February 5, 2020

Chair Representative Jeff Barker
House Committee on Business and Labor
State Capitol
900 Court Street NE
Salem, OR 97301

Re: Opposition to Land Use Provisions in HB 4096

Dear Representative Barker and Committee Members:

Thank you for the opportunity to provide testimony on HB 4096. 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. Our supporters come from across Oregon, from every county in the state.

1000 Friends of Oregon opposes the land use provisions within HB 4096 that apply to rural lands. **We request that HB 4096 be amended to remove Sections 13-15, or include revisions to those sections, so they apply only to lands within urban growth boundaries.** We take no position on the grant and tax program. We encourage the legislature to focus its efforts on the development of necessary childcare facilities in areas near workforce housing, schools, and workplaces, rather than on resource lands.

As written, Section 13 (2) would prohibit local governments from conditioning the establishment, development, maintenance, or use of property for a "child care home" or "child care facility" with conditions that are "more restrictive than conditions imposed on other lawful uses in the zone," regardless of whether conditions are necessary to ensure the safety and health of children. Sections 13, 14 and 15 would add child care facilities as a conditional use in the farm zone, and require governments to allow the use of a lawfully established dwelling for a child care home in the farm zone, subject only to the Farm Impacts test at ORS 215.296.[1]

[1] ORS 215.296 requires a local government to evaluate and find that a proposed use does not force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands.

A. The land use provisions are unnecessary because the conditional allowance of child care facilities is already allowed in the farm zone.

Local governments already have the ability to approve child care facilities within the farm zone. Under ORS 215.213(2)(n) and 215.283(2)(i), local governments can allow child care facilities as a home occupation in exclusive farm zones. *See also* ORS 215.441 (childcare facilities allowed within places of worship). The home occupation use provides an existing and sufficient pathway for child care facilities to be established. That pathway includes appropriate sideboards for home occupation child care facilities that regulate the size and impact of the use. *See* ORS 215.448. Like other uses in the farm zone, it is imperative that child care facilities continue to be conditioned in a manner that accounts for impacts to farmers, the infrastructure necessary for the child care use, and the health and safety of the children located adjacent to active farming operations. These aspects are appropriately addressed within the home occupation allowance.

B. Section 13(2) is unworkable in farm and forest zones, and could create health and safety issues for children.

Section 13 (2) creates a new test for allowing child care homes and facilities on resource land. It would require local governments to only impose conditions on a child care home or facility that are no more restrictive than conditions applicable to "other lawful uses in the same zone." This standard may work within urban areas, unincorporated communities, and rural residential areas, (*see* unamended ORS 329A.440), but does not work on resource land. Resource land includes active farm and forest operations along with numerous other uses, many which create localized conditions that may be detrimental to the health and safety of children. It is not good planning to restrict a government's ability to place conditions on the use of a child care facility, particularly when conditions are used to protect health and safety of children. Active agricultural areas have large machinery moving down roads, pesticide spray, fertilizer application, and other activities that create noise, dust, smells, and burning. Governments need to be able to manage uses in rural areas to ensure compatibility with surrounding uses, and this bill would do just the opposite. Local governments should not be limited in their ability to place conditions on childcare facilities, particularly when those conditions are necessary to protect health and safety.

Although it is unclear, Section 13 (2) could be interpreted to essentially allow child care facilities as uses permitted outright where other uses are allowed outright or minimally conditioned. Perhaps the provision means that within the farm zone, childcare facilities can only be subject to ORS 215.296, regardless of any possible health or safety issues that may be created by siting a childcare facility within in a actively-managed agriculture or forestry area. Without clear

conditional use approval authority, these land use provisions could result in urbanization outside of the urban growth boundary and lead to health and safety issues for children.

C. Section 13(1) confusingly mixes two distinct legal standards.

Generally, there are two types of uses allowed in the farm zone: uses permitted outright, and uses conditionally allowed. Uses permitted outright are uses that local governments must allow, and cannot require conditions of approval. *See e.g.*, ORS 215.283(1). In contrast, conditional uses are subject to approval by a local government, and subject to ORS 215.296. *See e.g.*, ORS 215.283(2).

The land use provisions provided within HB 4096 would combine aspects from these two types of standards for child care homes within existing dwellings, and *require* governmental approval, rather than allow a local government to approve such a use with conditions based on local issues. The proposed language mandates that governments "shall" allow the childcare home use on farmland, demonstrating that local governments would have no choice in approval, but also must require reasonable conditions under ORS 215.296. It is unclear what would happen if ORS 215.296 could not be met, as the bill requires counties to allow the use. The provisions are written in a confusing manner, and do not neatly fit into existing categories of uses allowed on resource land.

D. Conclusion

Based on the foregoing, 1000 Friends of Oregon requests that HB 4096 be amended to remove Sections 13-15, or include revisions to those sections, so they apply only to lands within urban growth boundaries.

Thank you,

Scott Hilgenberg
Rural Lands Legislative Attorney
1000 Friends of Oregon