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TO: Semiconductor Joint Committee of the Oregon Legislature

DATE: March 10, 2023

RE: My Comments and Proposed Amendments to SB 4-3 March 6, 2023 version

I strongly oppose this unnecessary and poorly drafted super-siting legislation.

As Tom McCall said, ...*Oregon is demure and lovely, and it ought to play a little hard to get. And I think you'll be just as sick as I am if you find it is nothing but a hungry hussy, throwing herself at every stinking smokestack that's offered.*

This is a very dangerous political precedent of the Legislature delegating power to the Governor to carry out spot zoning. In the future many other will ask for the same treatment for whatever seems important at the moment and that will degrade a planning system designed to be fair to all, balancing competing goals and forward looking.

Should the legislation pass then it must be corrected to:

- **Make super-siting approval the last step in an integrated application, approval and financing process, not operating on a separate track. This is the most important single amendment.**
- Prevent bait and switch and limits its effect to the uses that are offered as justification.
- Remove the incentives generated for landowners and speculators to deploy and game the legislation to enrich themselves.
- Require additional information and review criteria that consider the potential impacts of any subsequent development so that is available for public comment, in particular impacts on farming, water availability, generation of highly toxic wastes, housing costs and wildlife.

My comments and suggested amendments below are based on those ideas. Amendments are shown in red, strike-outs indicates deletion and underlining is new material.

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Section 1 Definitions

Anti-Bait and Switch Amendment

Comment: One of the most glaring omissions in the bill is the absence of a definition of “semiconductor industry and advanced manufacturing.” The justification for the bill is to attract these industries to Oregon but the open-ended wording of the bill could allow a wide range of “related” types of industries to use it. (See my comment on Section 10(1).)

The definitions below are borrowed in part from Section 14. Other parts of the definition of semiconductor, semiconductor industry were taken from the Secretary of Commerce Code of Federal Regulations for the CHIPS Act but I chose to create my own definition of “Advanced Manufacturing” since the big brouhaha of a few years ago was over the “failure” to attract an Advanced Materials plant.

As used in Sections 1 to 612 of this Act:

“Semiconductor’ means solid state electrical devices which perform functions such as information processing and display, power handling, and interconversion between light energy and electrical energy. Semiconductors are created by slicing or polishing semiconductor material, utilizing photoresist to manufacture intermediate products or producing either semiconductor devices or related solid state devices.’

“Semiconductor industry’ means the fabrication, assembly, testing, or production of semiconductors, materials used to manufacture and to conduct research and development with respect to semiconductors, materials used to manufacture semiconductors or semiconductor manufacturing equipment. ‘

‘Advanced manufacturing’ means use of innovative technologies to manufacture the devices used in the production of semiconductors including their components.

Section 3. Application process, review criteria, agreement with successful applicants

Subsection (2) Application contents

Comment: The application materials must address the review criteria and because the review criteria do not consider impacts on water supplies, toxic waste generation, the company’s participation in incentive programs elsewhere (so their performance can be checked) and their financial propriety, and on taxpayers, then those must be included in the application materials.

Water Consumption and Pollution Generation Disclosure Amendments:

Insert:

(H) State the amount of water and source of water that will be used in its operations by year, when operating at full capacity;

(I) State the types, volumes and proposed methods for disposal of all waste materials (solid, liquid or gaseous);

Taxpayer Impact Disclosure Amendment

(K) Identify with specificity the types and costs of capital improvements and public facilities and services that will be required for the project when operating at full capacity and the sources of funding for these improvements, facilities and services

Performance Track Record Amendment:

(J) Identify with specificity the company including parent company's participation in incentive programs in other states that have performance requirements addressing the same or similar subjects as set forth in this Act;

Corporate Responsibility and Oregon Taxpayer and Environment Protection Amendments:

(K) Provide certified financial and other audits relevant to the requirements of this Act, for the last five years;

(L) Disclose any pending litigation, audits, civil fines, criminal penalties or government investigations that could be helpful in determining whether the applicant will in good faith meet the application criteria and fulfill the terms of any agreement under this Act;

“(HM) Include any other information that the department or the Governor considers necessary or important for review of the application; and

Performance Assurance Amendment:

“(HN) Sign the application through an authorized director, officer, employee or agent under penalties for false swearing, which include revocation of any agreement and reimbursement of all benefits and costs incurred pursuant to this Act, plus interest and attorney fees.

Subsection (3) Review criteria

Comment: Amendments are needed to have criteria parallel to the issues added to the application materials. Also needed replacement of the “give preference” to standard which means other projects that do not meet the Acts standards could also qualify:

Amendment to Prevent Bait and Switch:

“(3) In approving applications and setting program grant and loan amounts, the department and the Governor shall give preference to select:

Water Quantity and Quality Protection Amendment:

(j) Projects that will not diminish or contaminate water supplies and water quality to the detriment of other people and businesses.

Pollution Prevention and Environmental Justice Amendment:

(k) Projects that will not generate pollutants in excess of state and Federal standards or increase health risks to historically disadvantaged populations and communities.

Good Business and Performance Assurance Amendment:

(l) Projects to be carried out by companies with a well-established public record of compliance with environmental and labor laws and regulations and good faith and full performance with similar performance standards in other agreements made with Oregon, other states and governments.

Taxpayer Protection Amendment:

(m) Projects that will not impose new tax burdens on persons and families with incomes below the state median household income.

Amendment to Avoid Making the Housing Affordability Crisis Worse:

(n) Projects that will not create additional housing demands that will exacerbate the unaffordability of housing in the host community.

Amendment to Minimize Loss of Productive Farmland:

(o) Projects that are designed and located to minimize the loss of currently or potentially productive farmland; and.

“(jp) Applications that, taken together, represent regional diversity in Oregon.

Subsection (4)(a). Governor approval of application; agreement with successful applicants

Amendment to Require Governor to Base Her decision on the Criteria in the Act:

Comment: There is no reference to any criteria or basis for this decision by the Govenor; it would be perfectly legal for her to say “because I feel like it and it will help me get re-elected.” The Governor’s approval must be based on the criteria and standards in the Act and the Governor should be required to sign that finding to assure personal accountability.

“(4)(a) As soon as practicable after making a final decision under subsection (2) of this section, the Governor shall return the application to the department with a signed notice of the final decision and the reasons for the decision based on specific determinations of compliance with each of the requirements of Subsections 1(3) and 3(3) of this Act.”

Section 5 Nonperformance Sanctions

Taxpayer Protection Amendment:

“SECTION 5. (1)(a) A business that received a program grant or loan, including an application assistance grant, shall become liable for immediate repayment of the full amount of the grant or the out-standing principal amount of the loan, and the cost of proceedings under this Act, plus interest, if; etc.

Section 10. Gubernatorial Site Selection

Subsection (1) Gubernatorial Approval

Amendment to Ensure the Intent of the Act is Honored and Prevent Bait and Switch:

Comments The most important amendment in this package is to limit super-siting for semi-conductor industry investments that have passed through all the review and financing steps established in the act.

The phrase “relate to” and the wording of the siting sections seem to allow a very wide range of industrial uses not the uses used to justify this legislation which is another opportunity for bait and switch.

(1) On or before December 31, 2024, the Governor by executive order and subject to section 11 of this 2023 Act, may bring within an existing urban growth boundary designated lands for the purposes of providing lands available for industrial uses ~~that are approved and have secured Federal and state financial support through as part of the state's covered incentive as defined in section 1 of this 2023 Act that relate to for~~ the semiconductor industry, advanced manufacturing or the supply chain for semiconductors or advanced manufacturing.

Subsection 2 Size of Sites Approved by the Governor

Amendments to Protect Taxpayer Investments in Existing Industrial Lands inside UGBs by Limiting the Scope to the Large Industrial Sites that Were the Impetus for the Bill:

Comment: This section itself represents a bait and switch. The justification was the need for large sites or at least sites for actual not speculative projects. Now the bill covers sites of virtually any size, down to one acre and whether or not there is a real proposal.

“(2) Lands designated by an executive order under this section must be within a site that consists of one or more tracts of land that are:

“(a) Contiguous to the city’s existing urban growth boundary; and

“(b) Entirely within three miles of the city’s existing urban growth boundary.

~~“(c) Needed for semiconductor industry or advanced manufacturing reviewed, financed and approved as provided in this Act.~~

“(3) Before issuing an executive order under this section, the Governor shall:

“(a) Conduct one public meeting, in coordination with the city nearest to the site and each county in which the site is located, to be held in that city for the purpose of discussing bringing within the urban growth boundary the lands or potential lands; “(b) Accept public comments for a period of no fewer than 20 days following the public meeting in paragraph (a) of this subsection;

“(c) Make a determination that existing lands within an urban growth boundary in this state would not meet the critical and major needs of the specific project; and

“(4) The determination and approval made by the Governor under subsection (3)(c) and (d) of this section are final and not subject to appeal.

“(5) The Governor may designate up to a maximum of 12 four sites, as follows: “~~(a) Two sites of any size; (b) Four sites that do not exceed are not less than 300 acres and not more than 500 acres.; and (c) Six sites that do not exceed 100 acres.~~

Subsection 7 Scope of Supreme Court Review

Amendment to Assure the Constitutionality of the Entire Act:

"(7) Jurisdiction is conferred upon the Supreme Court to determine ~~the legal effect of subsections (1) to (6) of this section, including whether subsections (1) to (6) of this section to determine whether this Act~~ violates any provision of the Oregon Constitution or of the United States Constitution. A person who is or will be adversely affected by subsections (1) to (6) of this section may institute a proceeding for review of the order only by filing a petition with the Supreme Court within 60 days following the effective date of this 2023 Act and serving a copy of the petition on the Attorney General and Governor.

Subsection 8 Local Government Review and Action

Preventing Bait and Switch Amendment

"(8) No later than six months following the entry of an executive order under this section, each local government with jurisdiction over the lands **may**, notwithstanding any statewide planning goals or ORS 215.431 or 227.188 or this chapter, amend its comprehensive plan or enact or amend any land use regulation to allow the use of the land for ~~industrial uses the semiconductor industry and advanced manufacturing~~ under subsection (1) of this section provided that:

Comment: As I read subsection 8, it gives the local government the discretion to not amend its comp plan and adopt the UGB amendment. If there is enough public opposition then they could refuse to amend the UGB. What would happen next would be a mess. If this was not the intent, then I suggest we not call attention to this.

Section 11 Removal of Unused Sites and Sunset

Amendment to Prevent Bait and Switch:

Comment: Subsection 2 is not necessary and is an invitation to bait and switch.

"Land brought within an acknowledged growth boundary under section 10 of this 2023 Act shall be removed from the urban growth boundary unless, on or before June 30, 2028:

"(1) Development of the land has been substantially completed; or
~~(2) The land has been incorporated within an urban growth boundary under ORS 197.286 to 197.314 or 197A.300 to 197A.325 and has been reviewed under ORS 197.626.~~

Section 12 Sunset Clause

Amendment to Narrow the Window for Governors to Unilaterally Override Land Use Laws:

"SECTION 12. Sections 10 and 11 of this 2023 Act are repealed on January 2, 202~~96~~."