November 23, 2015

Land Conservation and Development Commission
Delivered via email to Bob Rindy, Amie Abbott and Casaria Taylor, Department of Land Conservation and Development

Dear Chair Macpherson and Members of the Land Conservation and Development Commission,

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.

Thank you for the opportunity to comment on the proposed UGB Streamlining rules (November 13, 2015 draft) to implement 2013 HB 2254. We commend the Department, Commission, and the numerous advisory committee members who have devoted years to finding ways to improve the planning for urbanization and urban growth boundaries.

AREAS OF SIGNIFICANT CONCERN

Overall, OAPA is supportive of the proposed draft rules and believe they go a long way in making the process more efficient without compromising the quality of analysis and the rationale of the Urban Growth Boundary (UGB) process. That said, OAPA still has the following significant concerns about the current draft of the rules:

- **Needed housing and implementation of the UGB Streamlined Rule (OAR 660-038-0020(12)).** This section of the proposed rule states that cities with a population of 25,000 or more in their UGBs must satisfy the requirements of the needed housing statute, ORS 197.296. Briefly, that statute requires that cities periodically inventory buildable lands and conduct an analysis of housing needs. In addition, once this work is completed, the city must look at the housing needs analysis and the current mix and density of housing in its community, and determine whether changes are needed to the mix and the density housing to respond to those needs identified in the housing needs analysis.

While proposed OAR 660-038-0020(12) provides what appears to be a simple path for satisfying ORS 197.296, we question whether subsection (12) by itself and as written...
provides a city using the new rules in Division 38 with sufficient legal support to complete a UGB amendment under proposed Division 38 that also satisfies ORS 197.296. The Division 38 rules focus on mix and density of housing, with an assumption built in that over time a city will see more efficient use of residential land in the form of more units/developed acre (presumably supported by the research presented to the advisory committee from the University of Oregon). However, UGB amendments must also satisfy the Goals – in this case Goal 10. OAPA is not convinced that simply following proposed OAR 660-038-0020(12) and the other new requirements in Division 38 regarding mix and density are sufficient by themselves to ensure a city can develop a legally defensible UGB expansion. In other words, we are concerned that meeting Division 38 may not meet Goal 10, especially where ORS 197.296 imposes additional requirements. For example, one of the key elements of a housing needs analysis under ORS 197.296, is an examination of the demographic and economic factors that influence both the demand for and the supply of needed housing. The draft rule neither requires this analysis nor provides an alternative that is simpler to do in the spirit of the draft rule.

In addition, the plain language in proposed OAR 660-038-0020(12) needs further clarification to address the current requirements for ORS 197.296 and whether a city of 25,000 or more must still complete the Housing Needs Analysis (HNA) in order to inform and provide an adequate factual base for the mix and the density decisions it must make to satisfy Division 38.

- **Transferable Pathways (Proposed OAR 660-038-0020(5)).** This section of the rule limits the ability of the city to use the “traditional” method after it has used the simplified (Division 38) method only to “accommodate a particular industry use that requires specific site characteristics or to accommodate a public facility that requires specific characteristics,” as provided in ORS 197A.320(6). DLCD staff has stated that cities can use either method and we see no reason to restrict the method used to the narrow definition stated in this section. For example, cities should have a clear option on which path is used depending on their circumstances. A city with a comprehensive plan that is older and out of date may use the traditional method while updating their plan; a city with a new comprehensive plan may use the simplified method for an update.

- **Redesignation criteria for employment land (Proposed OAR 660-038-0150(3)(a) and (3)(b)).** Proposed OAR 660-038-0150(3)(a) requires a city to first consider redesignating commercial surplus for industrial uses, “provided the land is suitable to meet that need within the existing UGB.” OAR 660-038-0150(3)(b) requires a city to redesignate industrial surplus for commercial uses, “provided the land is suitable to meet that need within the existing UGB.” It is unclear what criteria will be sufficient to determine what is “suitable.” How will “suitable” be defined?

- **Analysis of serviceability (Proposed OAR 660-038-0210).** This section of the proposed rule attempts to fulfill the requirements of HB 2254 to address serviceability. As
mentioned in our testimony at the September 25, 2015 LCDC meeting, we had concerns about the serviceability requirement. Now that staff has suggested additional detail, we are concerned that the requirements are too vague and will be difficult and costly for cities to complete. The proposed rule seems to infer that the city must do a public facilities analysis for lands that they are considering to include in the UGB. One of the changes we proposed is more specificity on how a city measures and presents capacity. For example, when considering the capacity of the water system, is capacity expressed as a percentage of available supply? Or, is it measured in million gallons per day (MGD) and expressed as a ratio?

- **Treatment of Natural Hazards (Proposed OAR 660-038-0070 and proposed OAR 660-038-0130).** It is appropriate for the proposed rules to consider constraints on buildable land due to the presence of floodways, waterbodies, flood hazard areas, and steep slopes. However, OAPA is concerned about the selective hazard approach. For example, nowhere in the proposed rules is fire hazard mentioned. Considering that we have just had one of the worst fire seasons on record (2015), Oregon communities should be discussing where it is appropriate to site development in relation to areas of natural hazard. With most of Oregon Counties still in a declared drought status, drought is another hazard that should be considered as part of these rules.

The specific treatment of tsunami inundation zones in the proposed rule is also a concern. Proposed OAR 660-038-0070(1)(c) and OAR 660-038-0130(1)(c) identifies lands within the tsunami inundation zone established pursuant to ORS 455.446. However no reduction in development is required unless, “the city’s existing zoning classification of such areas prohibits or reduces residential development.” Furthermore, ORS 455.446 is specifically intended to apply to “Construction of certain facilities and structures,” namely critical and essential facilities. It is our understanding that very few cities have tackled the politically charged topic of reducing development densities, especially as it relates to residential and commercial lands, in the tsunami inundation zone. We fear that the proposed rule will allow cities to make decisions without having an important discussion with their citizens and property owners about tsunami inundation risk.

**AREAS FOR CLARIFICATION**

The following sections of the proposed rules are unclear to us and we suggest that LCDC modify the language to clarify the meaning.

- **Need for findings (Proposed OAR 660-038-0020(3) and (11).** These two sections appear to say the same thing. Are they different or is one of them superfluous?

- **PSU population forecast (Proposed OAR 660-038-0030(2) and -0100(1).** Must cities wait to use the streamlined process until they have a PSU population forecast? For cities outside Metro in Region 3 (Benton, Clackamas, Clatsop, Columbia, Linn, Lincoln, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill counties) that work will not be
completed until June 2017. Might these cities use a previously adopted population forecast?

- **Vacant residential parcels (Proposed OAR 660-038-0060(3)).** This section of the proposed rule states that vacant parcels are parcels at least 3,000 sq. ft. in size. What if a 3,000 sq. ft. parcel is not a legal lot?

- **Reference to updated SLIDO information (Proposed OAR 660-038-0160(2)(b)(A)).** This section defines land that is subject to significant development hazards, as land that “consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014...” Assuming that DOGAMI will update this information over time, LCDC may want to reference the most up to date landslide information data from DOGAMI. Cities should not be held to reference older data if new data is available.

- **Inclusion of storm water in impacts and serviceability analysis (Proposed OAR 660-038-0010(7) and -0210, and -0170(9)).** Impacts on storm water are included in the boundary location factors (proposed OAR 660-038-070(9)) but not in the Serviceable analysis (proposed OAR 660-038-0020 and -0210). Should storm water be removed from proposed OAR 660-038-0170(9) or included in the serviceability analysis?

- **Threshold criteria for “impracticable to provide necessary public facilities or services” (Proposed 660-038-0160(5)(c)).** This section of the proposed rule states that land isolated from existing service networks would require the city to evaluate the impracticality of service by evaluating the “likely amount of development”, “likely cost of facilities and services”, and “any substantial evidence collected or presented to the city regarding how similarly situated land has, or has not, developed over time”. This terminology is vague and invites litigation.

**A SUGGESTED “TO DO” LIST FOR AFTER THE RULE IS PASSED**

It is obvious that many people worked very hard to get us to where we are today. OAPA understands that resources—both financial and personnel—are often in short supply. That said we would like to make a few suggestions for future evaluation of this rule, periodic review, affordable housing, and future rule making activities.

- **Evaluation.** ORS 197A.305(5) states that starting on or before Jan. 1, 2023, the “Commission shall evaluate, every five years, the impact of the implementation” of the proposed rule changes. While the statute dictates that the evaluation consider, “population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations,” OAPA urges the Commission to take a broad view of “other considerations” and start thinking now about how it can measure and evaluation such
things as:

- What resources (time, personnel, technology, consultants, funding) are necessary to conduct both a traditional UGB evaluation and a streamlined evaluation for comparable cities? Is the streamlined process truly streamlined?
- What steps of the process are taking just as much time or resources to complete (or possibly more time and resources)?
- Have any of the assumptions about residential or employment development patterns and densities changed that would require changes in the streamlined rules?
- Are there data or studies that DLCD can conduct before the evaluation to get a better gauge of residential and employment redevelopment?
- Has policy direction (for example, policies to reduce greenhouse gas emissions or improve health outcomes through community design for active transportation), funding priorities for infrastructure, technology, or market demand suggest changes to residential or employment development patterns and densities in the streamlined rules?
- Which elements of the new streamlined rule are appealed and what are the issues brought up in those appeals?
- What has been the feedback from cities using the new rule? Have they offered feedback on what worked well and what elements require clarification or reworking?

DLCD staff and LCDC should be thinking now about what kind of information—and how staff will collect that information—to help staff conduct an evaluation in five years.

- **Periodic review.** ORS 197A.325(3) states “...when a city evaluates or amends the urban growth boundary of the city pursuant to [the new streamlined process currently under development], the city is not required to commence or complete periodic review. The commission shall, by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of the city comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs.”

Oregon has 19 statewide goals with which all cities and counties are required to comply. What once was a robust effort to keep comprehensive plans up-to-date—albeit a sometimes politically fraught, labor and time intensive, and expensive process—has virtually ceased to exist. The Oregon Legislature has slowly chipped away at the requirements for cities and counties to update its comprehensive plan and only eight cities\(^1\) have initiated periodic review since 2007. Counties and cities under 2,500 are no longer required to conduct periodic review, and when larger cities do, they are only required to focus on five issues relating to Goal 9 (Economic Development), Goal 10 (Housing), Goal 11 (Public Facilities and Services), Goal 12 (Transportation), and Goal 14 (Urbanization). In the meantime, compliance with regulations specifically triggered by periodic review are never

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\(^1\) Forest Grove, Hermiston, Junction City, Keizer, Lake Oswego, Pendleton, Portland, The Dalles, Tigard, and Troutdale.
At the same time, financial support to update sections of plans through the Post Acknowledgement Plan Amendment (PAPA) process has decreased over time, from almost $3 million in the 1999-01 biennium to just $1.5 million in the 2015-17 biennium (numbers not adjusted for inflation). During that time, Oregon communities have grown from 3.4 million in 2000 (US Census) to over 4 million in 2015 (PSU certified population estimate). Oregon is estimated to add an additional 768,000 people over the next 15 years (Office of Economic Analysis). Now should be the time when we are investing in our communities to position them to address natural hazards, climate change, changing demographics and so much more. OAPA believes the time is ripe to have a conversation about keeping comprehensive plans up to date and urge the Commission to be part of that conversation.

- **Affordable housing.** OAPA detailed our concerns that the proposed rule changes for the streamlined UGB process will result in less analysis about needed housing for lower income Oregonians (above). LCDC’s policy agenda and current efforts to study this issue are important to make sure that statewide policies promote the development of affordable housing, and don’t result in lost opportunities to better serve lower income Oregonians.

- **Future rulemaking and involvement of the planning community.** As we’ve stated before, OAPA understands the time commitment it takes to update regulations and commend the efforts of DLCD staff. Smart people have done some good, hard work to get the proposed rules to LCDC. That said, OAPA would like to work with the Commission and DLCD staff during future rulemaking efforts to work with more than just an advisory committee and also tap into the expertise of the hundreds of professional planners that implement Oregon’s.

For example, OAPA worked with DLCD to conduct a webinar about the proposed rules on November 9, 2015. We could do more and include an internet survey to get feedback about which parts of the proposed rule will present challenges, and which are well crafted. We would also like to work with DLCD staff to expand public outreach efforts to planners around rulemaking processes to analyze regulatory alternatives—focus groups of planners can review those alternatives and identify issues with implementation and make suggestions to overcome those issues. OAPA is ready to be a committed partner on future rulemaking efforts.

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2 These regulations include:
- ORS 197.660–197.670: Special residences
- ORS 195.060–195.085: Urban service agreements (agreements are addressed in the UGB streamlining legislation)
- ORS 195.110: School facility plans for large school districts
- OAR 660-012-0020: Elements of a transportation system plan
- OAR chapter 660, division 13: Airport Planning
- OAR chapter 660, division 23: Procedures and Requirements for Complying with Goal 5 planning program across the state.
Thank you again for the opportunity to provide feedback on the proposed rules to implement 2013 HB 2254.

Sincerely,

Jason Franklin, AICP
President of the Oregon Chapter of the American Planning Association