



September 6, 2024



NOTICE OF RECEIPT OF RULEMAKING PETITION

Pursuant to ORS 183.390, the Department of Land Conservation and Development (DLCD) received a petition to repeal and amend OAR 660-004-0040(7) from Mr. David King. Mr. King's submittal is attached.

OAR 660-004-0040(7) provides:

(7) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

At this time, DLCD requests public comment on that rule and on whether options exist for achieving this regulation's substantive goals in a way that reduces negative economic impact on businesses.

Pursuant to ORS 183.390(3), DLCD shall, in reviewing this petition, consider:

- (a) The continued need for the rule;
- (b) The nature of complaints or comments received concerning the rule from the public;
- (c) The complexity of the rule;
- (d) The extent to which the rule overlaps, duplicates or conflicts with other state rules or federal regulations and, to the extent feasible, with local government regulations;
- (e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- (f) The statutory citation or legal basis for the rule

Please provide any comments, in writing to the agency prior to Friday, September 20, 2024 at 5:00 PM. Comments must be provided in writing to:

Casaria Taylor
Senior Rules Coordinator
635 Capitol St. NE, Suite 150
Salem, OR 97301-2540
or by email at: casaria.taylor@dlcd.oregon.gov.

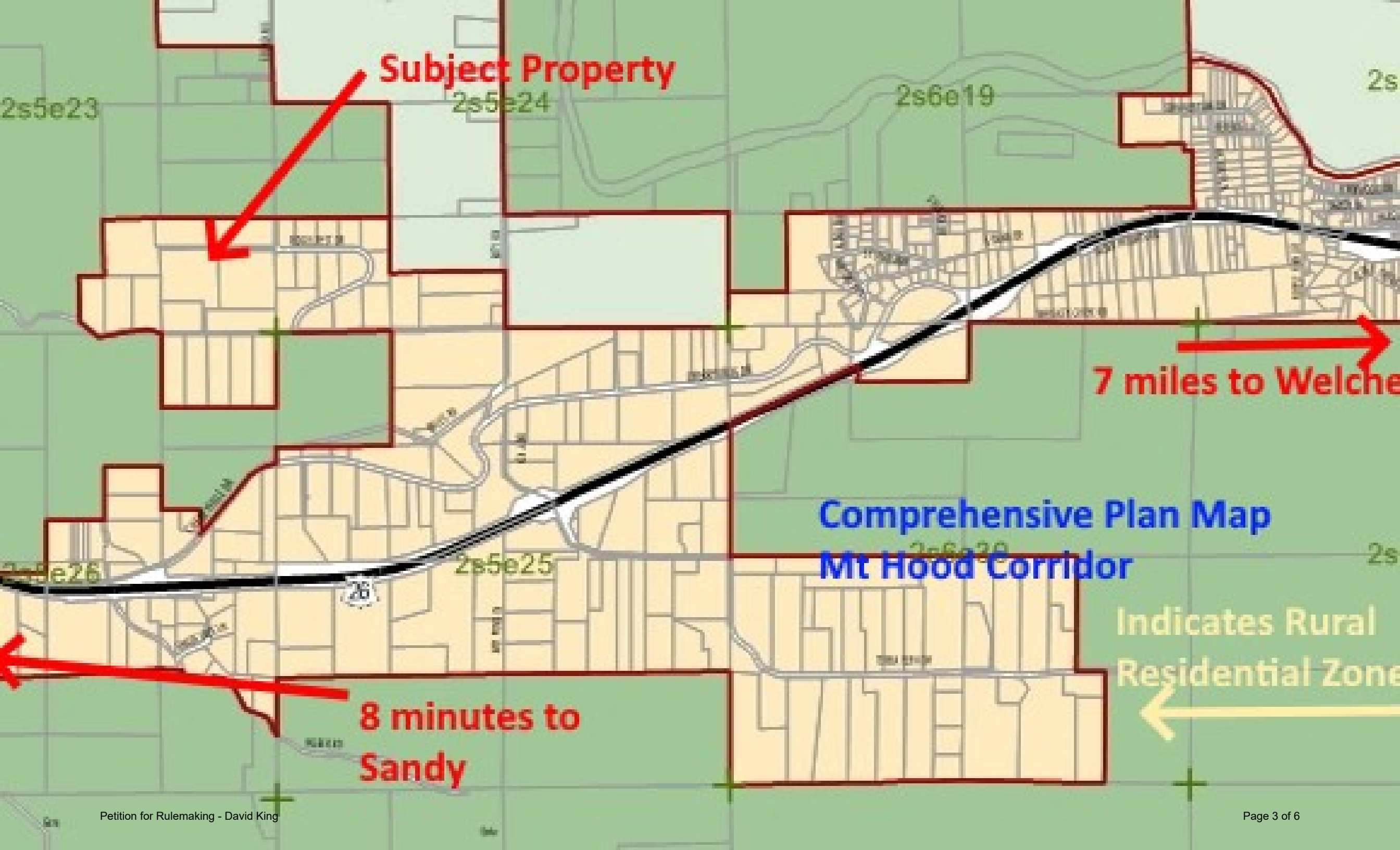
From: [david king](#)
To: [TAYLOR Casaria * DLCD](#); [REID Kelly * DLCD](#); [HOWARD Gordon * DLCD](#)
Subject: OAR 660-004 0040(7)
Date: Friday, July 12, 2024 10:07:44 PM
Attachments: [SurroundingArea.pdf](#)
[RuralResidentialArea.pdf](#)

To: Director of DLCD
Chair of LCDC
Attorney General's Office, State of Oregon
Clasaria Taylor, DLCD Rules Coordinator

I am petitioning to get the above rule repealed on the grounds that the rule making committee did not follow the proper notice requirements. ORS 185.335 requires that a rule be written in plain, understandable English in "sufficient detail to inform a person that the person's interests may be affected." ORS 185.750 requires that the rule be stated in "language that is as clear and simple as possible". However, subsection 660-004-0040(7) is anything but clear and simple. According to DLCD's interpretation, the purpose of the section was to void the provisions of any county plan that allowed upzoning without a goal 14 exception. Counties and Oregon property owners, on the other hand, disagree, saying that a goal 14 exception is required only if the county amends its comprehensive plan. The rule is vague and ambiguous if nothing else. Two times LUBA has attempted to parse the rule to discern the meaning and two times it decided it was ambiguous and indiscernible.

ORS 143-400(d) says that a rule cannot be repealed "if the [rule making] agency attempted to comply with the [notice] procedures and its failure to do so did not substantially prejudice the interests of the parties." However, facts and circumstances indicate that the rule making committee actually intended the rule to be vague and ambiguous. Based on the various drafts of the rule that the committee considered during the rule making meetings, it is reasonable to conclude that they wanted to avoid saying publicly that all upzoning would require a goal 14 exception. Language requiring a goal 14 exception was stricken from all of the proposed rule drafts. Based on the committee minutes, votes were taken on whether the rule should include language saying a goal 14 was required and it always voted in favor of including the language. Yet the language was omitted from the final version. Why was that? The most reasonable answer can be found in the archived audio recordings of the committee meetings. Those recordings captured discussions on how the notice of the rule would "look" to the legislature and local governments should it include the goal 14 exception language. The committee certainly wanted to say a goal 14 exception was required. But to the detriment of the affected parties, they simply did not want to say it outloud in public.

Copies of the LUBA decisions, meeting minutes, proposed rule drafts, and audio recordings to be provided upon request.



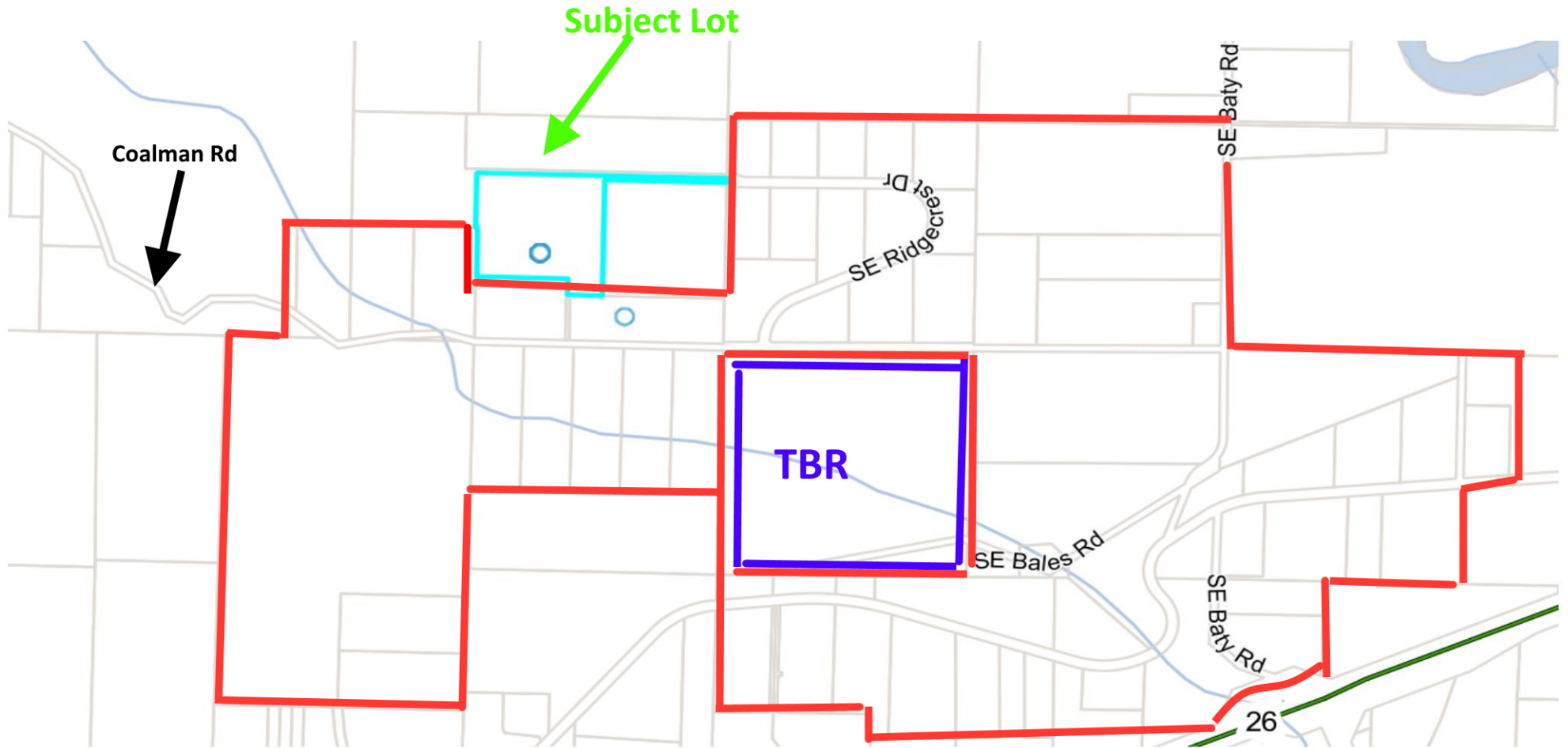
Subject Property

7 miles to Welche

**Comprehensive Plan Map
Mt Hood Corridor**

**Indicates Rural
Residential Zone**

**8 minutes to
Sandy**



Objectid: 110597

Primary Address: No Situs

Jurisdiction: Clackamas County (<http://www.clackamas.us/>)

Map Number: 25E23

Taxlot Number: 25E23 01300

Parcel Number: 00695545

Document Number: 2007-107470

Census Tract: 024302

Landclass: 640

RRFF5 Enclosed in Red
TBR Enclosed in Blue
Indicates Subject Lot

General Neighborhood

Assessment

From: [david king](#)
To: [REID Kelly * DLCD](#); [HOWARD Gordon * DLCD](#); [TAYLOR Casaria * DLCD](#)
Subject: OAR 660-004-0040(7) Petition for rule change
Date: Monday, July 15, 2024 9:46:20 AM

If OAR 660-004-0040(7) can be repealed, here is how it should be amended:

"Generally a goal 14 exception is required whenever a property is rezoned to a higher density. OAR 183.410 provides that a person may petition the DLCD for a declaratory ruling to determine if the rule applies to a specific property."

https://oregon.public.law/statutes/ors_183.410

The above language captures the essence of what the rule making committee was striving to achieve. It would allow the DLCD to restrict aggressive, high density rezoning projects while at the same time allow for measured, incremental development in areas where future UBGs are not negatively impacted.

Thank you for your help on this matter. Any suggestions would be greatly appreciated. My hope is to find a way that is fair to both sides of the issue.

Best David King 925 216 1349

PROOF OF MAILING

I certify that on September 6, 2024, I directed the original **Petition for Rulemaking** to be emailed to the following:

Mr. David King,
davidk235@gmail.com

Department of Land Conservation and
Development's Public Notices (Rulemaking)
govDelivery email list

Senator Jeff Golden,
GoldenJ@oregonlegislature.gov

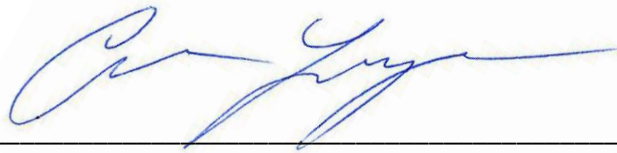
Senator Fred Girod,
GirodF@oregonlegislature.gov

Representative Ken Helm,
HelmK@oregonlegislature.gov

Representative Mark Owens,
OwensM@oregonlegislature.gov

Representative Annessa Hartman,
HartmaA@oregonlegislature.gov

DATED this 6th day of September, 2024



Casaria Taylor, Senior Rules Coordinator