



133 SW Second Ave, Suite 201 • Portland, OR 97204 • (503) 497-1000 • fax (503) 497-1001

Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528 • (541) 474-1155 • fax (541) 474-1156

Willamette Valley Office • PO Box 51252 • Eugene, OR 97401 • (541) 520-3763 • fax (503) 223-0073

Exhibit ZZZ

August 20, 2015

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Planning Dept.

Mayor Gary Wheeler and Members of the  
Medford City Council  
c/o John Adam, Planning Department  
City of Medford, Lausmann Annex  
200 South Ivy Street  
Medford, OR 97501

**Subject: File No. CPA-14-114, UGBA Phase 2, ESA Boundary Amendment**

Dear Mayor Wheeler and City Council Members:

Thank you for the opportunity to provide these comments regarding a proposed amendment to Medford's Urban Growth Boundary (UGB). 1000 Friends of Oregon is a nonprofit, charitable organization dedicated to working with Oregonians to enhance our quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural and scenic areas. We have many members and supporters in Jackson County and the city of Medford.

As the Southern Oregon Advocate for 1000 Friends of Oregon since 2002, I have been intimately involved in the planning efforts in Jackson County and Medford for over a decade. I participated extensively in the RPS process, eventually supporting Medford's adoption of that plan, and also supported the city's adoption of the UGBA Phase I GLUP map amendments.

I have been following Phase 2—including monitoring the technical analysis, reviewing publicly available documents, and meeting with staff and a number of property owners and their representatives. I submitted written<sup>1</sup> and verbal testimony before the Planning Commission in this proceeding, and have reviewed their recommendation in detail. The following comments are made with that background as context.

**General Comments Regarding the ESA Concept and Boundary Amendment Process**

Whether, by how much, and where to expand Medford's UGB are among the most important and far-reaching decisions that this Council will make. These decisions will have implications for what Medford looks like and how much it costs to live here for decades to come. The purpose

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<sup>1</sup> 1000 Friends of Oregon's written testimony dated March 3, 2015, is included in the July 21, 2015 Staff Report and Council Packet for these hearings as pages 59-73 of Exhibit B, "Findings."

of this entire exercise is to ensure that Medford continues to be a great, and affordable, place to live.

Evaluations of urban growth boundaries are conducted within a legal framework made up of municipal, county, and state regulations. These evaluations and any ensuing boundary expansions are based on a number of assumptions (such as population and job forecasts, household size, etc.) and detailed technical evaluations (such as the development capacity of the existing UGB, the feasibility and expense of meeting future transportation and utility needs, etc.).

Although the assumptions must be justifiable and the result must be technically and legally sound, in the end the final decision is political, and involves trading off some values in exchange for fulfilling others. The legal process recognizes that, and appropriately gives local jurisdictions broad discretion to decide how to meet their identified needs *so long as the end result fits within the technical and legal framework*.

Although some parties have offered challenges, we believe that the Planning Commission recommendation now before the City Council can be argued to be technically and legally sound.<sup>2</sup> So long as the Council's final decision stays within that framework—including the number of acres in the overall proposal—the result is likely to be something the state can approve.<sup>3</sup>

The remainder of these comments addresses issues that have been raised and questions asked by the Council in terms of the technical and legal framework and the weighing of values and policy tradeoffs in making your final decision.

### **The Technical and Legal Framework of the Planning Commission Recommendation**

In very broad terms, the UGB amendment process requires the city to determine what its future housing and employment land needs will be (in this case for the next 20 years), figure out how some of those needs can be met within its existing boundaries, and then identify how much and which lands need to be added to existing boundaries to accommodate remaining needs.

#### How were the needs determined? Or, is there enough land in the Planning Commission's recommendation to accommodate future growth needs?

Projections of future population growth being used in this proceeding were provided in the Population Element update adopted by the city in 2007. As has been noted in the record, a new process has subsequently been put in place requiring cities to use population forecasts prepared by Portland State University (PSU). Because Medford began its hearings prior to the

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<sup>2</sup> As discussed below, some of the findings could be strengthened to better support the conclusions that have been reached, but overall the methodology appears to address requirements.

<sup>3</sup> For example, see Exhibit WW, email from Josh LeBombard of DLCD dated August 13, 2015.

new PSU forecast being finalized this summer, the City is allowed to rely on the 2007 forecast for this proceeding.

However, it is relevant to note that the newer PSU forecast predicts a significantly smaller growth in population during the planning horizon.<sup>4</sup> The difference in need for residential land between the two forecasts is significant.<sup>5</sup> Even if the PSU forecast is low, it seems clear that the 2007 forecast is far too high, suggesting that any plan based on the 2007 forecast will include more than enough residential land to meet growth needs over the next 20 years.

The same is true for employment land. The employment land needs were calculated from the Economic Element, which was adopted in 2008. It was based on similar population forecast assumptions to develop a baseline scenario of how many jobs will be added by 2027. From that, additional scenarios were projected based on slow job growth assumptions and high job growth assumptions, each with a corresponding land need calculation. The asserted need to expand the UGB to include 636 acres of land for employment in this proceeding are based on the high job growth assumption, which projected the need for the highest number of acres. Using this assumption compounds the surplus need arising from the population forecast assumptions.

We want to be clear that we are not challenging the use of these documents or the assumptions therein for this proceeding.<sup>6</sup>

However, together they suggest that the amount of land contained in the Planning Commission recommendation should be more than sufficient to meet Medford's growth needs for the next 20 years. These facts offer strong evidence against any argument that more land should be added to the proposal to meet identified needs.

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<sup>4</sup> The PSU forecast does not provide a number for 2027, but both offer numbers for 2030. The 2007 forecast predicted a 2030 Medford population of 117, 516, while PSU now predicts a 2030 population of only 95,002. While the differences may seem extreme, it is already clear that the 2007 forecast is far too high. Indeed, the Adopted forecast for Jackson County, which Medford's 2007 forecast is based on, predicted a 2015 population of 91,924. The PSU 2015 forecast is based on an actual 2015 population figure of 80,024. (The Jackson County Population element can be found here:

[http://jacksoncountyor.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core\\_Download&EntryId=37682&language=en-US&PortalId=16&TabId=1460](http://jacksoncountyor.org/DesktopModules/Bring2mind/DMX/Download.aspx?Command=Core_Download&EntryId=37682&language=en-US&PortalId=16&TabId=1460). The PSU 2015 Forecast can be found here: <https://www.pdx.edu/prc/region-1-documents>.)

<sup>5</sup> Using assumptions in the plan of 2.41 persons per household and 6.6 housing units per acre, having 22,000 fewer people in 2030 suggests the need for 1,383 fewer acres of housing in 2030. It should be noted that the current project based on the 2007 forecast declares a need to expand the current UGB by only 884 acres to meet residential land needs in 2027. Using the PSU forecast would eliminate the need for any UGB expansion for residential land at this time.

<sup>6</sup> The only possibility we can think of that exists for Medford possibly having to use the PSU forecast would be in the case of a successful appeal resulting in a remand that was so complicated that the easiest way to resolve the issues was to start the process over rather than fix the broken product. In such a case it is likely that the clock would be reset, and Medford would be required to use current PSU projections.

Did Medford properly address how some future needs could be met within the existing boundary?

Urban Growth Boundaries are designed to meet the needs for 20 years of population growth for a city. They are expected to be adjusted periodically to continue to meet that need.

The current UGB was established in 1990. According to the Regional Plan Element of the Medford Comprehensive Plan, Medford's current UGB contains about 2,592 acres of available land designated for residential use and another 1,054 acres of available land for employment use, for a total of about 3,646 acres of land still available to help meet future needs.<sup>7</sup>

As noted in the Housing Element of 2010,<sup>8</sup> Medford has already adopted a number of policies that result in increasing the efficiency with which the city uses land. Those policies, combined with the GLUP designation changes that occurred during Phase I of this project, will increase the efficiency with which Medford using its existing lands, and form a solid basis from which to evaluate the future needs of the city.

How much land can Medford justify adding to its current UGB to meet future growth needs?

As noted above, if the basis for determining how much land can be added to a UGB were "best and most currently available information," it is unlikely that the Planning Commission's recommendation could be supported. However, Medford is allowed to rely on the adopted population, economic and housing elements—so long as identified errors and inconsistencies are remedied—in making this determination. The Planning Commission's recommendation was based on those factors.

Several arguments have been raised that the amount of land should be increased above the Planning Commission's recommendation. For example:

- It has been asserted that there is no hard and fast rule dictating exactly what the number of acres should be, and that some variation may be permissible. While it is true that there is no one procedure to generate an exact number that is demonstrably "the" right number, it is also true that the amount of land must be demonstrated through analysis to be necessary to meet projected future needs. The Planning Commission's recommendation is based on a rigorous analysis of the foundation documents and addressing inconsistencies found in those documents.
- In Exhibit Z, Jay Harland of CSA Planning argues that the Planning Commission's decision to remove land that appears to have been "double counted" between the Economic Element and the Housing Element was incorrect and should be reversed. It is not clear how much of the 135 acres the Planning Commission removed Mr. Harland is arguing should be put back in.

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<sup>7</sup> Medford Comprehensive Plan, Regional Element, Figure 3.1-1.

<sup>8</sup> Medford Comprehensive Plan, Housing Element, pages 3-8.

Most of the six pages in Exhibit Z do not discuss subjects that the Planning Commission based any reduction of acreage on. The remaining paragraph breaks the amount of land the Planning Commission found to be double counted into two categories: about 85 percent is explained by pointing the reader back to the Economic Element and its underlying documentation, and the remaining 15 percent is explained as being due to “unallocated” jobs that are related to city facilities such as parks. There is no information provided that should change the Planning Commission’s conclusions:

- Land for parks is already accounted for in the Planning Commission’s recommendation, and
- Staff analyzed the Economic Element in detail in response to a similar argument made to the Planning Commission,<sup>9</sup> and the Planning Commission agreed that the total amount of land needed to be adjusted to the amount that is reflected in the proposal now before the Council.
- In Exhibit LL, Mike Savage of CSA Planning argues that 121 acres of unbuildable land needs to be included in the proposal to accommodate agricultural buffers required by the Regional Plan.<sup>10</sup> Raul Woerner of CSA Planning asserts in Exhibit QQQ that this need arises because the requirement for this buffering land did not exist when the Housing Element and Economic Element that calculated buildable land needs for housing and employment were adopted.

While it is true that neither the Housing Element nor the Economic Element included calculations of the amount of land needed to supply these buffers,<sup>11</sup> the relevant question is whether or not provision for these buffers has been made in calculating unbuildable land needs in this proceeding. It is our understanding through conversations with staff that such a provision was made in staff’s initial calculation of land needs and is reflected in the recommendation before you.<sup>12</sup> Further, this need appears to have been treated in the same way it was in generating the land needs for the urban reserves during creation of the regional plan. Finally, as discussed above, even if the total amount of land needed is underestimated somewhat, evidence in the record shows that the overall amount of land in the proposal should be more than sufficient to meet reasonably projected needs for more than 20 years.

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<sup>9</sup> See Memo “Evaluation of excessive land need arguments,” from John Adam and Joe Slaughter, May 6, 2015, prepared for the May 14 Planning Commission Study Session, included in the July 21, 2015 Staff Report and City Council Packet at pp. 74-80 of Exhibit B, “Findings.”

<sup>10</sup> This requirement is codified in the Medford Municipal Code at Section 10.802.

<sup>11</sup> It is important to note here that even had the requirement to provide buffers existed when these elements were adopted it would not have been possible to have done this calculation, as the amount of land needed for these buffers is entirely dependent on exactly which portions of specific urban reserve areas come in, and on what land uses will be allowed within and outside of those areas.

<sup>12</sup> As of this writing it appears that some adjustments may need to be made based on the Planning Commission taking some areas out and adding different areas into the recommendation. If any adjustment is necessary it will be considerably short of the 121 acres CSA is advocating for.

Thus far no evidence has been presented that clearly justifies the addition of more land than is already included in the proposal before you. If anything, the strongest evidence in the record indicates that the size of the proposal should be reduced, rather than expanded.<sup>13</sup>

Are there fatal flaws in the process used to decide which lands to include in the expansion?

Once a supportable number of acres has been identified, the next task is to choose which acres to bring into the UGB. The elements that must be considered in this analysis are set forth and described in some detail in ORS 197.298 and Goal 14.<sup>14</sup> Several parties have argued in testimony that the process that has been followed thus far has contained errors, some of which may constitute “fatal flaws” that could result in a successful appeal of Medford’s decision.

Although Goal 14 in particular lists elements which must be evaluated, there is no prescribed process for how this analysis must be done. What is required is that all of the elements must be looked at, and that they must be balanced. So long as all of the elements are looked at, and the final decision is explained in sufficient detail in the findings, cities are generally given broad discretion by the courts in how they balance their decisions.<sup>15</sup>

Some parties have argued that the scoring done to rank urban reserve areas for appropriateness for consideration was done incorrectly and must be redone.<sup>16</sup> We disagree. If the entire decision on whether or not to include a particular area were based only on this scoring, then perhaps the scoring would have to be redone where obvious errors exist. However, ever since the scores were made public, and throughout the Planning Commission and City Council hearings processes, additional information has been gathered and considered. The Planning Commission relied on some of that information to justify its recommendation to include some areas that had poor scores on some of the analyses and remove areas that scored better from further consideration. The findings presented in Exhibit B explain that clearly.

We believe this is permissible. Indeed, this is how the Goal 14 factor evaluation and balancing process works. The remedy for where discrepancies may exist need not be to redo the scoring,

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<sup>13</sup> For example, Exhibit B to the July 21, 2015 Staff Report to City Council, states that “With the revised ratios of residential land types in the UGB expansion area the average densities of each of the residential land types alone will not result in a density of 6.6 units per acre or above [as required by the Regional Plan Element].” (See page 6) The Planning Commission added requirements that should ensure that development will actually occur at densities that meet commitments made by the city, but in terms of a UGB amendment the correct course of action could be argued to be to reduce the residential acreage to the point where the average densities WILL result in meeting those commitments. There is no need to add more land to the UGB than will be necessary to achieve that result.

<sup>14</sup> See [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors197.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors197.html) and <http://www.oregon.gov/LCD/docs/goals/goal14.pdf>.

<sup>15</sup> Some cities have gotten into trouble because they tried to use this balancing act to justify bringing in the wrong type of land—i.e., agricultural land instead of the higher priority non-resource or urban reserve lands. As explained in my verbal testimony, however, this situation does not apply in Medford so long as all of the lands being considered for inclusion are selected from your urban reserve areas.

<sup>16</sup> Information regarding this analysis and the resultant rankings is available at <http://www.ci.medford.or.us/Page.asp?NavID=2140>

so long as the findings provide enough detail to explain asserted discrepancies and why certain areas were included and others were not.<sup>17</sup> This is discussed in more detail below.

### **The Weighing of Values and Policy Tradeoffs in Meeting the Future Needs of the City of Medford**

As described above and below, so long as the final decision stays within the bounds of what can be justified technically and legally, Council has broad discretion in balancing how to meet the future needs of the city in its decision.

#### Is this a technical/legal argument or a policy decision?

It is easy to be critical of the technical analyses. For example, urban reserve areas were rated on their proximity to the existing UGB boundary. A more appropriate criterion might have been proximity to existing development. The difference is important: the area of MD5 that the Planning Commission added to the staff proposal near Chrissy Park ranks high regarding proximity to the existing UGB, but is farther from existing development than any other area in the proposal. On its face, this suggests that this area may be more expensive to serve with transportation and utility facilities as compared to most of the other areas in the proposal simply because of the additional infrastructure that will need to be built to connect this area to existing development.

Note that this extra cost is not primarily in construction. Much, although usually not all, of the costs of extending and constructing infrastructure is paid for by System Development Charges (SDCs) or directly by the developers.<sup>18</sup> However, once that infrastructure is in place it falls to the city and the utilities to operate, maintain, and eventually replace those systems. User fees often fail to cover these costs fully over the lifespan and replacement of those systems, resulting in the need to replace or upgrade systems at a cost to local taxpayers. The Council recently increased its utility and street fee charges to all residents in Medford in part to cover these costs. All other things being equal, development in areas that require less extension of services will save the city money in the long-run.

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<sup>17</sup> This is particularly true in the case of the sewer analyses, which were not originally performed consistently across the entire city. This inconsistency should be explained, and the way sewer information was used in making final decisions should be spelled out in the findings. (An explanation is provided at pages 11-12 of Exhibit B, "Findings.") However, this can be done by relying on other information in the record and need not require re-doing the sewer analysis.

<sup>18</sup> State law restricts what cities may charge SDCs for to roads, parks, sewer facilities, storm water facilities, and water facilities. SDCs in most cities in Oregon do not quite cover the full costs for those facilities. In addition, other facilities such as fire stations, police substations, and schools are not covered by SDCs and must be paid for by other means.

The Council may wish to make the policy decision that it is worth this extra cost because of the relative benefits<sup>19</sup> this area will bring in relation to other areas, even if as a matter of technical analysis this area may not rate as high as areas that are left out. However, that decision should not be confused with one that says this area is preferred over others as a legal matter. Finally, such a decision cannot be made in a way that causes the final plan to violate legal requirements.

All challenges are not created equal.

The idea that the decision made by the Medford City Council may be appealed has been brought up by multiple parties in these proceedings. Like any other land use decision the city makes, it is true that this decision can be appealed. However, as the Council weighs its decisions and whether or how to appease specific parties it should be noted that not all challenges are created equal.

As I pointed out in my verbal comments, the UGB appeals that have been the most successful in recent years have generally been because the city in question either tried to take in the wrong types of land or they have tried to get creative and find ways to take in more land than can be justified to meet future needs. So long as Medford stays on its urban reserve areas when selecting new lands for its UGB, the first won't be an issue here. Indeed, that was part of the point of the Regional Plan.

As noted above, the Council has been invited to try to find ways to add more land to the Planning Commission's recommendation. We believe that the record does not support any addition, and that information in the record shows that the amount of land in the current proposal is likely to be in excess of what is actually needed to accommodate growth in Medford for at least 20 years.

As is also noted above, appeals of UGB decisions that are based on whether a city "properly" balanced its Goal 14-required analysis are generally not successful absent a situation where the city tried to take the wrong type of land or too much land into its UGB, or failed to address factors at all.

Finally, to the extent that Council is going to be thinking in these terms, it is worth looking at the risks that a party is taking by filing an appeal. If someone appeals this decision because they believe there are too many acres in the plan, they lose nothing if the appeal results in a reset of the clock on the population forecast and a smaller future expansion. On the other hand, a property owner that appeals trying to force themselves in at the expense of another runs a

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<sup>19</sup> We are aware of the arguments that this area is necessary to provide trail connections and gravity fed sewer connections to areas already in the UGB. Those arguments could be countered by arguing that it is, in fact, possible to extend those trails (if the property owner is willing) even if they are not inside the UGB, and that it is within the City's power to allow pump stations to provide sewer connections to households currently within the UGB. Both of those solutions will come with their own set of costs—but the point is that they are options that could be legally pursued as alternatives if the Council so chose.

significant risk of creating a situation where the clock gets reset and not only they but other property owners as well find themselves outside of any permissible expansion.

### **Response to Council Questions**

During my oral testimony on August 13, Councilor Jackle asked me two questions.

1. What are examples of ways cities have tried to get creative and add more land? and
2. What findings do we need to bolster to make our decision stronger?

I gave examples of ways Medford has been encouraged to add more land to the Planning Commission proposal on August 13 and above.

As for the findings that could be stronger, I re-read the Planning Commission Findings (Exhibit B) and found that many of the criticisms that have been leveled during testimony before you are in fact addressed in the findings as written. Having said that, I offer the following suggestions for improvement:

- It could be made clearer that the rating systems used for transportation, sewer, water, parcel size and proximity to the UGB were tools used to begin the conversations of which areas should ultimately be included in the UGB, and that these were not the sole determinants of whether or not an area was finally included in the expansion. There are many cases where information has been provided in the record to either bolster scores or correct perceived errors. Considerable additional information (including conceptual plans provided by owners) has gone into the recommendation before you. While this is explained to some degree in the current findings, it appears that the role that additional information played in the reaching final decisions could be made clearer.
- A lot of attention has been focused on the fact that the two sewer providers used different criteria in their analyses and that no reconciliation has been performed. Pages 11-12 of Exhibit B in your packet offer a discussion of how these analyses and other information were collectively used to determine which areas could be served. This text could be looked at for opportunities to strengthen it, but it might also be helpful to discuss this issue area by area, as part of the discussion below.
- Pages 12-15 of Exhibit B offer language comparing why certain areas were removed by the Planning Commission, and why some areas that remained in were not considered for removal in that process. Once the Council selects the areas that are to be included in your final decision, this section could be re-written to offer a brief but affirmative discussion of how each of the areas selected for inclusion in the Council's final decision helps balance the factors. This discussion would have the effect of demonstrating how all of the Goal 14 factors were weighed against each other, and what factors Council

used to decide whether to include areas that might not have scored as high a score on some of the rankings as some areas that were left out.<sup>20</sup>

## **Conclusions and Recommendations**

1000 Friends of Oregon evaluates UGB expansion proposals and participates in hearings on those proposals throughout Oregon.

Based on that experience, along with our detailed involvement in the creating the Regional Plan that this expansion helps to implement, we believe that the technical analysis supporting the shape and location of lands suggested for inclusion in the UGB expansion appears sound and, as augmented with additional material in the hearings process, resulted in a good recommendation from the Planning Commission.

The Planning Commission recommendation now before you can provide a number of benefits for Medford's future, including:

- Spreading the development around geographically also spreads the impacts that concentrated growth could have if it were concentrated in a few areas or regions of the city.
- Spreading the types and locations of land available increases the options for the city and helps meet diverse needs. More types of land increase the likelihood that needs identified in supporting documents, such as the need to provide more affordable housing noted in the Housing Element,<sup>21</sup> can be met. Spreading the ownership of land increases the variety of building that can be expected, and decreases the chances that a small number of property owners can control land prices or the pace of development.
- Including more areas that are spread around the city and for the most part directly adjacent to existing built areas decreases the amount of land that is farther away from existing services, thus decreasing the cost to developers and the city of extending utilities and services into new development.
- Over the long term, keeping development closer to the existing utilities and services that already reach the edges of the existing UGB will prove to be the fiscally conservative approach to new development, as the city will be on the hook for operations and maintenance of facilities that the current tax base cannot support. This,

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<sup>20</sup> Note that some of this explanation is offered throughout the text of pages 9-24 of Exhibit B, but not all areas are mentioned and even for those that are mentioned there are factors that are not discussed.

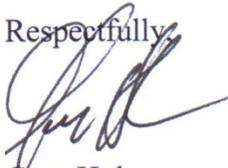
<sup>21</sup> The Housing Element identified a current shortage of 4,450 housing units affordable for existing households in Medford at page 44. In order to comply with Statewide Planning Goal 10 and Medford's own Comprehensive Plan, Medford's UGB proposal must include measures for addressing the current and future affordable housing needs. The GLUP redesignation in Phase I of this process could meet part of that need. The dispersed pattern for expansion in the staff's proposal could be argued to help meet that need as well.

combined with Medford's changes to GLUP designations within the existing UGB during Phase I, will likely save the city millions of dollars in the future.<sup>22</sup>

In closing, we recommend that if the City Council is going to consider adding any areas that are not in the current proposal you carefully consider the net impacts that those additions (along with the required subtractions to keep the proposal from exceeding what can be justified) will have on the future of the city.

Please place these comments in the record and notify me at the Grants Pass address above of any decisions or future hearings or meetings on this subject.

Respectfully,



Greg Holmes  
Southern Oregon Planning Advocate  
1000 Friends of Oregon

CC: Josh LeBombard, DLCD

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<sup>22</sup> See "More Extensive is More Expensive, for case studies suggesting the magnitude of this savings. Available at [www.friends.org/infrastructure](http://www.friends.org/infrastructure).