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To: Rep. Julie Fahey, Chair, House Committee on Rules

From: Bill Kloos

Re: HB 3197 – Clear and Objective Standards outside UGBs; ORS 197.307(4)

I submitted a March 29th letter to Chair Dexter of the Housing Committee opposing this rollback of clear and objective housing standards to inside UGBs, where it was prior to 2017. Before this goes to hearing in your committee, I'd like to make a positive suggestion about this Bill.

The clear and objective standards requirement for all housing, including housing outside of UGBs, has been in place for almost six years, and the sky has not fallen.

DLCD told the Housing Committee that the 2017 extension to outside UGBs was a mistake that should be corrected. This issue deserves a more thoughtful perspective than that. What housing types do the statutes intend to allow on resource lands? What has the DLCD/LCDC done via rulemaking to support or hinder that policy? How could it make its own rules more clear and objective to promote the existing legislative policy for housing on resource lands?

1000 Friends told the House Committee that it is state policy to minimize housing outside UGBs. That is too simplistic. Some types of housing must be allowed on EFU land, and other types are allowed if the county says OK. Farmers need housing, too.

Here is a suggestion for a more thoughtful, deliberative approach:

Consider taking the 2023-2025 interim to give the issue a good shaking out, such that the legislature can make a more informed choice in 2025. A starting point for questions to be answered should include:

- What housing do statutes say must be allowed on EFU land? See ORS 215.213(1)(marginal land counties); ORS 215.283(1)(all other counties).[1]

[1] ORS 215.213(1) and ORS 215.283(1) list types of housing on resource land that are allowed outright, subject to the standards in the statute. ORS 215.213(2) and ORS 215.283(2) list types of housing that county may allow on resource land, subject to state and county standards. The Supreme Court drew a bright line between of "as of right" housing in Subsection (1) and permissive housing under Subsection (2) of these statutes in *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995). The LCDC has supplemented the state standards with standards of its own.

- Has the LCDC supported the housing that must be allowed with clear and objective standards, or has it watered down the mandate with discretionary standards found in its own rules? For example, statutes (ORS 215.213(1)(d)) allow outright Relative Farm Help Dwellings on resource land. However, the LCDC limited this right to only "commercial" scale farms. OAR 660-033-0130(9)(a). But the agency did not define what is a "commercial" scale farm use. That means it gets slogged out application by application, county by county, one LUBA appeal after another.

- For the housing on resource land that statutes say must be allowed, can the statutes be made more clear and objective?

- For housing on resource land that statutes say may be allowed by counties, what relevant state and county standards could be made clear and objective to reduce processing and litigation costs?

None of the points above relates to creating more avenues for getting housing on resource land. They all relate to reducing the cost of processing and discouraging the expensive litigation now associated with building housing that the state program already allows.

Owners and builders have had the benefit of clear and objective standards inside UGBs for a long time. Since 2017 owners of resource land have had that right, too. It is logical to keep that entitlement in place, and strengthen it where possible, for resource landowners who already have a right to build a dwelling under the state program.

I don't believe that the DLCD has ever taken a close or comprehensive look at how its own rulemaking, which supplements standards in the statutes for housing on resource land, impacts the processing and litigation costs of developing what housing is allowed. This juncture provides a good opportunity to do that.