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Chair Dembrow
Committee on Environment and Natural Resources
Oregon State Senate

January 30, 2018

RE: Senate Bill 88 Proposed Amendment – Testimony for Hearing on January 31st, 2019

Chair Dembrow and Members of the Committee,

Thank you for the opportunity to testify before you on proposed Senate Bill 88.

Multnomah County (County) participated in the development of the Bill and we want to especially thank Senator Dembrow for convening the group and facilitating the discussion. The County believes that this bill has the potential to assist many communities throughout Oregon. Multnomah County does have one specific concern and associated amendment related to the proposed legislation that we would like to discuss with this body. The County supports the Bill and respectfully requests an amendment to allow Accessory Dwelling Units (ADUs) to be sited within an existing Urban Reserve.

Requested Amendment

Multnomah County respectfully requests that Section 2 be amended to remove (2)(a) so that ADUs may be established within an Urban Reserve:

~~(a) The lot or parcel is not located within in an area designated as an urban reserve as defined in ORS 195.137;~~

Accessory Dwelling Units in Urban Reserves

As currently proposed SB 88 would preclude the ability to site an ADU within an Urban Reserve. The County believes this provision of the legislation should be removed in order to allow for the development of ADUs within existing Urban Reserves. The rules that govern what can occur within an Urban Reserve (OAR 660-21) are primarily focused on preserving undeveloped land so that it can be efficiently urbanized when it is brought into the UGB. Allowing ADUs within existing Urban Reserves is appropriate given those land use designations are intended to reserve land for inclusion within a UGB. Land within the UGB is committed to urbanizing at a higher density, if we are going to allow ADUs outside of the UGB it seems appropriate that they be permitted in the area that has been identified to be within the UGB.

ADUs can be accommodated within the Urban Reserve without impacting the ability for the properties to efficiently urbanize by requiring ADUs to either be within, attached, or clustered near the primary dwelling on the property. SB 88 as currently drafted only precludes ADUs within existing UGBs. Current rules that govern planning and zoning within an Urban Reserve (OAR 660-21) would require existing ADUs to be accommodated if a new Urban Reserve is established. Likewise these rules would also require the right to construct an ADU to be accommodated as well if a new Urban Reserve is established.

If new Urban Reserves that are established will have the potential to have ADUs it seems appropriate that existing Urban Reserves also be afforded the opportunity.

In order to explain why we believe it is appropriate to allow for ADUs within an Urban Reserve we believe it is important to place the request in the context of what an Urban Reserve is and how it is intended to be managed. Oregon Administrative Rule (OAR) 660-021-0000 provides the purpose statement for the establishment of Urban Reserves:

This division interprets and implements ORS 195.137 through 195.145 and statewide planning goals pertaining to Urbanization. Rules in this division authorize planning for areas outside urban growth boundaries to be reserved for eventual inclusion in an urban growth boundary and to be protected from patterns of development that would impede urbanization.

Urban Reserves are allowed to be established to assist a City with planning beyond the 20 year horizon that occurs within a UGB. Specifically Urban Reserves allow a City to plan for their 30 to 50 year needs. OAR 660-021-0010 provides the definition of an Urban Reserve as:

- (1) "Urban Reserve" means lands outside of an urban growth boundary that will provide for:**
 - (a) Future expansion over a long-term period; and**
 - (b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.**

OAR 660-021-0040 provides the Planning and Zoning rules for regulating Urban Reserves. Each of those standards (1-7) are provided below along with discussion regarding the County's proposed amendment:

- (1) Until included in the urban growth boundary, lands in urban reserves shall continue to be planned and zoned for rural uses in accordance with the requirements of this rule and the applicable statutes and goals, but in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the urban growth boundary.**

SB 88 is a proposal to amend Oregon State Statute to allow ADUs as a rural use. Allowing ADUs in the Urban Reserve is consistent with this rule in that the County would still be allowing a rural use (ADU) to exist within the Urban Reserve.

- (2) Urban reserve land use regulations shall ensure that development and land divisions in exception areas and nonresource lands will not hinder the efficient transition to urban land uses and the orderly and efficient provision of urban services. These measures shall be adopted by the time the urban reserves are designated, or in the case of those local governments with planning and zoning responsibility for lands in the vicinity of the Portland Metropolitan Area Urban Growth Boundary, by the time such local governments amend their comprehensive plan and zoning maps to implement urban reserve designations made by the Portland Metropolitan Service District. The measures may include:**
 - (a) Prohibition on the creation of new parcels less than ten acres;**
 - (b) Requirements for clustering as a condition of approval of new parcels;**

- (c) Requirements for preplatting of future lots or parcels;**
- (d) Requirements for written waivers of remonstrance against annexation to a provider of sewer, water or streets; and**
- (e) Regulation of the siting of new development on existing lots for the purpose of ensuring the potential for future urban development and public facilities.**

SB 88 allows for ADUs and it specifically precludes the ability for a land division to occur on the property if it would result in the primary home and ADU being sited on separate lots (Section 2(4)(a)). The ADU use, if allowed within Urban Reserves can be managed to be consistent with this rule. Specifically subsection (e) identifies that siting restrictions can be required by local government. A County could regulate how ADUs are developed within Urban Reserves, requiring them to be clustered or attached to the existing dwelling. This would ensure that when the property is brought into the UGB the undeveloped portion of the property can be efficiently urbanized.

(3) For exception areas and nonresource land in urban reserves, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning in effect as of the date of establishment of the urban reserves. Such regulations shall remain in effect until such time as the land is included in the urban growth boundary.

SB 88 would allow for the development of a new rural use on non-resource land. If SB 88 was amended to allow ADUs within the Urban Reserve this would be considered a more intensive use as it would increase the residential density. The term zone amendment is not specifically defined within the rule or within the ORS 197.015, so it is unclear if this term describes only a zoning map amendment where the actual zone that applies to a property is changed, or if this term is intended to also not allow a text amendment to the existing zone. In order to allow for ADUs within and Urban Reserve this rule may need to be amended.

(4) Resource land that is included in urban reserves shall continue to be planned and zoned under the requirements of applicable statewide planning goals.

As currently drafted SB 88 does not allow for establishment of ADUs on resource land (farm and forest land).

(5) Urban reserve agreements consistent with applicable comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserves.

A jurisdiction that desires to allow for this use in an existing Urban Reserve can seek to amend their urban reserve agreement if it is ambiguous or specifically precludes the ability to allow the use.

(6) Cities and counties are authorized to plan for the eventual provision of urban public facilities and services to urban reserves. However, this division is not intended to authorize urban levels of development or services in urban reserves prior to their inclusion in the urban growth boundary. This division is not intended to prevent any planning for, installation of, or connection to public facilities or services in urban reserves consistent with the statewide planning goals and with acknowledged comprehensive plans and land use regulations in effect on the applicable date of this division.

As currently drafted SB 88 would not allow *urban levels of development* because the bill would establish the ability to have an ADU on rural property thereby making the ADU a rural use.

(7) A local government shall not prohibit the siting of a single family dwelling on a legal parcel pursuant to urban reserve planning requirements if the single family dwelling would otherwise have been allowed under law existing prior to the designation of the parcel as part of an urban reserve.

If SB 88 is passed, this part of the rule would require ADUs to be accommodated in future Urban Reserves. Likewise, rural residential land that is allowed to develop with ADUs could eventually be located within an Urban Reserve. If they will be permitted within future Urban Reserves why not allow them within existing Urban Reserves?

Support for SB 88

The County would like to highlight some aspects of the current Bill that we believe are important to retain.

1. Short Term Rentals: The ability to regulate Short Term Rentals (STRs) is an important decision for each community to make. The County strongly supports the ability for each community to decide if they want to allow or not allow STRs.
2. Time, Place, and Manner Restrictions: The ability to regulate a specific use consistent with the community's desires is appropriate. The County strongly supports the ability for local jurisdictions to be able to implement regulations with Time, Place and Manner restrictions.
3. No mandate: As currently drafted the Bill would allow a County to decide whether ADUs can be permitted within their jurisdiction. The County strongly supports this aspect of the proposed legislation and believes each community within the state should be afforded the opportunity to decide whether or not to allow ADUs.
4. Not on Resource Land: As currently drafted the Bill would preclude ADUs from being established on resource land. The County strongly supports restricting ADUs to rural residential lands. State law already allows for the establishment of farm help dwellings on farm land and it also allows for the establishment of health hardship dwellings on all resource land.

Thank you for the opportunity to address this committee. The County appreciates the work you all do on behalf citizens of the State of Oregon. Please let me know if I can assist with better understanding our comments as you review this proposed legislation.

Respectfully,

~MC~

Michael Cerbone, AICP
Land Use Planning Director
Multnomah County