

**To: Chair Helm, Vice Chairs Hartman and Owens and Members of the Committee
House Committee on Agriculture, Land Use, Natural Resources, and Water**
From: Al Johnson
Retired land use attorneyⁱ
Re: HB 2238 - Authorizes Rulemaking to Establish New Removal/Fill Permit Fees
Date: March 23, 2023

Email: halnrw.exhibits@oregonlegislature.gov

Greetings, Chair Helm and Committee Members:

As a long-time affordable housing advocate and retired land use lawyer with considerable wetlands experience, I urge you to assure that mitigation costs should run the other way when reducing buildable land capacity on lands included in urban residential buildable lands inventories.

What requires mitigation where lands in urban buildable lands inventories is concerned, is the loss of lands identified under statewide housing statutes and goals as needed to meet state and local obligations to provide realistic 20-year urban residential land supplies, as required by Oregon's statewide housing goal, at price ranges and rent levels and in locations affordable to all Oregonians.

Costs, aside, the current system is inconsistent with state law requiring clear and objective standards and prohibiting unreasonable costs and delays. It also undermines statutory Buildable Lands Inventories. Cities and counties should not be allowed to assume development of wetlands and likely wetlands, such as hydric soils, in their buildable lands inventories because such assumptions will not be supported by an "adequate basis in fact" as required by Oregon's needed housings statute and statewide planning goal. See LUBA's floating tree buffer opinion, cited in footnote.

ⁱ Statewide practice 1974-2010. Wide range of clients, public and private, for-profit and non-profit, residential, commercial, industrial, governmental. Several low-income housing projects approved over neighborhood opposition with help of Oregon's needed housing statutes and statewide housing goal.

Housing related volunteer work has continued since retirement, including:

Co-chair, Bend Residential Lands Technical Advisory Committee, during 2014-201 BLI-HNA-UGB update.

Member, Steering Committee, Wild Rivers Coast Alliance (focus on workforce housing inside coastal UGBs).

Member, DLCD Regional Housing Needs Analysis (OHNA) advisory committee and Housing Capacity work group

Alternate, DLCD Climate-Friendly and Equitable Communities rulemaking advisory commttee.

Served as LCDDC hearings official in 1970's. Drafted early LCDDC statewide housing goal decisions including *Seaman v Durham* (explaining least cost, regional fair share requirements of Goal 10) and *Kneebone v Ashland* (restricting density reductions).

Co-editor of Oregon State Bar Administrative Law handbook.

Represented prevailing party in leading cases enforcing Oregon's statewide housing and needed housing statutes, including:

Opus v. Eugene (requiring cities to account for impacts of site review standards on housing inventories)

Jaqua v. Springfield (limiting type and scale of nonresidential uses on urban residential lands)

Creswell Court v Creswell (prohibiting city from excluding manufactured home parks without coordinating with nearby cities)

Homebuilders/Eugene Chamber v Eugene (2002 Eugene code update (requiring cities to account for losses to residential lands inventories from amendments overlaying up to 200,000 density-reducing tree buffers on inventoried 20-year residential land supply).