OREGON PROPERTY OWNERS ASSOCIATION

House Committee on Energy and Environment
House Bill 2488 Letter of Opposition

March 29, 2021

Chair Marsh and Committee Members:

We write in opposition to the dash-2 amendments to House Bill 2488, and ask that you reconsider this proposal.

The fundamental problem with the bill and amendment is that it requires LCDC to enact a goal that will conflict with itself. It is simply impossible to enact a "climate justice goal" that does not negatively impact disadvantaged groups or create disparate impacts for these groups. Yet the bill and proposed amendments require LCDC to address each of these issues in a single goal.

If this bill called for a new goal that addressed the disparate impacts to disadvantaged groups that result from our current land use laws, we would support it and urge its passage. But instead, this bill attempts to merge that issue with climate change, and directs the Commission and local governments to enact policies that will make it more difficult to remedy the disparate impacts. In short, the bill and amendment will increase disparate impacts to disadvantaged groups. How is that just or fair?

Under the amendment, LCDC is ordered to include provisions in its new goal that require local governments to "protect and enact(?) natural resources". That is already done by LCDC's Goal 5. When expanding the urban growth boundary, the new goal must also require local governments to "avoid resource areas with potential for greenhouse gas sequestration and storage to the extent practicable."

On the more granular level, the new goal also requires the local governments to "identify and remedy disparate impacts when making any land use decision to achieve a fair distribution of the benefits and burdens to the greatest extent possible." What this means is that the foregoing sentence will be a criteria in all individual land use decisions, from the largest to the most mundane. What does this language mean and how is the applicant supposed to address it? More importantly, how are local governments supposed to draft findings that address it?

Criteria such as these are neither clear nor objective, and will greatly interfere with the state's needed housing goals and policies, which are crucial to remedy our housing shortfall, which legislators of both parties have expressed deep concern with resolving. The housing shortage and our current UGB policies have had significant and disparate impacts on disadvantaged groups as housing has become unaffordable to most. How does shrinking the supply of available land for housing inside the UGB, making it more difficult to expand the UGB, and adding a new vague and subjective criteria for every single land use application assist in remedying the housing shortage?

The end result is that this bill will make it even more difficult to develop housing or other uses. In a state that has a well-deserved reputation of being tough on new development, how is this going to make things better for disadvantaged groups?

The process for implementing the new goal is also deeply troubling. The bill defines "environmental justice" in part as "the fair treatment and meaningful involvement and participation of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of land use laws. . .". That is an important policy object with which we agree. But the amendment immediately ignores that objective by 1) allowing LCDC to ignore the statutory requirements in Chapter 197 for adopting a new goal, which are designed to ensure maximum public participation in the development of the new goal, and 2) eliminating the landowner notification provisions in Chapters 197, 215, and 227 for any new changes to the local comprehensive plan or zoning ordinance, which inform impacted property owners of changes that are proposed on their property, along with the date, time and location of a public hearing on the proposed change.

How is it that the proponents of this bill expect to have "meaningful involvement and participation of all people . . . with respect to the development of . . . land use laws" when they deliberately opt out of the very provisions of state law that are designed to ensure that involvement? Shouldn't the public be aware of the changes required by this bill?

Finally, the proposed amendment eliminates the right of property owners who are impacted by either the new goal or any implementing rule to file a Measure 49 claim should the goal or rules limit or prohibit the use of the property owners' property. Measure 49 (codified in ORS Chapter 195) provides protection to property owners from regulations that limit or prohibit 1) residential uses, or 2) farm or forest practices. With this bill, goal language that would prohibit a property owner from building a home on their rural property, prohibit a farmer from clearing an area to farm, or stop a property owner from harvesting a stand of timber would be immune from M49. Each of these activities is beneficial to the state, not detrimental. Why should we make them more difficult?

Habitat for Humanity recently published a research summary on the beneficial impacts of homeownership. The summary states "homeownership is a crucial foundation for helping low-income families find a path out of poverty." We agree, which is why we urge the committee to split these issues into separate bills. A bill to address disparate impacts to disadvantaged communities would enjoy broad support. Mixing this important objective with climate change not only invites opposition, but also creates a bill that works against itself, particularly when the amendments create new barriers to development of the housing that the state so desperately needs.

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