

**LO Stewards PAC**  
**PO Box 573**  
**Lake Oswego, OR 97034**  
[\*\*LOStewards1@gmail.com\*\*](mailto:LOStewards1@gmail.com)

September 14, 2015

Lake Oswego Planning Commission  
City of Lake Oswego  
380 A Avenue  
Lake Oswego, OR 97034

Dear Commissioners:

For six years, LO Stewards has been advocating for reasonable change to the “sensitive lands” (SL) program. Since our first public presentation on September 21, 2009, we have raised concerns that the SL program:

- is arbitrary and inequitable and a “trade” program
- lacks science, does little to benefit the environment
- damages private property owners/de-values property

We agree with the “Option 2” approach to increase regulations on “public property” (and by that, we mean State and local parks, open space and natural areas, not school property). Unfortunately, “Option 2” does not address the concerns above nor does it meet the council direction/goal for more respect and less regulation of private residential property. The original proposal from April/May 2015 more closely met the council goal; however, at the May 11, 2015 Planning Commission meeting and May 18, 2015 City Council meeting, information was provided by staff that altered the direction of the program, resulting in this new Option 2. Despite recent City PR and claims that the “broken” SL program has been repaired with Option 2, nothing could be further from the truth. And, the claim that this new direction is required under Federal and State law is also a stretch of the truth.

While we have many concerns we’d like to focus on some foundational issues before getting into more line-by-line Comp Plan/code detail:

**Lack of Measure 56 Notice**

Through a recent public records request and communication with staff, LO Stewards has learned that only a portion of those impacted by the “Option 2” proposal have received Measure 56 notice. The on-line packet and communication with staff shows that the majority (42 page list of approximately 1240 property owners) received a general mailing that did not contain required Measure 56 language and was a “city wide” notice. It would be unclear to a recipient of this general notice that their specific property could have issues with permissible uses and value.

Properties have changed ownership over the years and it cannot be assumed that the new owner is aware of the SL designation. We also believe that the owners on

this list, even though already designated SL property owners, should have received Measure 56 notice given that many properties are proposed for an increase in regulatory impact—resulting in a change of permissible use and value of the property that is now being added to the SL program.

The second list of owners (11 pages of approximately 300 owners) did receive the Measure 56 notice as these properties are new to the SL program. We don't understand why **all** those with a potential impact—increase or new and even those being removed or reduced--from this proposal would not be given Measure 56 notice given that this proposal does impact permissible uses and value for all the property involved...not just the 300 new. **We question the validity of holding this hearing without Measure 56 notice being given to all impacted SL property owners, but particularly those with a proposed increase of area to be regulated—which impacts permissible use and value.**

### **Option 2 Increases the SL Program, Counter Council Policy/Goal**

The Council has had a goal to reduce regulation on private residential property to the greatest extent possible. The Option 2 program not only increases buffers, but also adds more property to the SL program. **The single family residential property involved in Option 2 is now 233 acres on 1194 lots versus the current SL program that is 230 acres on 1054 lots.** (see chart comparing the current program to Option 2).

### **HBA Program Likely to Become Regulatory**

We are also concerned that the voluntary/incentive based HBA program is just regulation in waiting given that the 2015-2019 TMDL Implementation Plan (page 26-27 last paragraph) promises to review the program “within two and one-half years” and add regulations if deemed necessary. We have little faith that the regulatory oriented staff at the various government agencies will be satisfied with the HBA program in the long run **so the property owners who believe they have been freed of SL regulations via the HBA program should be aware of the future regulatory promise made to DEQ.**

### **Remains an Arbitrary and Inequitable/“Trade” Program**

**The new language in the proposed Healthy Eco-Systems Comp Plan chapter now specifically allows environmental trading using the “systems-wide approach”.** (PC packet Attachment B page 9 of 35 Policy 1) We know that the “systems-wide approach” is about off setting/reducing regulations in one area by increasing it in another. For years, using the “systems-wide approach” has been considered a way to deal with developing in the Foothills floodplain. **Now we see that the Option 2 proposal does in fact increase the number of properties with SL; as was attempted in 2008, not coincidentally, there is growing chatter in the community about moving forward again with Foothills development. Please do not approve a trade policy!**

### **TMDL Implementation Plan Content**

The 2015 TMDL Implementation Plan sets the direction and foundation for the City's regulatory commitment to DEQ for addressing TMDLs. This critical policy document did not come to the Planning Commission (or even to City Council for a public review) but LO Stewards did alert you about it in your role as the Committee for Citizen Involvement. This document was not well noticed, yet the plan establishes a very alarming foundation/promise to DEQ for the SL program, other city codes/programs (such as tree code) and future city regulation. This plan includes definitions and direction of the recent controversial EPA "Waters of the US" rule which is being challenged in Federal court as over-reaching, lacking in scientific basis, arbitrary, and a violation of the Constitution. The Army Corps of Engineers does not support the EPA direction and conclusions. **Why is the City of Lake Oswego basing its environmental regulations/programs on the EPAs over-reaching and controversial new rule that is very likely to be struck down as un-Constitutional? Why be ahead of regulation? And, if Option 2 passes but the EPA rule is struck down, will the City reduce regulations?**

### **Lacks Scientific Basis and is Pseudo-Science**

Staff has indicated that Metro requires 50-foot buffers on primary and secondary water features. **This is not true.** Metro Title-3 allows 15-foot buffers on secondary water features in 25 degree or less slope. Also, the 2015 TMDL Implementation Plan acknowledges that there is no valid science that supports these 50 foot plus buffers and the data that was provided shows that 20 to 30 foot buffers protect from the vast majority of pollutants, yet they recommend the 50 foot plus anyway. **Why are we insisting on over-regulating these small areas when there is no scientific justification and Metro Title 3 allows smaller buffers?**

In summary, while Option 2 may provide relief of SL for a few property owners, overall, with Option 2, the program is made worse than the current SL program. We understand that the City must comply, and is currently in compliance, so we question why the City would proceed with a more onerous program that does not meet Council policy direction, lacks science, over-regulates, hasn't been fully noticed, and allows trading as a policy.

Regards,  
LO Stewards Board

Comparison of Land Involved in Current Sensitive Lands Program versus Latest “Option 2” Proposal

Resources	Existing SL Program Lots	Proposed “Option 2” Lots (Sept 2015)	Existing SL Program Acres	Proposed “Option 2” Acres
<b>Regulated Resources Breakdown by type:</b>				
Total Single Family	1054	1194	203	233.11
Total Other Private	123	166	131	120.77
Total Private Dedic OS	76	91	104	114.78
Total Public	190	206	512	585.09
<b>Total Regulated Resources</b>	<b>1443</b>	<b>1657</b>	<b>950</b>	<b>1053.75</b>
<b>Proposed HBA/Incentive Breakdown by Type*:</b>				
Total Single Family Dividable	0	226	0	71
Total Single Family Non-Dividable	0	181		11
Total Other Private	0	38	0	12
Single Family Other	0	8	0	0
<b>Total Proposed HBA</b>	<b>0</b>	<b>453</b>	<b>0</b>	<b>94</b>
<b>Total Regulated and HBA</b>	<b>1443</b>	<b>2110</b>	<b>950</b>	<b>1147.75</b>

\*Note that HBA is only relevant for private property, not public in the Proposed “Option 2” program.

Sources: Existing SL Program data is from Sensitive Lands Data Summary report dated April 28, 2010 prepared by Morgan Holen and Roger Shepherd to the Second Look Task Force. Note that this does not include property annexed and designated SL from mid -2010 until now nor does it include the properties removed from SL under the Isolated Tree Groves ordinance. We estimate that those two issue balance out and that the 2010 data is still viable for overall comparison sake.

Proposed “Option 2” September 2015 Data from LU 15-0019 September 3, 2015 Planning Commission hearing packet, Exhibit E-1, page 3 of 3 chart titled “Option 2 RP and/or RC – Breakdown by Property Type.” And HBA data is from Exhibit E-2.1 of the same packet.