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To: House Agriculture, Land Use, Natural Resources and Water Committee

Re: HB 3013 -1 Amendments

Thank you for considering HB 3013, sponsored by Rep. Courtney Neron and Sen. Aaron Woods. This letter is to provide background for my case which prompted this legislation, *Schaefer v. Oregon Department of Aviation*, 23CV14126. The sponsors and proponents of this bill have always understood that, as LUBA explained, ORS 197.625(5) means:

“any improvements that are made pursuant to such a permit decision may have to be removed, if the decision that adopted the standards and criteria is not affirmed by LUBA so that the land use regulation becomes acknowledged. In other words, a permit applicant who proceeds under unacknowledged land use regulations does so at his or her own risk[.]”

Western States Development Corp., Inc. v. Multnomah County, 37 Or LUBA, 835, 840-41 (2000).

When a LUBA appeal reverses a land use approval, the losers have a legal duty to implement LUBA’s final order. And if they don’t, the winner can enforce LUBA’s order in circuit court under ORS 197.825(3)(b). However, the circuit court ruled that I actually lack the right to enforce LUBA’s order, for reasons not seen in the text of ORS chapter 197. HB 3013 will reverse that egregious error which led to dismissal of the case.

When one court misapplies the law, clearly another court could make the same mistake. HB 3013 will clarify the meaning of ORS 197.625(5) and ORS 197.825(3)(b), consistent with LUBA’s understanding, by using paragraphs to clarify what the current law describes in sentences.

The legislative intent of HB 3013 is simply to ensure LUBA orders are implemented, and the winner at LUBA can enforce the LUBA order. Why appeal to LUBA if the government and the developer can ignore LUBA's order? HB 3013 confirms that developers, their affiliates, state agencies, and local governments have an affirmative duty to implement a LUBA order by removing constructed improvements and revoking permits, without having to wait for someone to sue them in circuit court. And confirms they can be sued if they fail to implement LUBA's order.

Most governments do not allow a development to start construction while a LUBA appeal is pending. But some local governments like Marion County will issue permits and allow construction to start. This has always been understood to be at the developer's own risk of later removal, but some contend there is no such risk.

Let's make it very clear that LUBA's orders must be fully implemented. Please listen to Rep. Neron, Sen. Woods, the Cities of Aurora and Wilsonville, the land use non-profits and others who urge you to vote yes on HB 3013 -1. Help us prevent land use violators from getting off scot-free.

Sincerely,



Joseph Schaefer