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Washington County, Oregon
10655 SW Hall Blvd., Tigard, OR 97223



January 8, 2019

Kathryn Harrington, Chairperson
Washington County Board of Commissioners
155 N. First Avenue
Hillsboro, Oregon 97124

Dear Chair Kathryn Harrington:

I am writing to express our concerns about the effect of recent statewide legislation on Washington County's Goal 5 program and provisions of the County's Community Development Code (CDC) designed to protect Significant Natural Resources (SNRs).

Under Statewide Land Use Planning Goal 5, all counties are required to adopt programs that identify, inventory, and enact special protections for natural resources, scenic and historic areas, and open spaces. OAR 660-015-0000(5). As part of its Goal 5 program, Washington County inventoried natural areas that it decided should have special protections. These areas are identified as SNRs on the County's maps, and the rules governing development involving SNRs are set forth at CDC chapter 422. Unfortunately, recent legislation apparently had the unintended effect of gutting the County's Goal 5 program, leaving its designated SNRs with no special protections whatsoever.

In the 2017 legislative session, SB 1051 was enacted to help alleviate Oregon's housing crisis by, among other things, setting firm deadlines for the review process for new housing development. While SB 1051's goals are laudable, its hasty passage has resulted in some apparently unintended consequences that must be addressed. Specifically, the legislature deleted the term "buildable land" from the "needed housing" statute set forth at ORS 197.307(4). Prior to passage of SB 1051, ORS 197.307(4) stated:

"(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land described in subsection (3) of this section.

ORS 197.307(4), as amended by SB 1051, now states:

"(4) Except as provided in subsection (6) of this section, a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing."

Although the deletion of the term "buildable land" from this section might seem minor, it has had significant consequences that the Legislature most likely did not intend.

The "needed housing" statute generally requires local governments to apply only "clear and objective" standards to development of needed housing. Prior to the passage of SB 1051, the "clear and objective" requirement was limited to "buildable land." Under LCDC's Goal 10 rule implementing the needed housing statute, the term "buildable land" excludes certain sensitive areas

such as lands with steep slopes, natural hazards, and lands protected by environmental overlays, such as significant natural resource areas designated by local governments for special protections under Goal 5. By limiting the scope of the needed housing statute to “buildable land,” the Goal 10 rules gave local governments the ability to impose additional requirements on construction in these sensitive areas that might not otherwise meet the “clear and objective” requirements applied to development of land outside the special areas.

Removal of the term “buildable land” from ORS 197.307(4) has had significant consequences. For example, there is mature woodland in the Ash Creek corridor in our neighborhood that was designated by the county under its Goal 5 process as an SNR (“Wildlife Habitat”). Under Washington County’s development code, activities in a designated “Wildlife Habitat” cannot cause significant interference with that natural resource absent a showing of proper mitigation of that interference. CDC 422-3.6. However, the county hearings officer recently ruled that the protections under the CDC for designated “Wildlife Habitat” were not “clear and objective” and thus ran afoul with the needed housing statute as amended by SB 1051. The hearings officer also refused to apply other sections of CDC chapter 422 applicable to riparian SNRs under the theory that those provisions were also not “clear and objective.” CDC 422-3.3 -3.4.

The hearings officer decision was appealed to the Oregon Land Use Board of Appeals (“LUBA”). *Warren v. Washington County*, LUBA No. 2018-089. However, LUBA ultimately upheld the hearings officer’s decision and strictly applied the revised language of ORS 197.307(4) to find that the “needed housing” rule now applied to all housing applications, regardless of whether the property in question was “buildable land.” LUBA further acknowledged that the legislature might have “inadvertently” caused this result. Nevertheless, LUBA went on to find that the applicant in that case did not have to comply with any of the county’s Goal 5 requirements because those regulations were not “clear and objective.” This left the significant natural resource at issue (and by extension, all other designated Goal 5 resources under the County’s jurisdiction) with no special protections whatsoever, despite the fact that the area had been designated by the county for special protections under Goal 5.

Because of this ruling, the County no longer has valid standards/code addressing Goal 5 and has fallen out of compliance with this important statewide planning goal. It is therefore imperative that County suspend approval of applications and permits in areas subject to Goal 5 protections until clear and objective standards are established or there is a legislative fix. This includes the “Crestline” application (18-074-S) at issue in LUBA’s ruling and therefore without valid development standards addressing Goal 5. We are attaching CPO 4M’s letter requesting legislative action.

Thank you for your attention and please support these changes for the benefit of county planners, developers, landowners, and the public (CPOs). If you have questions, do not hesitate to call us.

Yours truly,

Jim Long, Chair, Community Participation Organization-4M
503-647-0021

cc: Gordon Howard, Land Conservation and Development Commission
Washington County Committee for Community Involvement (CCI) and all CPOs
Oregon Senator Ginny Burdick and Representative Margaret Doherty

Attachment: Letter to members of Oregon State Legislature