields of buildable lands during the planning period. As the DLCD review of the proposed Portland metropolitan area boundary in 1979 put it:

“Factors 1 and 2 of Goal 14 deal with the amount of land necessary to meet growth needs—including housing, employment and livability—within the planning period. The assessment of land needs for twenty years in advance necessarily involves making assumptions that will be open to disagreement. In making assumptions concerning housing mix, housing densities, employment-to-land ratios, open space requirements and the like, economic inefficiencies or ‘market imperfections’ may be considered. Assumptions must be consistent with relevant Goals, in particular, Statewide Goals 9—Economy of the State and Goal 10—Housing.” DLCD Director’s Report for July 11, 1979 LCDC meeting, page. 13.

As to yield within the 20-year planning period (Bend’s delayed UGB approval gives it only about 12 years, to 2028), the same report points out that there

“. . . can be no assurance that all land designated for development within the UGB is actually buildable, since there is no certainty that it can be serviced within the planning period.” *Id.* page 43.

Unfortunately, this reasonable, balanced approach was modified between acknowledgment of initial urban growth boundaries and more recent updates to urban land supplies. One of those modifications is the “tiering” system set up by ORS 197.298, which trumps the balancing process of the Urbanization Goal by not allowing it to start until after all agricultural lands have been excluded. It does so for the poorest of agricultural and forest lands as well as the best. It excludes those lands without regard to the impact of their exclusion on housing costs, on orderly and efficient provision of services, on wildlife habitat and stream quality, on compact urban development, or on anything else relevant to responsible and rational land use planning.

This is not sound land use planning. This is the result of good lobbying by powerful interest groups. This is capture of the regulators by the regulated. These two bills are baby steps on the long walk back to Senate Bill 100 as envisioned by the founders of our state land use system. Please give these bills your support.

Respectfully submitted,

Al Johnson