



FRIENDS OF THE COLUMBIA GORGE

February 12, 2019

House Committee on Agriculture and Land Use
900 Court Street NE
Salem, Oregon 97301

RE: Oppose HB 2357 to reduce citizen participation before the Land Use Board of Appeals

Dear Chair Clem and Members of the Committee:

Friends of the Columbia Gorge (“Friends”) is a nonprofit organization with approximately 7,000 members dedicated to protecting the outstanding resources of the Columbia River Gorge National Scenic Area and supporting its communities. Friends is dedicated to protecting the outstanding scenic beauty, natural resources, cultural heritage, and livability of the Columbia River Gorge National Scenic Area.

While most land use appeals within the Columbia River Gorge National Scenic Area (“National Scenic Area”) are required to be taken to the Columbia River Gorge Commission, appeals can also go to the Land Use Board of Appeals (“LUBA”) in limited circumstances (*See* ORS 196.115). In addition, land use decisions for projects directly adjacent to the National Scenic Area or within urban areas in the National Scenic Area, both of which are appealable to LUBA, can have adverse effects within the Gorge itself. Therefore, this bill has the potential to harm Friends and the National Scenic Area.

It is not clear what problem this bill is meant to address. Since SB 77 passed in 2013, LUBA has been required to collect and report appeal statistics to the public on its website. One of the arguments that spurred SB 77 was that a large number of frivolous appeals were being brought to LUBA. However, the data collected pursuant to SB 77 has shown that for each full year of reporting, 2014-2017, there has been an average of only 63 cases per year filed and briefed

before LUBA. Of those cases, only 40% were affirmed by LUBA thereby indicating that the appeal was unsuccessful. There is simply no evidence of frivolous or abundant appeals. Another complaint that brought about SB 77 was that there was a small number of organizations and individuals who were constantly appealing local land use decisions. However, in addition to showing that there is a small number of appeals each year and that those are largely successful, SB 77 reporting has proven that such frequent appellants do not exist in reality. (See <https://www.oregon.gov/LUBA/Pages/SB-77.aspx>)

Finally, this bill is flawed. HB 2357 virtually eliminates standing to appeal for any organization or individual that does not reside or do business within 25 miles of the boundary of a body making a land use decision. This would likely have unintended consequences. For example, if someone owns a second home at the coast at which they do not reside and a land use decision directly affecting their property is made by a local government then HB 2357 would unconstitutionally take away that person's rights to Due Process under the Oregon and United States Constitution. In addition, Tribes that do not have a presence within 25 miles of the boundary of a decision-making body could not appeal, even if the project would unconstitutionally adversely affect their treaty rights.

HB 2357 is a bad idea that solves fictional problems. **For the reasons above, Friends opposes HB 2357.**

Thank you for this opportunity to comment.

Sincerely,



Steven D. McCoy
Staff Attorney