

Memo to Oregon Solutions Donut Hole work group
From Al Johnson
Re: Land Use Context¹
August 28, 2017

The 225-acre area of gorse-infested land known as the Bandon Donut Hole presents a variety of challenges and opportunities because of its location, elevation, topography, soils, ownership, wetlands, and other key factors.

One such key factor is the area's land use context—how it is affected by Oregon's unusual statewide land use planning system. That context is the subject of this briefing paper.

The Donut Hole's regulatory context includes Oregon's state land use statutes, goals, and rules. It also includes a layer cake of city and county comprehensive plans, transportation systems plans, public facilities plans, area refinement plans, zoning codes, and intergovernmental agreements. These local plans and codes implement state land use requirements. They also adopt and implement a variety of additional local land use policies tailored to local preferences and settings.

What's different about the Donut Hole?

The Donut Hole is an unusual setting in many ways. Its special circumstances subject it to special constraints. They also create special opportunities. They include, among other things:

- its location within the City of Bandon's Urban Growth Boundary but outside the city's current city limits in unincorporated Coos County;
- its location between Highway 101 and the bluff, surrounded by urban development already served by urban facilities and services, on generally level ground, outside tsunami zones and protected viewsheds.²
- its close proximity to the coast's main highway, the Bandon area's primary fire station, and the local airport.
- the area's place in the Bandon Comprehensive Plan's buildable residential lands inventory as the City's prime repository of "urbanizable" lands available to meet short and long-range housing needs, including needs for relatively affordable workforce housing.

¹ This short background paper is just that. It is not legal advice, and it is no more than a short introduction to a complex system of state and local land use regulations. I hope it is helpful.

² The Donut Hole has already been identified as a refuge area on evacuation plans.

- a history of inability to access this repository of largely vacant residential lands through timely annexation and related access to public or private funding for necessary infrastructure;
- a history of subdivision and parcelization;
- a multiplicity of ownerships, most of them quite small;
- the area's status under the Coos County Comprehensive Plan's Natural Hazards chapter and the state Natural Hazards Goal as an urbanizing area requiring master planning to address heightened wildfire risks;
- Coos County's track record of successful master planning and implementation with the nearby Bandon Dunes Resort;
- The City of Bandon's record of successful residential site planning and implementation for small homes on small lots, clustered to protect wetlands, on the nearby Bandon Commons project.

Taken together, these factors, together with the current convergence of financial and public safety incentives and the momentum created by the Oregon Solutions gorse project present a one-time opportunity: to leverage the funding and the political will necessary to turn the Donut Hole from an impenetrable thicket, community wildfire hazard, and motley collection of stranded assets into a resilient, fire-safe, tsunami-safe neighborhood.

The Master Plan strategy

In my view, the joint city-county master plan provides a rare opportunity to get the flexibility in planning and the certainty in implementation that are the keys to a successful future for the Donut Hole. Because a master plan is part of a comprehensive plan, it is at the top of the local regulatory hierarchy and can include any necessary tweaks to otherwise conflicting local requirements. At the same time, it has to comply directly with all state land use statutes and goals, an important quality control assuring that all bases have been touched. It's not always fun or easy, but if the result approaches the success of the Bandon Dunes Master Plan, it will have been worth it.

Under a well-considered master plan, developed with broad citizen participation and enthusiastically supported by both public and private stakeholders in and around the Donut Hole, the Donut Hole can provide Bandon with a wide range of housing choices for its workforce and other segments of the community.

A master-planned Donut Hole can also accommodate a wide range of other public and private uses, some interim, some long-term, that, taken together, provide a permanent solution to an

ongoing wildfire hazard and create a center for refuge, resilience, and adaptation addressing the other ongoing hazards of earthquake and tsunamis. It could, for example, create redundancy and resilience for the community in the form of solar or wind generation, battery storage, emergency water supplies, package treatment plants like the ones at Bandon Dunes and the Three Rivers Casino in Florence. It could, together with the fire station, accommodate one of the forward supply depots contemplated for the South Coast in the latest update to the state resilience plan. Urban farming, university field and research stations, interpretive centers, incubators, sports facilities, campgrounds—whatever works for the people of Bandon and Coos County and doesn't work for gorse.

City and county policies, plans and zones

The Donut Hole is currently designated for urban residential use on both the Coos County and City of Bandon comprehensive plan maps and zoning maps. Much of the 225-acre area is old platted subdivisions with very small lots, laid out on a conventional street grid. Almost none of the lots or streets have been developed, and the area has no storm or sanitary sewer. There are a few larger parcels, but most of the 1400+ lots are 25' X 100', and there are over 100 separate ownerships. There are only a dozen or so homes scattered across the area.

The lots and parcels in the Donut Hole are currently zoned UR2, which is a county "Urban Residential" zone. Upon annexation, the city normally applies one of its existing zones. Under those zones, the City of Bandon's minimum lot size is 5,400 sf, but will allow construction on the undersized lots as long as all other building codes and special setbacks are complied with. If the area remains subject to wildfire hazards, that could mean setbacks that are the width of entire lots. The City has code provisions for Planned Unit Developments, which create flexibility by allowing clustering, smaller lots, zero lot lines, and other measures without reducing overall density or buildout capacity. The Bandon Commons PUD just west of the Donut Hole is an example of such development.

The Master Plan Option

In response to the need for flexibility and a growing awareness of the wildfire danger, Coos County has recently amended its Comprehensive Plan and Zoning Code to facilitate a collaborative city-county master plan option, under which the master plan and special code provisions would be adopted by both jurisdictions as distinct parts of their comprehensive plans and zoning codes, similar in format to the Bandon Dunes master plan and code provisions currently residing in the Coos County Comprehensive Plan and Development Code. The plan would address gorse eradication, wetland preservation, other community concerns and owner interests. It would also address the timing and financing of urban facilities and services as well as the timing of annexations. Finally, it would create clear entitlements for property owners and meet the Oregon Needed Housing Statute's requirements for clear and objective standards and simplified permitting procedures for needed housing types within acknowledged urban growth boundaries.

Oregon's Statewide Land Use System: A place for everything and everything in its place.

Land use planning and zoning in Oregon is another of those things that are different here. There's a reason why a well-known book about Oregon land use is entitled **The Regulated Landscape**.³ Our land use regulatory framework is comprehensive, hierarchical, and strictly, if sometimes unevenly, enforced.

Since the adoption of Senate Bill 100 over 40 years ago, all Oregon cities and counties have had to adopt comprehensive plans and zoning ordinances that carry out the mandates of a set of statewide land use statutes, goals, and administrative rules. Because they implement state land use laws, city and county comprehensive plans are not just visions of the future. They too have the force of law. This means, in general, that all zoning ordinances and land use permits must be consistent with all applicable comprehensive plan designations and policies.

Those mandates cover the full range of land use issues. Agriculture, Forest, and open space goals reserve the vast majority of Oregon's nonfederal lands for rural uses such as farming, ranching, timber production, and habitat preservation. Other goals address planning for coastal dunes, beaches, and estuaries, recreational needs, transportation, economic development, housing, energy, natural hazards, and the orderly extension of public facilities and services.

Of special concern in planning for the future of the Donut Hole are the Urbanization Goal, the Housing Goal, the Natural Hazards Goal, the Public Facilities and Services Goal, and the Transportation Goal.

The Urbanization Goal (Goal 14) confines urban development within Urban Growth Boundaries designed to meet projected needs for urban growth over a long-term planning period, normally 20 years. To establish and change urban growth boundaries, cities have to prove that they have adequate supplies but not a surplus of serviceable lands to meet urban land needs, including residential land needs, over their planning periods.

The Urbanization Goal and related rules prohibit extension of urban facilities and services, including public sewer and water, outside urban growth boundaries. Of more direct concern, those regulations have also been applied to delay or prohibit urban development and service extensions inside urban growth boundaries pending annexation into cities. Given the great difficulty many Oregon cities have in completing annexations, this too often means that county lands counted as "urbanizable" will in fact remain "rural" during the relevant planning period and may as well still be outside a UGB. The result is the Oregon land use program's version of what a software developer would call "vaporware," what a soccer fan would call an "own goal." Until now, at least, it's what we are calling a Donut Hole.

The Housing Goal (Goal 10) requires Oregon's local governments "To provide for the housing needs of citizens of the state." More specifically, Goal 10 requires that

³ Knaap & Nelson, *The Regulated Landscape: Lessons on State Land Use Planning from Oregon* (Lincoln Institute 1992).

“Buildable lands for residential use shall be Inventoried and plans shall encourage the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type, and density.”

As fleshed out in statutes, interpretive rules, and case law, this means that lands in acknowledged buildable residential lands inventories, like those in the Donut Hole, must be made realistically available in ways that meet near-term needs. Under the statewide Housing Goal (Goal 10) and one of the Needed Housing Statutes, ORS 197.307, such lands must be available for permitting outright subject only to standards and procedures that are (1) clear, (2) objective, and (3) do not cause unreasonable cost or delay.⁴

⁴ **197.307 Effect of need for certain housing in urban growth areas; approval standards for certain residential development; placement standards for approval of manufactured dwellings.** (1) The availability of affordable, decent, safe and sanitary housing opportunities for persons of lower, middle and fixed income, including housing for farmworkers, is a matter of statewide concern.

(2) Many persons of lower, middle and fixed income depend on government assisted housing as a source of affordable, decent, safe and sanitary housing.

(3) When a need has been shown for housing within an urban growth boundary at particular price ranges and rent levels, needed housing shall be permitted in one or more zoning districts or in zones described by some comprehensive plans as overlay zones with sufficient buildable land to satisfy that need.

(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. The standards, conditions and procedures may not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay.

(5)

(6) In addition to an approval process for needed housing based on clear and objective standards, conditions and procedures as provided in subsection (4) of this section, a local government may adopt and apply an alternative approval process for applications and permits for residential development based on approval criteria regulating, in whole or in part, appearance or aesthetics that are not clear and objective if:

- (a) The applicant retains the option of proceeding under the approval process that meets the requirements of subsection (4) of this section;
- (b) The approval criteria for the alternative approval process comply with applicable statewide land use planning goals and rules; and
- (c) The approval criteria for the alternative approval process authorize a density at or above the density level authorized in the zone under the approval process provided in subsection (4) of this section.

(7) Subject to subsection (4) of this section, this section does not infringe on a local government’s prerogative to:

- (a) Set approval standards under which a particular housing type is permitted outright;
- (b) Impose special conditions upon approval of a specific development proposal; or
- (c) Establish approval procedures.

(8) In accordance with subsection (4) of this section and ORS 197.314, a jurisdiction may adopt any or all of the following placement standards, or any less restrictive standard, for the approval of manufactured homes located outside mobile home parks:

- (a) The manufactured home shall be multisectional and enclose a space of not less than 1,000 square feet.
- (b) The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

Moreover, these lands, including those in the Donut Hole, can't be subjected to direct or indirect "downzoning" that reduces their capacity without accounting for and offsetting those reductions, either by increasing densities elsewhere within an urban area or by increasing the size of the urban area itself. In the case of the Donut Hole, that means the area should emerge from any master planning, PUD, or other process with the capacity to accommodate at least as many residential units as are theoretically possible now.

To be successful, the master plan should exceed these minimum requirements. It should result in additional capacity, encouraging compact urban growth while assuring that all current landowners come out with at least the same quantity of unit entitlements they have now.

If the Master Plan and implementing ordinances are done right, those Master-Plan-based entitlements should have the advantage for both current property-owners and potential future residents of being real instead of theoretical.

Goal 7 - Areas Subject to Natural Disaster and Hazards

To protect life and property from natural disasters and hazards.

This state land use goal requires local governments to adopt comprehensive plans, inventories, and policy measures to reduce risk to people and property from natural hazards and disasters. Those listed in the goal include floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. The County's firewise initiative and the new wildfire hazard policies calling for master planning address this goal, together with other, more specific requirements for setbacks and the like.

(c) The manufactured home shall have a pitched roof, except that no standard shall require a slope of greater than a nominal three feet in height for each 12 feet in width.

(d) The manufactured home shall have exterior siding and roofing which in color, material and appearance is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on surrounding dwellings as determined by the local permit approval authority.

(e) The manufactured home shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

(f) The manufactured home shall have a garage or carport constructed of like materials. A jurisdiction may require an attached or detached garage in lieu of a carport where such is consistent with the predominant construction of immediately surrounding dwellings.

(g) In addition to the provisions in paragraphs (a) to (f) of this subsection, a city or county may subject a manufactured home and the lot upon which it is sited to any development standard, architectural requirement and minimum size requirement to which a conventional single-family residential dwelling on the same lot would be subject. [1981 c.884 §5; 1983 c.795 §3; 1989 c.380 §2; 1989 c.964 §6; 1993 c.184 §3; 1997 c.733 §2; 1999 c.357 §1; 2001 c.613 §2; 2011 c.354 §3]

Goal 11 - Public Facilities and Services

Goal 11 requires local governments to “plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.”

The Goal defines a "timely, orderly and efficient arrangement of public facilities and services" as "a system or plan that coordinates the type, location, and delivery of public facilities and services in a manner that best supports the existing and proposed land uses." Goal 11 specifically lists police protection, fire protection, sewer services, storm drainage facilities, planning and zoning, health services, recreation facilities and services, energy and communication services and community governmental services as matters of concern.

The City and County address this with public facilities plans, annexation policies, urban service extension restrictions, and a Joint Urban Area Management Agreement, among other tools.

Goal 12 – Transportation Planning

This goal requires cities, counties, and the state to plan for safe, convenient, and economic transportation systems to move people and goods within across geographic and jurisdictional areas. It is implemented by LCDC’s Transportation Planning Rule (TPR), OAR Chapter 660, Division 12 and numerous LCDC, LUBA and court decisions.

Goal 12 requires local government transportation plans to be based upon state, regional and local transportation needs. The TPR sets specific requirements for compliance and coordination among affected units of local government for preparation, adoption, refinement, implementation and amendment of transportation system plans. Through measures designed to reduce reliance on the automobile, the TPR is also intended to encourage travel and land use patterns in urban areas that reduce air pollution, traffic and livability problems associated with much of urban development.

Bandon has a relatively current and sophisticated Transportation Systems Plan in which, among other things, Face Rock/20th Street is shown as a future east-west arterial between Beach Loop Road and Highway 101. That arterial serves both projected traffic circulation needs and emergency evacuation needs. It would probably be a given in the street layout for any new Master Plan. The need to move forward with that connection could also leverage funding through, say, ODOT and LCDC’s Transportation Growth Management Program.

Enough for now

There’s much more, but briefing papers should be brief. Briefer than this. I hope this summary gives us a framework for thinking about the Donut Hole’s regulatory environment as both a challenge and an asset. It should lead us to more creative and lasting solutions as well as to the additional funding sources needed to get us there.