OREGON PROPERTY OWNERS ASSOCIATION

February 4, 2025

House Agriculture, Land Use, Natural Resources and Water Committee
Oregon State Capitol

Re: House Bill 3013

Committee Members:

Thank you for the opportunity to comment on House Bill 3013. We have deep reservations about what are likely unintended consequences of the bill (and the dash-1 amendment) and its implications for needed development across Oregon.

We have not been involved in the lengthy Aurora Airport litigation but understand how contentious the situation has become. Our hope is that the battle to "win" that case does not result in legislation that makes significant changes to our existing development laws in a state that is already difficult on development, including housing needed to meet our housing targets.

If the committee is inclined to move forward with the bill, here are our concerns with the current draft:

- **The bill seems to eliminate remand proceedings.** When a property owner receives approval to amend a local government comprehensive plan or development code as part of a land use application, if LUBA disagrees with the approval, the most common resolution by LUBA is to remand the local government's approval back to the local government to make a new decision consistent with LUBA's opinion.

  Remand proceedings are important as they give all parties to the decision a chance to make changes to satisfy LUBA's concerns without having to start all over. Sometimes those changes are significant, while other times they are exceedingly minor.

  HB 3013 would eliminate remand proceedings in cases where the local government has approved an amendment to its comprehensive plan or development code, even if LUBA affirms the comp plan or development code determination but remands for a much

different reason. Under the bill, if LUBA (or LCDC or an Oregon appellate court) rejects a local government approval for any reason, the approval is "void and without further effect." That language appears to eliminate the ability of LUBA, LCDC or the Oregon appellate courts to remand a local government approval back to the local government to "fix" its error, even if the error is easily correctable and has nothing to do with the comp plan or development code amendment. That's a tad bit draconian.

- **The bill has significant impacts on subsequent non-controversial decisions that no one opposes.** It is common practice for a property owner seeking to develop property to be required to amend the local comprehensive plan in order to receive development approval.

  For example, a builder seeking to develop an infill project in a residential zone in a suburban city may need to request an amendment to the city's parking requirements to enable denser development. Because infill projects tend to be controversial with existing neighborhood residents, should the city approve an amendment to its development code to alter parking requirements to enable the project to move forward, an appeal of the city's decision is a distinct possibility.

  Unfortunately, during the pendency of the appeal, the city's amendment to its parking requirements will remain unacknowledged. That's fine for the current applicant, but the city is required to apply its unacknowledged parking amendments to subsequent applications. Depending upon the time it takes for LUBA and the Oregon appellate courts to complete legal review of the challenge to the first infill project, the amended but unacknowledged parking requirements may have been applied to multiple projects across the city, particularly in a larger, fast-growing city.

  Under the language of the bill, if the challenge to the city's parking requirement amendments is invalidated by LUBA or the Oregon appellate courts, even if the invalidation has nothing to do with the parking code amendments made by the city, the city is required to revoke all subsequent land use approvals that applied those code amendments, even if the subsequent approvals were entirely uncontroversial, were not challenged or appealed, have become final, and have resulted in a fully built-out development. This cannot be what the bill proponents intend, as it would result in chaos.

- **We already have a right to require local governments to abide by LUBA decisions – there's no need to create one.** From the testimony at yesterday's public hearing, the primary concern from the proponents of the bill seemed to be a need to ensure that local governments do not ignore LUBA's directives from their opinions. We haven't found that to be an issue and there did not seem to be any examples of local governments ignoring

LUBA outside of the Aurora Airport situation, and even that example is disputed by the parties.

The reason why there are no examples of local governments ignoring LUBA is because there is already a process in place for assuring that LUBA's decision are enforceable. ORS 197.825(3) expressly authorizes Oregon circuit courts to enforce LUBA orders if needed. A review of the history of that statute shows that the enforcement authority has been used intermittently over the years, and there is a well-established body of case law demonstrating when the circuit court can exercise jurisdiction to enforce a LUBA decision. There certainly seems to be no established threat to that order or anything that would indicate an increasing pattern and practice of local governments refusing to abide by LUBA decisions.

In fact, it is long (and well) established law that any party to a LUBA proceeding or the Board itself may seek relief in the circuit court to enforce LUBA's determination. Limiting enforcement authority to parties to the proceedings is as it should be, as the parties have demonstrated to LUBA that they have met Oregon's extremely broad standing requirements to demonstrate that they have a stake in the outcome of the decision.

Unfortunately, this bill not only obliterates the existing law limiting circuit court enforcement to the parties, it also allows anyone to bring a circuit court claim to enforce the LUBA decision. While "anyone" may sound like hyperbole, with this bill it is not, as the language of the bill gives standing to literally anyone, even if they did not participate in any of the proceedings leading to the LUBA opinion.

The proponents haven't demonstrated a need to eliminate standing in Oregon land use procedures. That's exactly what this bill does.

- **The bill authorizes anyone to seek damages against a city or applicant for "damages" resulting from a local decision that is overturned by LUBA or the Oregon appellate courts. There's no reason for that.** The proponents of the bill have included a damages provision within the bill, authorizing anyone who files suit to enforce a LUBA decision to seek damages resulting from the LUBA decision. From the testimony at yesterday's hearing combined with the written testimony to date, it appears that there is significant dispute over this issue in the Aurora Airport case. We urge the committee to ferret out the actual facts of that case before changing Oregon law statewide.

  As provided above, if passed, the bill would already expand existing Oregon law limiting those who can seek to enforce LUBA's decisions to include anyone, whether or not they participated in any stage of the proceedings that led to the LUBA decision. This language simply eliminates the standing requirement. That's certainly a policy choice for the legislature – a bad one, but one the legislature can make.

But the proponents of the bill don't appear to be satisfied with opening standing to the entire world. Not only does the bill do just that, it also gives the entire world the right to seek any "actual damages" that they believe they have suffered as a result of the local government's decision. The bill doesn't specify who would be responsible for those damages. Is it the local government who made the decision? Is it the applicant who had the gall to apply to develop their property? Is it someone else? It isn't clear under the bill.

Regardless of who the proponents wish to be the funding source for their damages claim, this is a remarkably bad idea.

If the committee decides to move forward with this bill, we would be happy to participate in any work group to make amendments to this bill to eliminate the "oh my god, did they really mean that" aspects of the current provisions. There is a lot of work to do to make this language workable, before the committee can even begin to have the policy discussion. In the interest of simply making a bill that can be understood by the land use bar and courts, we'll volunteer to help. As currently written, this bill would be a disaster for any kind of development in Oregon, including housing projects of all types. It doesn't matter how much drama exists surrounding the Aurora Airport – it isn't worth upending Oregon land use law to make someone happy.

Thank you for the opportunity to comment.

Very Truly Yours,

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