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Via Electronic Mail

House Committee on Agriculture, Land
Use, Natural Resources, and Water
Oregon State Capitol
900 Court St. NE
Salem, OR 97301

RE: Testimony on Behalf of HDSE Sewer Systems Against Proposed HB 3013

Dear Honorable Legislators:

Thank you for this opportunity to comment. This firm represents HDSE Sewer System Owners Association (HDSE). This testimony is submitted in opposition to HB 3013 (the "Bill") because it would have unintended and disastrous consequences for Oregon businesses and municipal governments.

HB 3013 proposes substantial changes to Oregon's established land use system. The Bill reacts to a single lawsuit, yet its implications could be far-reaching. The Bill will introduce a level of uncertainty for developers and investors at a time when investment in crucial housing and economic development projects is already under tremendous pressure. Municipal governments could find their ability to authorize important local projects affected. And by upending the legal concept of standing in land use cases brought before the circuit courts, this change will inevitably lead to increased litigation placing additional burdens on courts and local governments.

Given the risk of far reaching and unintended consequences, we urge lawmakers to engage in further dialogue with stakeholders to address any underlying issues in a manner that maintains the integrity and effectiveness of Oregon's carefully developed land use framework, rather than implementing sweeping changes impacting public and private parties alike.

I. HB 3013 DOES NOT ADDRESS A PROBLEM OF STATEWIDE CONCERN

HB 3013 is about an individual (the Bill proponent) who is disappointed about the outcome of ongoing litigation. It does not address an existing problem. As written, ORS 197.625(b)(5) says, in summary, that improvements authorized by a permit or zone change

which was based on a comprehensive plan or land use regulation that failed to gain acknowledgement are no longer justified by that comprehensive plan or land use regulation. This statutory scheme allows for the scenario where an improvement justified by some other basis may remain. The basis may be a previous land use regulation, another statute, or a court order. It could be, as in the case of HDSE, a land use decision from twenty years ago.

A. Background.

HDSE operates a sewer system that has been in continuous operation since the early 2000s. This sewer system was approved by Ordinance 1205, an unchallenged Marion County land use decision from 2004. Recently, various investigations were made into whether expanding HDSE's sewer system would be possible. There were several motivating factors for these investigations including (1) understanding how HDSE could continue to serve its members; (2) expand its membership to pre-existing neighboring businesses; and (3) whether there was a potential to offer services to new businesses that may ultimately be established on property purchased by TLM Holdings LLC (TLM).

TLM sought and received approval from Marion County for airport-related development at the Aurora Airport. Despite being located on the airport side of Airport Road and surrounded by existing airport facilities, TLM's property retains its Exclusive Farm Use (EFU) zoning designation. Marion County's acknowledged airport master plan has identified this property as suitable for airport development and LUBA affirmed Marion County's approval on two separate occasions, supporting the development. Mr. Schaefer, who opposes the development and supports this Bill, appealed to the Court of Appeals. The Court of Appeals ruled that development at the airport could not use the airport itself (classified as a "transportation facility") as justification for approving airport-related development despite precedent relying on similar justifications.

Plaintiff Joseph Schaefer brought litigation against TLM and a multitude of other parties including HDSE purporting to enforce the Court of Appeals decision. Mr. Schaefer argued, among other things, that HDSE, who was not a party to the Marion County, LUBA, or Court of Appeals proceedings, had based investigations into expanding the sewer system 'in whole or in part' on the Marion County approval.

B. HB 3013 addresses a single individual's disappointment with pending litigation, not a systemic issue with Oregon's land use regulations.

The case involving HDSE, TLM, and Mr. Schaefer underscores the intricacies of Oregon's land use system and the potential for misuse of legal processes. The court's ruling affirmed that HDSE, as a private entity operating lawfully, was not obligated to alter its business decisions based on the zoning status of TLM's property, and that Mr. Schaefer's participation in the Marion County proceedings did not justify a lawsuit against third party HDSE.

HB 3013 arises out of Mr. Schaefer's specific legal disappointment rather than addressing a broader land use concern. Oregon's existing LUBA process has been effective for decades in enforcing land use decisions, and this case does not indicate a systemic failure.

Mr. Schaefer's lawsuit sought extraordinary actions from the circuit court that were beyond the scope of LUBA's order, including undoing contracts and approvals to which he was not a party, enjoining unformed contracts and draft documents, prohibiting future permits for TLM's property development, and compelling TLM to reverse legally required site stabilization actions.

The lawsuit's premise misinterpreted LUBA's order, which did not preclude future development under different applications—in accord with current law. ORS 197.625(b)(5) (as written). The circuit court's rejection of Mr. Schaefer's claims against all defendants demonstrates the balanced and fair land use system that currently protects both development rights and environmental concerns while preventing misuse of legal processes for individual agendas.

C. HB 3013 guarantees uncertainty and threatens private property owners.

The Bill is likely to have far-reaching and unjust consequences for property owners. If a local government grants approval for a permit or change based even partially on an “effective but unacknowledged” regulation, the Bill's proposed language suggests that virtually any action taken by the property owner could be subject to removal. This broad interpretation could encompass routine maintenance, improvements to irrigation or water systems, driveway repairs, or even fence installations. Such a sweeping provision fails to distinguish between actions directly related to the approval and those that are merely incidental to normal property ownership and maintenance. This approach could create significant uncertainty and financial risk for property owners, potentially discouraging investment and improvement in land.

Moreover, the Bill disproportionately penalizes property owners for administrative oversights or delays in the acknowledgment process, which are often beyond their control. The proposed amendment exacerbates these issues by undermining the long-standing principle of ‘reasonable certainty’ in land use decisions. By allowing the retroactive undoing of licenses, agreements, and other authorizations based on unacknowledged land use provisions, the amendment would create a chilling effect on development and erode confidence in the land use system for private parties, state agencies, and local governments alike.

This overreach into private business and property rights not only contradicts established legal principles but also threatens to stifle economic growth and necessary infrastructure improvements throughout Oregon. Ultimately, HB 3013 risks transforming Oregon's land use system from a balanced framework into an unpredictable and punitive regime that could bring progress and investment to a standstill.

The Bill's requirement to remove any improvements made to a property if an appeal is successful could lead to absurd and costly scenarios, such as replacing dilapidated structures, replanting dead trees, and leaving property in an unstable and dangerous state. The effect of the proposed amendment is to effectively force all parties to delay any action on a property until the multi-year appellate process is complete.

Furthermore, the Bill would grant opponents of development an unprecedented level of power, allowing them to effectively obtain injunctive relief without demonstrating irreparable harm. This could paralyze critical projects, including municipal infrastructure improvements and disaster prevention measures. The proposed legislation would shift the focus of Oregon's land use system from balanced development to adversarial opposition—the result being to bring progress to a halt at the whim of any opponent—even out of state competitors at odds with Oregon's interests.

II. HB 3013 UNDERMINES OREGON'S CRUCIAL STANDING DOCTRINE AND INVITES FRIVOLOUS LITIGATION

HB 3013 proposes a radical departure from Oregon's well-established legal doctrine of standing, which has long served as a critical safeguard against frivolous lawsuits and unnecessary court congestion. Under current law, plaintiffs must demonstrate a real, personal stake in the outcome of litigation by showing a legally recognized interest, a tangible effect on that interest, and the potential for meaningful redress through court action. This doctrine ensures that only those with genuine grievances can bring cases before the courts, promoting judicial efficiency and fairness.

HB 3013 dismantles this crucial filter by granting standing to anyone who merely participated in an appeal or submitted testimony against a development, regardless of their connection to the project or its impacts. This sweeping change could allow individuals from across the country, with no direct stake in Oregon's local developments, to initiate lawsuits and potentially halt important projects. A resident of New Hampshire or Multnomah County could gain the right to sue over a development in Malheur County, despite having no personal interest affected by the project. Such a system would not only overwhelm our already burdened courts with potentially meritless cases but also reinforce the environment of uncertainty and risk for developers, property owners, and local governments.

By eliminating the requirement for plaintiffs to have a genuine stake in the outcome, HB 3013 threatens to transform Oregon's land use system into a playground for obstructionists and special interests, potentially stifling economic growth and necessary development across the state.

III. HB 3013 THREATENS JUDICIAL REVIEW AND CONFLICTS WITH ENVIRONMENTAL REGULATIONS

The amendments proposed in HB 3013 pose a significant threat to the established legal process for land use decisions in Oregon. The Bill has the potential to eliminate appellate review of LUBA decisions. The Bill's provision to immediately *void* permits or zone changes that fail to gain acknowledgment could render Court of Appeals decisions moot or advisory, effectively removing a crucial layer of judicial oversight. This change would undermine the carefully balanced system of checks and balances in Oregon's land use framework, potentially leading to hasty and irreversible decisions without the benefit of thorough judicial review. By making approvals void upon the first loss at LUBA, regardless of potential errors in LUBA's decision-making, HB 3013 will further chill development and erode confidence in the state's land use system.

Furthermore, HB 3013 creates a direct conflict with existing DEQ regulations concerning site stabilization requirements under National Pollutant Discharge Elimination System (NPDES) Construction Stormwater Drainage permits. The Bill demands developers recreate pre-development conditions in the event of a failed acknowledgment in direct contradiction of mandatory DEQ permit conditions, which have the force of law.

This conflict is exemplified in the case of TLM, where DEQ-required site stabilization measures, including necessary fill, grading, and vegetative cover, would be prohibited under HB 3013. This undermines critical environmental protections established under the Federal Clean Water Act and introduces a risk to public safety and economic waste unsupported by policy concerns or Oregon's interests. The passage of HB 3013 would force developers to choose between complying with state law and adhering to federal environmental regulations, creating an untenable situation that could harm both development interests and environmental safeguards.

Finally, HB 3013 fails to account for situations where local governments may inadvertently neglect to file required notices with the Department of Land Conservation and Development (DLCD) for acknowledgment. Property owners and developers, acting in good faith and without control over or knowledge of these administrative processes, could find themselves in precarious legal situations through no fault of their own. Under the proposed legislation, a mere technical oversight by a city or county could render approvals—even those granted years ago—suddenly 'void' exposing citizens to potential claims for damages and requiring the removal of established developments.

Such a retroactive and punitive approach not only undermines the principle of reasonable reliance on government approvals but further threatens a chilling effect on development across Oregon. The potential for long-completed projects to be suddenly deemed *illegal* due to administrative oversights introduces an unacceptable level of risk that could severely hamper economic growth, housing development, and infrastructure improvements throughout the state.

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For these reasons, and the reasons stated by the other parties in opposition to HB 3013, HDSE opposes the Bill and urges you not to advance it out of committee.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Amanda Bryan', with a stylized flourish at the end.

Amanda Bryan