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November 16, 2015

Lake Oswego City Council
City of Lake Oswego
380 A Avenue
Lake Oswego, OR 97034

RE: LU 15-0019

Dear Mayor Studebaker and City Councilors:

We submitted letters to the Planning Commission for their September 14 and 28, 2015 public hearings regarding the “sensitive lands” (SL) program and Healthy Eco-Systems Comp Plan chapter. We hope you will take the time to read both letters (Exhibits G 12 and G 16) and please address and discuss our concerns publicly.

While there are many elements of this latest proposal that are problematic, we would like to see the Council specifically discuss and address the following during the hearing:

- **Lack of Measure 56 notice to more than 1200 property owners.**
- **Increase in the size of the SL Program, counter adopted Council policy/goal**
- **“Systems-Wide Approach” Comp Plan Policy/Trades**
- **Impact of the TMDL Implementation Plan and Lack of Public Process**
- **HBA Program Likely to Become Regulatory**

Measure 56

Measure 56 notice was provided to the 335 property owners proposed to have the SL program applied to their properties for the first time. However, we believe that the current 1200 (approximate) SL property owners should also have received Measure 56 notice. While they received a general letter, indicated as “city wide” notice despite not being mailed city wide, Measure 56 has required language that alerts a property owner to specific property impact and this language was not in the letter the 1200 received.

Measure 56, specifically ORS 227.186(9) “*defines rezoning as (a) Changes the base zoning classification of the property; or (b) Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone.*”. We believe that the proposed SL code changes, which increase buffers, fall under section (b) because the new buffers increase the overlay zone. Land that was previously not impacted by the SL code will now be under SL code and therefore have limited or prohibited uses on property that was previously not affected (not in the discreet SL zone).

During the September 14, 2015 PC hearing and in the supplemental staff report, staff provided their rationale for not providing Measure 56 notice to more than 1200 current SL property owners. We do not agree with staff rationale that the current 1200 plus SL property owners

didn't need noticed because they already have a SL overlay on their property and as written in the staff report: *"The proposed map and code amendments do not restrict property use beyond that which would be required under the present code if all designated RP districts were accurately mapped"*. The SL map is only an indicator of a resource but it is the code text that must be used for on the ground delineation of a resource and identification of the impact area/discreet zone. **With the code changes that increase the buffers, Measure 56 notice should have also been provided to current SL property owners as well.**

As the supplemental staff report explains Measure 56, *"The intent of the statute is to put property owners on alert where a proposed zone change may adversely affect property values."* Yet, a decision was made not to alert the current SL owners to the changes that may adversely affect property values. In fact, much of the City PR regarding this program over the last year or two would lead current owners to believe that the impact to their property was being reduced when that is not the case with the current proposal. Why not provide Measure 56 notice to all impacted owners? With two letters, it appears there was an effort to manage and limit participation of property owners by leaving them with a false impression of the direction of the latest SL proposal. Most probably do not understand the increased impact of this new proposal.

We question the validity of holding this hearing without Measure 56 notice being given to all impacted property owners. We believe the City is in violation of Measure 56/ORS 227.186, specifically 227.186 (9) (b) and should stop the process and provide proper Measure 56 notice to the 1200 property owners. We feel strongly that the City has an obligation to be honest and forthcoming with ALL property owners impacted by this new proposal and not try to slip this program through with attempts to misrepresent and limit citizen knowledge and participation.

Size of the Proposed SL Program

While staff maintains that *"More properties are having regulations removed than added."*, the numbers, taken from staff created documents, speak for themselves. **This proposal increases the SL program.** We've attached a comparison chart for your review. While the staff report provides several numbers about properties that have been added to, removed from or re-categorized within the SL program, this is a shell game and **the bottom line numbers show that this proposal creates a SL program that is larger than ever.** For example, the private residential property impact has increased from 203 acres on 1054 lots to 233.11 acres on 1194 lots—that's 140 MORE lots/property owners in the SL program, an increase of approximately 13%.

"Systems-Wide Approach" Comp Plan Policy/Trades

The Planning Commission did not address our concerns about a new Comp Plan policy (see your packet Exhibit A 1.1, Attachment B, page 9 of 35, Policy 1) that states *"Develop a systems-wide approach to urban forestry, watershed protection, and other environmental management issues, to protect, restore, and enhance the City's natural resources."* While it sounds nice, what does it mean? There is no definition for "systems-wide approach". However, in our research, we have learned that "systems-wide approach" or "systems approach" or "off-site mitigation" are terms that have been used in this context for environmental trading—off setting/reducing regulations in one area by increasing it in another. The City has had at least one documented meeting with Metro about using a "systems approach" to develop Foothills (in the Willamette River Greenway) and specified that this meant *"Natural resource restoration and buffer requirements could be reasonably reduced in the subject area if water quality and fish habitat values are substantially*

improved at other locations.”(Source: Lake Oswego Government Affairs Memo to Andy Cotugno, Metro dated June 15, 2001 summarizing the outcomes of a meeting that took place on June 7, 2001 between Metro and Lake Oswego.)*

We are greatly concerned about establishing policy that allows trading in this manner, especially when it is private residential property being traded. We question not only the ethics of this approach but also whether this is a violation of Goal 5 and the Clean Water Act.

Impact of TMDL Implementation Plan and Lack of Public Process

Although the council did not formally review the 2015 TMDL Implementation Plan and was advised that it wasn't a policy document, it is in fact a very serious policy document that staff has indicated **does** impact our codes and the SL program. We are very concerned that the TMDL Implementation plan, a document that drives policy and commits the City to programs that have budget ramifications, was developed and provided to DEQ without proper council and citizen input and involvement. The original 2003 TMDL Implementation Plan specifically indicates that there was NO citizen input/involvement. The updated 2015 TMDL Implementation Plan had very minimal notice and was not vetted with city council in a public hearing despite the policy and budget ramifications. We are concerned about violation of State Goal 1—citizen involvement and the CWA also requires public process.

HBA Program Likely to Become Regulatory

Within the 2015 TMDL Implementation plan (bottom of page 26 to top of page 27), staff very clearly promises DEQ that any voluntary incentive based programs that are adopted (such as the HBA program in the program you are considering), will be reviewed within 2 ½ years and made regulatory if deemed necessary. There is no specific criterion outlined for how assessment will be done. **We believe the HBA program is regulation in waiting; and that based on the TMDL Implementation Plan, DEQ and city staff will find a reason to shift these properties back to the regulatory SL program—increasing the residential property portion of the SL program by another 71 acres and 226 lots. We would like all HBA owners to be made aware of the TMDL commitment. Again, as with the Measure 56 notice issue, property owners are being misled about the impact to their properties.**

Since 2009, LO Stewards has been the leading citizen voice for the effort to reform the “broken” SL program. We have advocated for a reasonable program that balances protecting **true** natural resources, meeting basic regulatory requirements, and respecting property owners. Unfortunately, this Option 2, developed in back rooms with the regulatory authorities, is extremely flawed; yet we see that you are likely to push it through, just as the Planning Commission did, because some (those NOT impacted) are tired of the issue or as mentioned in the Planning Commission meeting, it hurts the Lake Oswego brand.

Unfortunately, property owners and the community have been misled into thinking that a real solution to the SL issue has been crafted. We believe the City is potentially in violation of Measure 56, State Goals 1 and 5 and the Federal Clean Water Act and encourage you to reconsider the Sensitive Lands and Comp Plan proposal that is before you tonight.

Regards,
Dr. David Streiff
President, LO Stewards

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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
Regulated Resources Breakdown by type:				
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
Total Regulated Resources	1443	1657	950	1053.75
Proposed HBA/Incentive Breakdown by Type*:				
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
Total Proposed HBA	0	453	0	94
Total Regulated and HBA	1443	2110	950	1147.75

***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.

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