To: House Committee on Human Services and Housing
House Committee on Agriculture and Land Use
From: Al Johnson
Date: April 2, 2019
Re: 2019 HB 2001 and HB 2003

This memo addresses two issues: (1) the need to assure a true 20-year planning period; and (2) the advisability of directly implementing Oregon's existing Fair Share policies with immediate, widespread, and minor deregulation of single-family zoning areas before incurring the costs, delays, and controversies entailed in implementing HB 2003.

Getting Real About the "Next 20 Years"

The term "next 20 years" recurs throughout the Needed Housing Statute, both in its current form and as amended. In 2001, the legislature attempted to assure that the 20-year planning period would not continue to be eroded by appeals and delays, as it had in the past, sometimes resulting in actual planning periods of 10 years or less.

As amended, ORS 197.296(2) provides that

> "the 20-year period shall commence on the date initially scheduled for completion of the periodic or legislative review."

Unfortunately, that has not solved the problem. Cities like Bend have seen their actual planning period cut almost in half as the result of delays from appeals, remands, and other causes. One result is constraints on already limited land supplies that are contrary to legislative intent. Another is an unintended reward for appeals and other delaying measures that carry no penalty for housing opponents. Yet another is the need for cities like Bend to begin new updates prematurely to insure that they can finish in time to get an actual 20-year planning period next time.

In order to assure that cities get the 20-year planning periods that ORS 197.296(2) is intended to provide for, the statute should be amended to say that

> "the 20-year period shall commence on the date initially sheduled, **or on the date rescheduled following a remand or other delay**, for completion of the periodic or legislative review."

The 20-year planning period is nothing new. It has been an essential component of Oregon's land use program from the beginning. Our original urban growth boundaries were established "to accommodate the need for further urban expansion taking into account . . . population needs for the year 2000," *as recommended by Guideline 1 to the Urbanization Goal.* That gave local governments and LCDC 5 years to get ready, and most jurisdictions made it.

The need for a full 20-year planning period is greater today than it was back in the 1970's when urban growth boundaries were first being established. Our cities' original urban growth boundaries were generous, for a variety of reasons, including the absence of subsequent legal developments that have generally tightened standards for expanding urban growth boundaries. We are now almost 40 years out. Supplies are tighter than ever. Our state, regional, and local planners need that full 20 years to do coordinated, effective, and realistic long-range planning for our urban areas.

Oregonians of all income levels need housing that is affordable, accessible, and liveable. And our rural farm and forestlands still need to be protected from urban growth pressures.

Simplifying Fair Share

Both HB 2001 and HB 2003 reinforce and implement the longstanding "Fair Share" element of Oregon's lstate land use policies, including the Statewide Housing Goal (Goal 10), LCDC's rules and rulings interpreting the Housing Goal, and Oregon's Needed Housing Statutes.

They do so in two different ways.

HB 2001 does it by immediate general partial deregulation, subject to future adjustments based on experience. HB 2003 does it by delayed, area-specific, locally-enacted partial deregulation, based on production targets developed by a state agency based on a "fair share" methodology to be developed over the next few years.

HB 2003 follows a path marked out by other states, including New Jersey and California. It proceeds by centralizing and channeling a preliminary series of procedural and analytical tasks, leading to determinations of housing unit targets and allocations. That leads, eventually, to a less general set of regional and local deregulatory measures, which would have to find their way through the daunting Oregon post-acknowledgment amendment (PAPA) process.

HB 2001 follows the path marked out by Governor McCall, the 1973 legislature, and the LCDC's Agriculture, Forest Lands, and Urbanization Goals. Like HB 2001, those historic statewide land use measures had immediate and direct application: They set new, more stringent, limits on the authority of local governments to authorize urban and nonresouce land uses on rural and resource lands. Like HB 2001, those broad bans on urban and nonresource development were subject to future adjustment through the establishment of urban growth boundaries, through the exceptions process, and through future legislation adopted in the light of experience.

Although these strict new state-imposed constraints were based on "needs" for agricultural and forest lands, there was no requirement for studies, methodologies, tailoring, or, for that matter, citizen participation, in determining specific needs or allocations among or within Oregon's local land use jurisdictions.

Like the resource goals, HB 2001 is also direct and general in application, subject to adjustment where local governments demonstrate that adjustment is necessary. However, it is worth noting a key difference as well: Oregon's Statewide Agricultural and Forest Lands Goals limited local deregulation of rural lands and constrained supplies of urban lands. HB 2001 and Oregon's Statewide Housing Goal, limits local regulations that further constrain already-limited supplies of urban residential lands.

I respectfully suggest, that instead of launching both approaches at the same time, this legislature should put HB 2001 first, see how it works, and then move on to HB 2003 if it turns out to be necessary. Doing so will

minimize the costs, delays, and failures that other states taking the HB 2003 approach to regional fair share have experienced. It will also allow this legislature to reallocate funding to other housing priorities.

At the same time, the new law should relieve local governments of workload and budget anxieties. The proposed general expansion of opportunities for plexes throughout our large urban areas is unlikely to create significant additional impacts on infrastructure and service needs. Because it is a general dispersal of small-scale multi-family housing types, impacts will be gradual and dispersed, unlike those that happen when large new projects like hospitals and apartment towers come into a neighborhood.

No "reopening" of local plans should be necessary, and HB 2001 should so provide. HB 2001 should provide that it will operate directly as an overlay on plan maps and zoning maps, and that it will not require reopening of comprehensive plans or plan components such as transportation plans, sewer plans, neighborhood plans, and the like. Local governments should be free to do so, but that should not delay implementation. HB 2001 should direct them to conform their planning and zoning maps with prominent text boxes clearly explaining that the range of uses allowed in certain plan and zoning designations has been expanded to included plexes and providing links or other references for further information. Such informational changes to plan and zoning maps, whether in the form of text boxes, adjusted graphics, or both, should be considered ministerial and should not have to go through a formal post-acknowledgment amendment process.

As with protection of resource lands, there should be a mechanism for departures from state housing policy. That mechanism already exists. It is the reasons exceptions process, established by the statewide Planning Goal (Goal Two) and state statute (ORS 197.732). It already applies to requirements of the Statewide Housing Goal as well as to those of the Agricultural Lands and Forest Lands goals. HB 2001 should explicitly make the ORS 197.732 reasons exceptions process available for local governments seeking departures from requirements of HB 2001. As with all exceptions, local governments will have to justify any watering down of otherwise applicable state requirements, and state land use authorities will have the final say on whether they have made their case.

The HB 2003 path has proven to be a troubled one, for many reasons, including its focus on unit allocations, topdown allocation methodologies, and output goals in dealing with regulatory barriers that are only part of the problem and can be only part of the solution. Not surprisingly, commentators now recognize that the more appropriate and effective approach in dealing with regulatory barriers is to lower those barriers as necessary to give more room for markets, tax policy, subsidies, and other parts of the solution to play their roles.

As the most comprehensive recent review of New Jersey's unit based "Mt. Laurel" approach concludes:

> "The informational burdens and political turmoil that Mt. Laurel has suffered over its thirty-year history suggest, at least, that it might be worth giving an anti-restriction approach a try." Hills, "Saving Mt. Laurel," XL Fordham Law Journal (2013) 1610, 1644.