

"Making a difference through excellence of service"



CITY OF WARRENTON

January 19, 2010

Oregon Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Re: Proposed OAR 660-028, Transfer of Development Rights Pilot Program

Dear Members of the Commission:

The City of Warrenton supports the proposed Oregon Administrative Rule 660-028, Transfer of Development Rights Pilot Program.

This rule would provide cities and property owners, an opportunity to transfer development rights where there are state regulatory obstacles to developing property. Because of this rule, areas of natural habitat and aesthetic value can be protected and the property owner can still have their right to develop.

Thank you for the opportunity to comment on this proposed Administrative Rule.

Sincerely,


Carol Parker
Warrenton Planning Director

c: file



GIUSTINA RESOURCES

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Eugene, Oregon 97440
(541) 485-1500
FAX: (541) 485-2050

January 19, 2010

Chair of the Land Conservation
and Development Commission
c/o Casaria Tuttle
635 Capitol Street, Suite 150
Salem, Oregon 97301-2540

Re: Comments on Proposed New Administrative Rules Establishing a Process
and Criteria for Selection of Transfer of Development Rights Pilot Projects

Giustina Resources is a family-owned company that owns and sustainably manages western Oregon forest land. We would like to submit the following comments regarding the above referenced proposed rules.

Our first comment is in regard to conservation easements. Section 6 (2)(b) of HB 2228 requires "...participating owners of land in a sending area to grant conservation easements pursuant to ORS 271.715 to 271.795, **or otherwise obligate themselves** [emphasis added], to ensure that additional residential development of their property does not occur". This is very similar to the wording in the proposed rules (Section 8 (a)). We are concerned that conservation easements under ORS 271.715 to 271.795 are complicated in that they involve a third-party "holder" of the easement. ORS 271.715 defines a "Conservation easement" as a "nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural, scenic, or open space values of real property, ensuring its availability for agricultural, forest, recreational, or open space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property". Actual forest practices under this definition are apparently subject to the opinion of the "holder". For example, it is not clear to us that managing forests for wood products production would be allowed under this definition. A clear and efficient alternative would be to require participating owners of land in a sending area to record a deed restriction on their property prohibiting the development of

Chair of the Land Conservation
and Development Commission
January 19, 2010
Page 2

residential homesites on the sending property. We would like to suggest that you specifically allow this alternative in these rules.

Our second comment is in regard to public access. Section 6 (2)(c) of HB 2228 requires "...participating owners of land in a sending area to allow reasonable public access to the property". The proposed rules (Section 8 (b)) adds that the "commission may agree to limits on public access in the event the landowner demonstrates there are significant risks to forest resources or management practices that would result without such limits". Landowners often limit public access for a wide variety of reasons including, but certainly not limited to, safety, fire risk, resource protection, liability exposure, theft, vandalism, and dumping. These reasons vary over time by owner. It would be impractical for the commission to consider individual exceptions on an ongoing basis. We would like to suggest that owners of land in a sending area have discretion to limit public access for any reason deemed important to the owner and, if public access is allowed by the owner, the owner may, at its discretion, require written permits for entry.

We appreciate the opportunity to comment and your consideration of our comments.

Sincerely,



Peter C. Sikora
Giustina Resources

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