January 17, 2017

Greg Macpherson, Chair
Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

RE: Testimony from the Oregon Chapter of the American Planning Association on Item 9 - Proposed Rules for HB 4079 Pilot Program for Affordable Housing.

Dear Chair Macpherson and Members of the Commission:

The Oregon Chapter of the American Planning Association (OAPA) provides this testimony on the draft rules for implementing the 2016 HB 4079 Pilot Program for Affordable Housing. Thank you for the opportunity to provide this testimony. OAPA represents over 850 professional and citizen planners in Oregon committed to promoting the art and science of planning in Oregon.

OAPA’s testimony on the draft rules include a combination of larger, bigger picture perspectives combined with detailed line-by-line comments on the draft rule.

Policy Concerns
OAPA testified on the original legislation, and presented a number of concerns over expediting the UGB expansion process for affordable housing. You will find a copy of our testimony attached to this letter.

Acknowledging that the rulemaking process resulted in a consensus document and that the prospect of pilots is imminent, OAPA recommends that the Commission ensure the new rules are clear enough for local governments to use and present proposals for the development of affordable housing.

Some housing planners might urge requiring lower MFI levels (e.g. 60% vs. 80%) and/or a higher percentage of affordable units in any mixed-income development, but the Advisory Committee landed at 80% and 30% respectively. There also is language allowing for “extra credit” in the grading if a jurisdiction sets more ambitious targets. The Commission could choose to reexamine these numbers, perhaps after hearing from the general public and anyone from the housing development community.

The rules in and of themselves are not as significant a concern as the potential for this initiative to undermine current and ongoing efforts to produce affordable units within the UGB, where opportunities for jobs, transit, and services exist, rather than on
the margins of the community where many, if not all of these, are lacking. OAPA’s position is that the Commission should be encouraging local governments to adopt many of the tools detailed in the rule, not merely to justify proposals for a pilot but because they lay the foundation for more production of affordable housing within the UGB.

Section 3 of HB 4079 (and the Purpose section of the Rule) makes it clear that the purpose of the Bill is to encourage local governments to provide an adequate supply of land within the UGB dedicated to affordable housing and to develop affordable housing on that land. Section 5(1)(d) of the Bill also requires LCDC by rule to specify local government efforts that demonstrate that the local government is encouraging development of needed housing within its existing UGB. We need to be careful that the exception to the adopted policies of promoting housing choices within the UGB does not become a policy itself.

In support of maintaining that focus, it is important that the required showing in the rule that the development of this kind of project is unlikely to occur within the UGB be more than a minimal assertion of difficulty. If it is important for local governments to adopt the tools listed and encourage their deployment within the UGB toward affordable housing development, there should be a tough “but for” test to justify a pilot outside the UGB, e.g. neighborhood opposition should not in itself be a justification.

Time will tell whether applications will flow and affordable housing will be produced. Past experience suggests that upfront infrastructure costs and the absence of transit and supportive services on the margins will be as important as land value in the calculus of providing affordable housing and opportunity for its residents. In pursuing this experiment, we need to be careful what we ask for. A lot of our land use and housing policy is in play.

Comments on the Draft Rules
The rest of OAPA’s comments focus on the rule language itself, raising questions on the meaning of certain sections, and recommending clarifications in others.

Page 2

- Proposed definition of “Public Facilities and services” – OAPA recommends modifying the definition to read as follows:
  - “Public facilities and services means sanitary sewers, domestic water, fire protection, parks, recreation, streets and roads, and mass transit.”
- Line 32, proposed rule at OAR 660-039-0020(3)(d) – please clarify how a local government will demonstrate that the pilot project site does not include high-value farmland. Will the most recent data from the Natural Resource Conservation Service (NRCS) serve as adequate evidence?
Page 2 and 3
• The pre-application requirements under 660-039-0020(3) mirror the application requirements under 660-039-0020(6). OAPA recommends clarifying the rule that submittal of the materials under 660-039-0020(3) is not required again for a completed application under -0020(6).

Page 3
• OAR 660-039-0020(6)(d)(F) – regarding the list of amendments to the qualifying’s city’s comprehensive plan and land use regulations, please clarify what this list should constitute. For example, is a list of sections to be amended sufficient, or will the local government need to identify and list specific amendments by section.

Page 4
• OAR 660-039-0020(6)(d)(G) – what information will be required from a local government regarding the domestic water and sanitary sewer services that are either required or available to serve a site? Nothing is listed under (G).

• OAR 660-039-0020(6)(j) – for the data required under (j), what source of data is acceptable, for example, would American Community Survey data suffice? In what form does the data needed to be presented?

Page 7
• OAR 660-039-0040(3) - regarding transit service for local governments over 25,000 in population, see lines 24 through 28 – please clarify how a local government would satisfy this rule by showing mass transit service would be provided concurrently with development of the affordable housing units? Would this demonstration include data from a transit provider that service has been programmed to be provided at a certain point in the future, or must be available when the units are available for sale or rent?

Page 8
• OAR 660-039-0050 – this section refers to a 100-foot buffer from adjacent lands in resource zones in (1), and refers to farm and forest uses in (2). Please clarify if the buffer is required based on whether adjacent land is in a resource zone, engaged in some resource use, or both.

Page 9
OAR 660-039-0060(1) – OAPA recommends amending this rule as follows for clarity, with the proposed addition shown in bold and underline:
• A qualifying city submitting a pilot project nomination must demonstrate that its acknowledged comprehensive plan, acknowledged land use, zoning, and/or development code...”.
• The purpose for this change is to clarify that the city’s land use regulations have been amended to included affordable housing measures, regardless of the term used to describe them (e.g. zoning or development).
Page 10
- OAR 660-039-0060(3)(C)(iii) – please clarify what types of housing are included under the term “multiple unit housing.” OAR 660-008-005(5) defines multiple housing to mean attached housing where each dwelling units is not located on a separate lot. Please clarify if this would include housing types such as duplexes, triplexes, and fourplexes, as well as buildings with five or more units.

Page 11
- OAR 660-039-0060(3)(F) – please clarify that this rule refers to the amount of land in high density residential zoning districts. As written, it refers to an amount of districts.

Page 16
- OAR 660-039-0100(1)(d)(I) – was the intent of this rule to have the qualitative assessment prepared every year?

Thank you again for the opportunity to comment.

Sincerely,

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