Oregon
Kate Brown, Governor

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March 26, 2015

**To:** The Honorable Representative Brian Clem, Chair
House Committee on Rural Communities, Land Use and Water

**From:** Bob Rindy, Legislative Coordinator
Department of Land Conservation and Development

**Regarding: House Bill 3214**

House Bill 3214 would amend state laws concerning "exceptions" to land use planning goals. The amendments would indicate that:

> "*a local government is not required to take an exception to a goal related to agricultural use or forest use to change the zoning of a lot or parcel that has never been zoned, pursuant to the goal and a comprehensive plan designation, for the protection of agricultural use or forest use.*"

Based on the remarks of Dave Hunnicutt to the committee on March 24, it is our understanding that this bill is in response to a particular circumstance in Washington County regarding a property that is zoned rural residential. However, rather than address that particular situation, this bill proposes a broad change to state law regarding exceptions, and would therefore effect land use planning and farm and forest land protection statewide.[1]

There are approximately a million acres of "exception land" in Oregon outside urban growth boundaries and it is likely the majority of this land was "never zoned for farm or forest use." These lands are commonly referred to as "exception areas" because they consist of productive farm and forest soils and are interspersed with working farms and forests. As such, an "exception" to farm or forest protection requirements was required in order for counties to designate them for uses other than farm or forest. The department believes this bill is aimed at these areas, although the bill's intent is unclear. However, because of the broad wording of the bill it would probably apply to other areas besides exception areas.

The exceptions process is a core element of Oregon's agriculture and forest land protection and provides needed flexibility. The exceptions process includes many provisions that relate to "rezoning" because it is vital to consider surrounding agriculture and forest uses when an exception area is proposed for rezoning. The department believes this bill would do irreparable

[1] We note that neither the department nor the Land Conservation and Development Commission (LCDC) have been approached by Mr. Hunnicutt with a request to consider his concerns about current exceptions rules regarding his client, nor has he requested that the department or the commission consider any changes to these rules due to the special circumstances of his client.

harm to current land use processes regarding exceptions and farm and forest land protection. Below are some of the problems it would cause, but because of the bill's breadth we are concerned that additional unforeseen results are likely.

- The term "never been zoned … for the protection of agricultural use or forest use" is subject to multiple interpretations. Do historic farm or forest zones adopted by counties prior to the statewide land use program fall under this definition? Are records available regarding such zoning? Does the term include zones labeled on county zone maps as "farm", "agriculture, "forest," or "mixed farm forest," often consisting of smaller farms or woodlots, but which do not meet standards in law for farm use or forest use zones (and thus are probably adopted under exception requirements)? There are many such zones. The wording of the bill does not adequately convey legislative intent on this and as a result the Land Use Board of Appeals (LUBA) and the courts would be required to interpret its meaning on a case by case basis.

- The requirements for goal exceptions are a longstanding and integral part of Oregon's farm and forest protection program, and they are a key method to provide needed flexibility to land use requirements. For example, an applicant may demonstrate that there are particular "Reasons" for an exception to farm or forest protection requirements (ORS 197.732(1)(c)). If such Reasons are reasonable, an exception is approved by a county, and there are many examples of these. However, LCDC rules require that when an exception is approved, plan and zone designations must "limit the uses … to only those that are justified in the exception …. When a local government changes [uses] within an area approved as a "Reasons" exception, a new "Reasons" exception is required" (OAR 660-004-0018). This makes sure exceptions uses do not change to new uses that were never justified in the original exception and that may have vastly different effects on surrounding farm and forest land than the use originally justified. This bill would eliminate this core requirement and thus weaken the exception process since zoning could be changed at a later time to allow a different use unrelated to the initial Reasons and which would have different impacts.

- Public land, including state and federal land in many counties, is almost always un-zoned and typically has "never been zoned." Occasionally such public land becomes private land (through land swaps or other actions by state and federal agencies) and counties must then determine zoning. Since such land "has never been zoned" it would not be subject to exception requirements if this bill becomes law. That probably means that, under this bill, a county would be unable to zone this land as "exception land" regardless of soil types and existing land use patterns or development, or worse, the bill may imply that this land could be zoned for non-farm or non-forest uses without regard to soil types or the exceptions process. The intent of the bill is unclear, but this result is of serious concern to the department.

- Certain areas that are "designated" on county comprehensive plans as protected for farm or forest use but are not "zoned for the farm or forest use." For example, in some counties aggregate mining sites are labeled on zoning maps as aggregate mining use, even though they predominately consist of agriculture or forest soils. Under current law, when such sites are "reclaimed" after mining is concluded, they must be rezoned under statewide farm or forest requirements or exceptions requirements. Under this bill, it is unclear whether such sites could be converted to nonfarm or nonforest uses without regard to goal exceptions requirements, or whether the bill instead means that the exceptions process is unavailable for those sites. Either result is of concern.

- The legislature has authorized Metro area counties to plan for rural reserves. Rural reserves are typically areas with enhanced protection for farm land and as such new or expanded exceptions are more stringently regulated (since exceptions area uses often cause additional conflicts with farmland). LCDC rules for rural reserves (based on statutes at ORS 195.137 – 195.145) rely on the requirement for a new exception when land within reserves is rezoned. HB 3214 would remove LCDC's authority to use the exceptions process for certain lands in reserves, and as such some LCDC rules for reserves would be voided.

Please enter this memo into the record for the hearing on this bill. Thank you and the committee for considering this testimony.

If you have questions, please contact Bob Rindy, DLCD Legislative Coordinator, 503-934-0008, bob.rindy@state.or.us.

Copy: Greg Macpherson, LCDC Chair
Richard Whitman, Governor's Natural Resource Policy Advisor