CITY OF BEND

March 17, 2025

Sen. Khanh Pham, Chair
Sen. Dick Anderson, Vice-Chair
Senate Committee on Housing and Development
900 Court Street NE, Room 453
Salem, OR 97301

RE: City of Bend Testimony on SB 974, -1 amendments

Chair Pham, Vice Chair Anderson, and Members of the Committee:

The City of Bend has prepared this testimony on SB 974 and the -1 amendments. Thank you for the opportunity to testify on this bill.

The City opposes the -1 amendments dated March 11, 2025, to SB 974. We have several concerns that are outlined below in our written testimony.

At the outset, we suggest that there needs to be a more in-depth conversation on processing times for housing, and in particular where a land use application is involved. This conversation started during the 2023 Session with HB 3569, but did not reach a final outcome. We suggest a work group be formed that includes planning and building staff from cities of a variety of sizes, especially those where the staff may consist of one planner and one building official. Collect some data on different processing times to identify those cities that are meeting the bill drafter's expectations on processing time and those that are not. This may be an area where the newly formed Housing Accountability Production Office (HAPO) can help with funding, staff recruitment, and evaluation of existing processes.

Overall, both SB 974 and 974-1 look like they are intended to provide for quicker turnaround times for houses, middle housing, and manufactured housing where a discretionary land use application is required. Requiring final decisions within shorter time periods is possible with more narrow and discrete land use applications such as variances. This is not possible if housing is proposed with a plan amendment/zone change or a more completed land use application such as a tentative plat for a subdivision.

The new definition for "Urban housing application" and making everything listed a limited land use decision is both internally inconsistent and inconsistent with the existing structure of land use planning and decision making in Oregon. This kind of apparently small amendment would in fact result in myriad potential complications and challenges, ultimately resulting in added cost and delay. Making certain local decisions that presently have a lot of process – a comprehensive plan amendment, for example – and others that have a fairly simple process – building permit for siting a housing structure – into limited land use decisions would require extensive modifications to

existing processes, and it is unclear what the intent and impact of such wide-ranging changes would be. Some of the changes would significantly lessen the notice and opportunity for public involvement (for example, on comprehensive plan changes) and others would significantly expand notice and opportunity for public involvement and potential delay and appeal (for example, siting a housing structure, and local engineering decisions, as further discussed below).

Such a wholesale change to land use planning should be done thoughtfully and with the input of experienced planners and development professionals, to ensure not only the production of housing needed to meet the needs of the state, but also safe construction and infrastructure to serve those units, and well-planned communities.

You will find more detailed comments on the -1 amendments below

1. Page 5, new (f) under ORS 197.015(12) identifies the approval or denial of an urban housing application as a decision that is not a land use decision. This is inconsistent with the following language in the bill that refers to processing of certain applications that are land use decisions, e.g., plan amendments and zone change, alongside applications for urban housing applications.

2. Old subsection 197.015(12)(b) should stay in. Making a final subdivision or partition plat into a limited land use decision is a step backward from a procedural perspective. Today, a final plat is a ministerial decision under ORS 197.015(10)(b)(A). This change will cause delay (see further explanation, below). This section was added by the legislature in the early 2000s to overcome a bad case out of LUBA that found that final plats were limited land use decisions. For an interim period, all jurisdictions in the state changed their processes to do so and it added time and cost to projects without much in return. It was such an issue at that time that the legislature intervened and fixed the situation. This bill is a step backward to those days 25 years ago.

3. Proposed 197.015(21)(a)(A) is legally untenable. A limited land use decision cannot, by definition, be a post acknowledgement plan amendment (PAPA). A PAPA is a “Land Use Decision” under 197.015(10).

4. Proposed 197(21)(a)(C) makes a final plat, which is a simple ministerial decision, into a limited land use decision, which is subject to notice to neighbors and may be appealed. This is a more lengthy and expensive process than exists today (see comments above under 197.015(12)(b)).

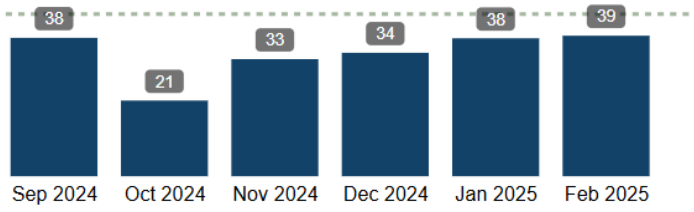
5. Proposed 197(21)(a)(E) makes a building permit into a limited land use decision. A building permit is considered a ministerial decision under the statute today (ORS 197.015 (10)(b)(A)). Nobody wants a building permit to be a limited land use decision – not cities, not developers. It will add cost and delay to a building permit. A building permit today cannot be appealed by a neighbor who is opposed to the project. Under this bill, it could. A project opponent could appeal a land use decision for a development to LUBA and lose, which today that is the end of legal challenges for a development project. Under this bill, an opponent could lose at LUBA and then appeal the subsequent building permit for the project, which, under the limited land use rules, would give them another bite at the apple at LUBA and delay the project. It typically takes three to six months to get a decision out of LUBA. If their decision is a remand, it starts another 120-day process at the local level (ORS 227.181).

6. Section 10: Will increase overall costs to cities and appellants. A developer could appeal an approval over a minor condition of approval and, if they prevail at LUBA, a city will have to pay their soft costs for engineering. In Bend, where permit fees cover all costs of the private permit

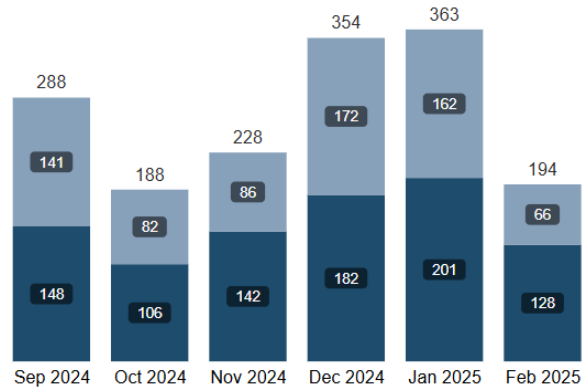
program, the city would have to raise fees for all engineering permits to build a reserve in case such cost are awarded.

7. Section 11: Requires a city to issue a decision on a final engineering design permit within 120 days. A significant amount of the overall permit timeline in an engineering permit is the time response and redesign by the applicant when the original design is incorrect. Bend's goal is 45 days for the first round of review for complex engineering permits, and the year average currently is 43.2 days. An iterative process of responding to corrections by the applicant's engineer and rereview by city of the revisions is the shared time it takes to finalize the permit. Here are two graphs from the city's permit timeline dashboard that demonstrates this:

Graph A: Days to complete first engineering review by city staff:



Graph B: Days to permit issued – dark blue is city time; light blue is developer time:



If this bill is approved, cities would change processes such that the first round of review is the "decision" that is issued within 120 days. This would require an applicant to apply to reconsider their denial with new information in the form of corrections, which today is a simple resubmittal. Changing this will add more time and cost and make the process more complicated without fundamentally changing the outcome.

Further, under this proposal, an engineering permit would become a limited land use decision subject to notice and appeal to LUBA. This adds an overly proscriptive process to what today is a simple local procedure. LUBA referees are land use law experts. They do not have experience adjudicating engineering permits, which will further add to confusion and delay.

8. Section 12 and 13: Removes local control on design review, landscaping, and parking lot circulation.

9. Section 14 New (8): Makes Final Plats subject to a 120-day shot clock. A final plat cannot be approved by a city unless all public improvements are constructed by the applicant or a financial

security guaranteeing their construction has been accepted by the city. All land use conditions of approval must also be met. Currently a final plat application may be filed by a developer while construction is underway, and the city may begin review while construction and bonding are finalized such that the final plat is ready to record at the same time the improvements are done. This is an efficient process. Under this bill, a final plat would be limited land use decision subject to review based the extent of construction at the time of filing. This would result in two scenarios:

1. A developer must wait to file a final plat application until the very end when everything is built or bonded. This means city review of the final plat cannot start until later in the process which will cause delay.
2. A developer files a final plat application early, before construction is complete, which would force a city to deny the final plat because the final plat criteria of approval has not been met, which again would cause delay.

Conclusion: If adopted, these changes would require cities to radically change how multiple application types are currently processed. The net result would be more process, more cost and more time. By making these processes subject to new timelines and limited land use proceedings, required changes to the systems will ultimately be tested through appeals to LUBA, which again add time and cost to projects. A better approach to making progress on improving turnaround times for these types of permits would be to establish a statewide work group to define the existing issues, gather stakeholder input, investigate solutions, and propose collaborative and productive recommendations to local and statewide regulations.

Thank you for consideration of our testimony. As a city, we are committed to doing all we can to support the production of needed housing. Please let us know if a -2 set of amendments will be produced; we would appreciate the opportunity to review and provide our feedback.

Sincerely,

Colin Stephens /s/

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