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House Committee on Energy and Environment
OFB Testimony on HB 2488
March 29, 2021

Chair Marsh and Members of the Committee,

Thank you for the opportunity to provide testimony today expressing concerns about HB 2488, which require a comprehensive update our land use planning goals – and potentially create a new goal - in an effort to address both environmental justice and climate adaptation.

The Oregon Farm Bureau (OFB) is the state’s largest agricultural trade association representing nearly 7,000 farm and ranch families across the state. OFB was one of the early proponents of Oregon’s land use planning system and has consistently advocated for the protection of agricultural land from conversion due to irresponsible development. A proper functioning land use system is critical to the viability of agriculture in this state and requires the highest level of protection. Preservation of agricultural land is critical - Oregon’s farms and ranches produce the healthy food and fiber needed to sustain our residents, nation, and global community. As it relates to climate change, Oregon’s agricultural lands also act as a carbon sink, providing critical sequestration benefits for the rest of the state.

While we appreciate our state’s commitment to combating climate change, addressing environmental justice, and ensuring that our land use planning process is inclusive for all Oregonians, we have substantial concerns about HB 2488 and the upcoming -2 amendment. A new land use planning goal is not necessary to ensure that climate change or environmental are addressed by Oregon’s land use planning system. Goal 1 is designed to ensure that the public is involved in every aspect of the planning process, and it the foundation of our system and can adequately address environmental justice issues around access to the process, while the remaining goals can ensure that our state is adequately planning for our changing climate while addressing environmental justice issues.

Despite our long standing as stakeholders in land use planning decisions and strong desire to be partners in the implementation of Oregon’s land use planning system, our organizations were not engaged in the development of this bill and did not get a meeting request from proponents to discuss it until last week. As a result, while we think the intent behind HB 2488 is positive, we have several concerns about the bill as drafted and as modified by the -2 amendment as it has been described to us:

Changes to the land use planning goals are not needed. Oregon’s land use planning goals already incorporate climate and environmental justice considerations throughout Oregon’s 19 land use planning goals. Senate Bill 100 directed DLCD to create statewide planning goals and guidelines to be used by state agencies and local governments in preparing, adopting, amending, and implementing comprehensive plans. Oregon’s 19 goals are general expressions of state policy and the guidelines are suggested approaches designed to assist local governments and state agencies in carrying out the goals. Once the goals were adopted, each city and county in Oregon was required to make its land use decisions and to prepare comprehensive land use plans in compliance with the goals. Once LCDC acknowledges that a local government’s plan and land use regulations comply with the statewide goals, the local government must make land use decisions in compliance with the acknowledged plan and regulations.

As it relates to climate change, Oregon’s land use planning system by definition supports climate friendly planning, encouraging clustered urban development and supporting the maintenance of agricultural and forestry lands, which are major carbon sinks. When SB 100 was passed, preservation of farmland was a top priority. As Governor Tom McCall stated to the legislature, "...sagebrush subdivisions, coastal condomania, and the ravenous rampages of suburbia in the Willamette Valley all threaten to mock Oregon's status as the environmental model for the nation."¹ It was this concern that put farmers on the forefront of crafting this policy. In concert with SB 100, the state legislature also enacted SB 101, which introduced the “Agricultural Land Use Policy” now codified in ORS 215.243. This policy represents the same concern expressed by Governor McCall, in that fragmentation and conflicting uses threaten the existence of agriculture operations.

Statewide Planning Goal 3 mandates that agricultural lands must be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest, and open space. Goal 3 generally calls for limiting specific dwellings and uses on farmland, creating strict standards for review of land divisions, establishing minimum lot sizes in EFU zones, as well as containing urban and rural development.

While we appreciate HB 2488’s desire to protect agricultural lands for carbon sequestration, Land Use Planning Goal 3, coupled with Oregon’s statutory policy on agricultural lands, already ensures that agricultural lands are not converted away from farm use. While climate science was not as developed in 1973 as it was today, Goal 3 was written with agriculture’s intrinsic environmental benefits in mind. HB 2488’s language calling for the preservation of agricultural lands would at best be duplicative, and at worst could fundamentally alter decades of clarity about how to best protect our farmland from development.

As it relates to environmental justice, Goal 1 ensures robust public participation from all impacted parties to a land use decision, and the remaining goals ensure that the land use planning system is approached with environmental justice in mind. Indeed, our entire land use planning is predicated on the fact that all communities are better off if we are mindful of where we site specific uses and limit conflicting uses. The existing system is more than capable of utilizing Goal 1 and working within our existing goals to ensure that environmental justice issues are addressed.

¹ Or. H. Journal, 57th Legislative Assembly, at J-310, (1973) (Governor Tom McCall, Legislative Message to a Joint Session of the Oregon Legislature, (January 8, 1973)) (transcript available in Oregon House Journal at 310-315).

Therefore, if the legislature wants to ensure that our communities of color, historically disadvantaged communities, and those who feel disenfranchised have a seat at the table in planning decisions, the legislature should undertake a focused review of Planning Goal 1, instead of creating a dual goal with climate adaptation. Everyone in Oregon should have equal access to their government, access to planning materials in a way that allows the public to understand consequences of projects, and sufficient notice for those who would have a material interest in a project. We support increasing participation for those who do not feel like they have access to their government and making sure that information is readily available for those who want to weigh in. The focus should be on ensuring that environmental justice considerations are brought forward and heard, not on an amorphous goal related to carbon policy.

Unfortunately, the -2 amendment actually appears to limit public engagement in local land use decisions. Specifically, the -2 states, “(4) Notice is not required to be delivered to any property owner under ORS 197.047, 215.503 or 227.186 based on a rule, land use regulation or land use decision that enforces or implements the climate justice goal.” This section of the -2 created conflict within Goal 20 itself, as it would possibly prevent landowners from historically disadvantaged communities, communities of color, or rural Oregonians from being able to track and weigh in on implementation of this goal.

The goals of climate change adaptation and mitigation and environmental justice for disadvantaged communities often conflict. One of our primary concerns with HB 2488 is how it will resolve the conflicts that can exist between meeting our climate adaptation goals and protecting environmental justice communities. As drafted and in the amendment, HB 2488 fails to acknowledge that the goals of climate change adaptation and mitigation may be at odds with the goals of environmental justice and racial equity. For example, critics of current greenhouse gas reduction programs have noted that policies may actually cause disparate impact on historically disadvantaged and low wealth communities. Moreover, our planning system and certain environmental regulations have contributed to a system of inequity, especially for communities of color and those living below the poverty line. It is unclear from the bill whether the required changes to comprehensive plans and subsequent planning decisions made in the name of climate adaptation will be subject to the same equity review that other planning decisions will.

While we believe that the current system is more than able to address the modern challenges presented by climate change and the need to proactively engage to ensure environmental justice communities are protected, there are several conflicts that could be presented between these two concepts that must be addressed.

For example, a local government may update its comprehensive plan in compliance with HB 2488 and deny or condition approval of an affordable housing project on the grounds that it is located too close to a transportation corridor, and that would negatively impact the health of the residents because of exposure to diesel particulates. The conditions of approval may include setbacks, mandatory HVAC systems, or other proscriptions that essentially drive the price of the homes up to a point where they are no longer in the realm of affordability, which works against supporting those in historically disadvantaged communities.

In the agricultural sector, this conflict could present itself where climate goals favor the protection of agricultural lands to meet our greenhouse gas reduction goals, while environmental justice goals may favor expansion of urban growth boundaries onto agricultural land to prevent the gentrification that is harming disadvantaged communities. In another scenario, an on-farm housing project may be denied land use approval because of the perception that living on farm is going to cause increased exposure to harmful conditions, but denying that housing option directly impacts the ability of those, mostly in the Latinx population, from getting access to free OSHA-regulated housing and may subsequently cause greater greenhouse gas emissions by forcing employees to drive from areas within the growth boundary out to rural Oregon to work.

It is unclear from the amendment how these conflicts will be resolved – the Goals are not supposed to conflict with each other, and comprehensive plans are supposed to be in line with the each of the goals. It is unclear to us at this time how local governments will be expected to comply with the new Goal 20 if a proposed project causes conflict within the goal itself or with other goals.

This bill duplicates work the governor’s office is already pursuing. OFB has been closely engaging with the Governor’s Office around the development of SB 286, which would reconstitute the environmental justice task force within the Environmental Quality Commission, and develop a mapping tool to help aid Oregon’s natural resource agencies in their approach to addressing environmental justice issues. It is unclear how HB 2488 and SB 286 will work together, and could cause conflict between the two efforts. This work, and particularly the mapping exercise proposed by HB 2488, seems entirely duplicative of the mapping exercise contemplated by SB 286, and which has been developed over the course of months with the Governor’s Office and Racial Justice Council. DLCD should use the map that will be developed as part of SB 286, and not create their own duplicative, and much more confusing, map.

The bill is unclear in how it would engage local governments in this work. Our land use planning system is reliant on local government investment to function – this bill is unclear whether and how local governments would be engaged in the implementation, whether there is funding for their work, and how local governments would work with the state on implementation.

The bill is inadequately funded. As drafted, the bill proposes to invest \$850,000 to significantly alter Oregon’s land use planning system, which would require code changes by nearly every local government in the state. Presently, the Governor’s Recommended Budget sets aside \$800,000 for a STUDY of these ideas. The changes proposed by this bill would cost our state and local governments millions of dollars. This bill does not provide adequate resources to undertake a project of this magnitude, and it is unclear how the agency could adequately complete this work without sufficient funding.

We appreciate the opportunity to testify on HB 2488, and welcome any questions you have.

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