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Hon. Julie Fahey, Chair
Hons. Breese-Iverson and Kropf, Vice-Chairs
House Committee on Rules
Oregon Legislature
Salem, OR 97301

RE: Oppose HB 3414 (As Introduced, subject to -5 and -6 Amendments)

Dear Chair Fahey, Vice Chairs Breese-Iverson and Kropf, and Committee Members,

For the past 23 years, I have worked as a land use attorney representing local governments, developers and neighborhood groups throughout the state. Although I have expertise and volunteer advocating for the protection of our cultural and historic resources, I have worked on a wide variety of matters including advocating for the provision of housing, including affordable housing.

The guiding principle that drives my work—as is also the case for most of the private and public sector land use planners that I have had the pleasure to work with - is that sound land use planning is predictable, efficient and balances the many land use objectives that Oregonians hold dear. These objectives include protecting the natural environment and urban places that reflect shared community values while also recognizing that all people have access to safe and affordable housing and jobs that allow Oregonians to thrive. Recalling Governor McCall's now famous speech calling for the adoption of Senate Bill 100, which established Oregon's land use system as we know it today:

> "We are in dire need of a state land-use policy, new subdivision laws, and new standards for planning and zoning by cities and counties. The interests of Oregon for today and in the future must be protected from grasping wastrels of the land. We must respect another truism: that unlimited and unregulated growth leads inexorably to a lowered quality of life."

It is quite telling that in this month, nearly exactly 50 years later, we stand on the precipice of allowing development to proceed without attention to urban form and development protections, specifically the historic, the natural and the scenic. Adopting Section 2 of HB 3414 will upset this balance that so many people have worked so hard to establish.

For the last 50 years, land use planners, preservationists, conservationists and local communities have worked collaboratively to identify regulations and procedures that allow new development.

If passed, the -6 amendments will give developers unilateral veto power over a boundless list of regulations including tree protections, cultural resource requirements, open space provisions and scenic area protections. The shock of such discordant development felt in every neighborhood throughout the state will incite neighbors who will turn their ire on local governments; local government officials will turn on the state; and development teams will be left without the very predictability they ask of land use system. The result will not be more housing, but a denigration of community trust. Any response that this upset is only temporary is not only disingenuous, in my experience, once you give development an authorization, it is highly unlikely to be removed.

Skepticism and mistrust, coupled with highly visible impacts from new development, will easily overwhelm local planning staff. Adding to this mix, ambiguity in the language of the -6 and -5 amendments is likely to lead to litigation, notwithstanding language that suggests such efforts cannot proceed. The result will be delay and uncertainty – the antithesis of sound planning. Writ of review is always available as an avenue for challenge should a local government fail to follow a state law or local requirement.

Some examples of the lack of clarity within the -6 amendments include:

- What types of "new residential development" qualifies for an adjustment? Does it include an addition to the façade landmark structure to add an ADU, addition of a fourplex to a landmarked property that requires adding additional floors or even demolition of the designated structure?
- Can a discretionary approval criterion be adjusted under Section 2, just like a substantive development or design standard?
- The US Supreme Court has said that protections directed at protecting historic resources fall within a local government's authority to regulate for the "health and safety" of its citizens. Does this mean that such regulations fall within the "health and safety" exception?
- Do historic design standards regulating mass and overall bulk or that might require sculpting of buildings to reflect the development scale of surroundings fall within the exception for regulations "relating to height or floor area ratio?"

Regarding the -5 amendments, the effort to define and constrain the parameters of the adjustment authorization is appreciated but technical revisions and clean-up would be necessary for this version to work:

- Does limiting the adjustment qualification to "limited land use decisions" and "building permits" exclude a certificate for appropriateness for activity within a designated historic area which is typically viewed as a "land use decision?"
- Is there an inconsistency between "limited land use decision" qualification under Subsection (1)(a), which includes an evaluation of discretionary standards, and the requirement that only "clear and objective standards" are subject to adjustment under Subsection (1)(e)?

- If historic areas are excluded from the adjustment authorization for multi-family development within historic areas in Subsection (2)(a), should this same exclusion extend to include middle housing development under Subsection (2)(i) as well?
- Although requiring that a development realize some public benefit in return for the adjustment is proper, how will a local government or a community ensure that new development subject to a adjustment necessary to reduce development times actually comes to pass?

The lack of certainty and distrust created by passing Section 2 of HB 3414 will destabilize a system that has been 50 years in the making. Without further revisions to the -5 amendments, do not pass Section 2 of HB 3414. Thank you for your consideration of these comments.

Very truly yours,

Carrie A. Richter