

May 5, 2025

Re: Testimony on HB 3746

Chair Pham, Vice chair Anderson and members of the Senate Committee on Housing and Development:

My name is Eli Spevak. After a decade developing affordable housing with Portland non-profits, I launched my company, Orange Splot LLC. Since then I've developed 9 condominiums, ranging in size from 2 to 23 homes. Most have been new construction, although some have been conversions as well. On 5 of the larger projects I got a "Wrap policy" with a 10 year liability tail. On the others, I relied on standard policies. Within these communities, 26 homes are permanently affordable in partnership with Proud Ground.

As I've climbed the learning curve on condominium liability and written some pretty hefty checks for insurance, I've looked forward to legislation to decrease the 'liability tail'. So when I heard that HB 3746 had cleared the House, I was encouraged. Then I read it - and ended up with more questions than answers. Over the past week, I've done quite a bit of research – including talking with other condo developers and with people who have submitted testimony in favor of this bill.

Core Concern:

I believe that the compromise struck in this bill between liability exposure and consumer protection will make **smaller condominium projects more expensive, not less, to develop**. This bill may improve the financial feasibility of larger condominium projects, which by all accounts have barely been developed at all for the past decade. But in doing so, it would **stymie** development of the smaller condominium projects that are actually getting built.

I don't think this is the intent of the bill, and I'm more than happy to share my experience to try and craft an amendment to address my concerns.

Good parts of the bill:

First off – this bill has some good elements to it:

- HOAs would be required to go through an internal process and vote before initiating litigating, including notifying residents that it may be challenging to sell during the litigation process. That's helpful from a process and consumer protection perspective.
- Provides developers a meaningful opportunity to repair defects ahead of litigation

Including these 2 provisions would make for a great bill, in and of themselves.

The expense trade-off:

The other two parts of the bill would reduce the liability tail from 10 -> 7 years and introduce a moisture intrusion inspection regime. Unfortunately, it doesn't appear that the associated costs or

savings from these changes have ever been quantified, making it hard to know if there'd be a net increase or decrease to the cost of development. I don't think this should be left to chance, so have done my best to do so over the past week to estimate costs by comparing notes with other small builders and insurance brokers - and using a couple 6-plex condos I just built as a guinea-pig.

Insurance Savings: I reached out to two experienced insurance brokers who I've worked with across all my wrap liability policies. One has experience writing policies for condo projects in WA, which has a 6-year liability tail. Both said that there'd be a nominal savings, maybe a couple grand, because the vast majority of construction defects are discovered in years 2-4. By years 7, 8 and 9, few new problems get unearthed, so there's relatively little exposure at that point for the insurance carrier. Aln Washington, wrap policies are actually **more** expensive than in Oregon, although this is driven more by worker comp rates than liability tales.

For many small condo projects, don't get wrap policies at all. Instead, they rely on standard general liability policies, which can be found that allow condos up to 8 units, and the policies of their subs.

For these developers, this bill would provide no premium savings at all.

Inspection Costs: On the cost side, this bill would introduce a requirement for moisture intrusion inspections at turnover and years 2 (paid by the developer) and year 6 (paid by the HOA). The turnover inspection would cost next to nothing, since nearly all of these projects have a Wrap insurance inspector or home energy certifier going out to the site multiple times as it's getting built who could tack this on to their scope of work.

But the year 2 and 6 inspections are a different matter. My regular special inspection company (Carlson), like many others, doesn't do post-occupancy moisture intrusion inspections so could not offer a quote. They referred me to a local company that does this work routinely. I sent them the plans for my most recent 6-plex and asked for a quote for a non-invasive moisture intrusion inspection, as required by this bill. They quoted \$4,600, and provided this context for larger or smaller projects:

*Any site containing 1-4 relatively small buildings (2-stories, 6 total per building) or smaller would trigger a proposal of the same general scope. That scope is one technician for one day in the field plus a maximum of two days to write the report. With internal review and miscellaneous correspondence, **that's about \$4,600 on a time and materials basis.** Our costs would likely come in under this amount on very simple structures and single-family homes, but we are just assuming typical situations with this budgetary cost estimate.*

*Any site containing 5 or more individual two- or three-story buildings would likely require the same report writing timeframe but would trigger the need for a second technician on site to get all the work done in one day. With internal review and miscellaneous correspondence, **that's about \$6,000 on a time and materials basis.***

Any site containing a large building that would require a boom lift or other additional equipment to access (such as a 4-over-1) would take the same manpower and time as allotted above but would need to add the cost for rental equipment.

Even if this ends up being a high estimate, it seems likely to be more expensive than any savings that would be gained from a reduction in insurance premium from 10 years to 7. Furthermore, the developer would need to bump up HOA fees to cover the cost of the year 6 inspection, which developers are loathe to do because higher HOA fees mean lower borrowing power for buyers.

Why am I concerned about the impact this bill would have on small projects?

- **There are A LOT of them happening.** From 2018-2024, Portland built over 1,700 units in middle housing projects, of which 387 (over 20%) are condominiums. This tally wouldn't include middle housing condos developed elsewhere in Oregon.
- Many of these projects have **no common elements**, so no replacement reserve is required for them. Imagine a house + detached ADU or a cottage cluster. In these cases, this bill would require that a replacement reserve be established for sole purpose of saving up funds to pay for the year 6 moisture intrusion inspection. And technically, once there's a replacement reserves, statute requires it to be updated annually.
- In many of these condominiums, the HOA doesn't own or have maintenance responsibility for the home's envelope. So the HOA would be inspecting something it's not even responsible for taking care of, which is kind of odd.
- I'm pretty small potatoes in development volume, but have shared this bill with 4 developers I know who, collectively, are responsible for a significant percentage of the 'middle housing' condos developed during this time period in Portland. They all feel that this bill, as written, would be a net negative.

Conversion condominiums: I've read supportive testimony on how this bill would reduce premiums on condo conversions. But the statute of limitations on a claim is based on the substantial completion date of the building, not the date of the condo conversion. So there is no 10-year liability tail for conversions of 10+ year old buildings. All this bill would do for conversion condominiums is introduce a moisture intrusion inspection at conversion – which probably isn't a bad idea. But it wouldn't yield insurance premium savings on conversions of 10+ year old apartments to condominiums.

Proposed policy amendment options:

- Exempt projects with 12-20 units or less from the year 2 and 6 inspection requirements and leave the liability limit on those projects where it is today, at 10 years. Keeping in the turnover inspection is fine as a trade-off for the helpful elements of the bill. **OR**
- Leave the 10-year liability period as-is for all projects and drop the inspection regime from the bill entirely.

Implementation timing also, I think, merits a technical fix:

The bill's sponsors clearly intend for the bill to be forward-looking in its impacts. Yet as it's currently written, I think it would:

- Require the HOA for the 23-unit project I finished 4.5 years ago contract for a moisture intrusion inspection at year 6, even though they didn't know that expense was coming and haven't started setting aside funds to pay for it.
- Require, on each of the 6-plexes I just completed, for me to plunk pay for the 2-year moisture intrusion inspection and tell these fresh HOAs that they need to increase their HOA fees to pay for a similar inspection at year 6.
- Multiply these effects by all the other recently-completed condo projects out there, affecting 300+ units in the City of Portland alone.

Technical fix amendment:

Establish that moisture intrusion inspections only apply to projects that reached substantial completion (or some other trigger) after some date (Dec. 31, 2025?).

Big picture: This bill's attempt to make large condo projects more feasible unintentionally makes smaller ones less so. This is unfortunate, since the vast majority of condos nowadays are in small 'middle housing' developments. But it's also easy to fix, by excluding smaller condo projects from year 2 and 6 inspection requirements and leaving the liability tail on those projects at 10 years.

Thank you for your consideration. I look forward to returning to Salem to testify in favor of an amended version of this bill.

Eli Spevak, owner
Orange Splot LLC

Attachments:

Quote for moisture intrusion inspection from Professional Roof Consultants
City data on small condo projects

April 28, 2025

Mr. Eli Spevak
Orange Splot LLC
4751 NE Going Street
Portland, OR 97218



Via email: eli@orangesplot.net

RE: ORANGE SPLIT – 27TH AVENUE TOWNHOUSES BUILDING ENVELOPE MOISTURE INTRUSION INSPECTION

Dear Mr. Spevak:

Thank you for considering Professional Roof Consultants, Inc. (PRC) for this project. The following is our understanding of the project and our proposal for professional services.

SCOPE OF WORK

As we understand it, Oregon House Bill 3746 (HB 3746) is considering adding language that would require all new condos and homes in an HOA to commission an independent inspection to identify building envelope-related moisture intrusion before the end of the second year following the condominium's substantial completion, and again before the end of the sixth year following the condominium's substantial completion.

The subject property of this proposal is a six-unit, two-story condominium located at 6305 NE 27th Avenue in Portland, OR. The objective of this investigation is to meet the year-2 requirement of HB 3746 by inspecting the existing building envelope (roof, walls and waterproofing – where accessible) to look for existing building envelope-related moisture intrusion (if present) and provide a brief letter report documenting the investigation's findings to Orange Splot.



To meet the objective outlined above, PRC anticipates providing the following services:

SERVICES PROVIDED

1. Obtain and review available historic information and documentation as it pertains to the building envelope, including "as-built" drawings, warranties, past reports, repair documents, and any other available pertinent information.
2. Schedule and perform a visual-only inspection of the building envelope components (roof, walls and waterproofing) to look for any notable evidence of existing moisture intrusion. No destructive testing is included. For this proposal, we assume that this investigation will take one technical specialist a maximum of one day on site to perform the required tasks. Tasks to be performed will be as follows:

INDEPENDENT CONSULTANTS FOR ROOFING | WATERPROOFING | EXTERIOR WALLS

606 SE 9TH AVENUE PORTLAND, OR 97214 503 280-8759 FAX 503 280-8866 ProfessionalRoofConsultants.com

- a. Walk the exterior perimeter of the building and access all roof areas to look for evidence of existing moisture intrusion. PRC will utilize a ladder to access the roof.
 - b. This inspection will be exterior-only except where a building occupant has specifically reported/observed moisture intrusion within their unit and authorizes us to enter their space to review the occurrence.
 - c. Utilize non-penetrating moisture survey equipment and/or infrared camera equipment to identify moisture or locations of significant heat loss which can be an indication of moisture intrusion within the exterior walls and roof assembly.
 - d. Document field conditions with digital photography.
3. Prepare a brief letter report that summarizes the investigation findings and identifies specific locations of identified moisture intrusion as required to meet the requirements of HB 3746.
 4. Be available to meet to discuss our findings and review the information gathered and recommendations provided.

FEE PROPOSAL

Professional Roof Consultants, Inc. proposes to provide our specialized services with compensation on a **Time and Material basis not to exceed \$4,600.00** in accordance with the attached Schedule of Charges and Standard Provisions for the initial inspection and evaluation.

EXECUTION

Execution of this document by duly authorized representatives of the Consultant and the Client, including the Consultant's Standard Provisions (attached) and current Schedule of Charges (attached), represent the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties.

Please do not hesitate to call me if I can help clarify any part of our proposal. We look forward to a successful project.

Sincerely,

ORANGE SPLIT LLC



Steven L. McBride, President
PROFESSIONAL ROOF CONSULTANTS, INC.

Accepted By: _____
(Signature)

twb

(Printed Name)

Attachments: Schedule of Charges
Standard Provisions

Title: _____

Date: _____

Hi Eli,

Morgan forwarded me your email asking if we were able to get a tally of units built in single dwelling zones that sold as condos rather than simple fee. I help manage the RIP data so I thought I would go ahead and respond to you directly.

So we do have those numbers! The RMLS data we used to identify sales of new units in single dwelling zones does include a 'Property Type' field that identifies attached, detached, condo and manufactured home on real property. The accuracy of that data I think is good but just note that it didn't undergo as much scrutiny/cleaning as other datapoints we focused on in the report.

Of the total sales we tracked as part of the RIP permit database (so only sales of new units in single dwelling zones between 2018 and June 2024), here is the breakdown of # of sold units, by property type and unit type. You'll see I highlighted in yellow the units sold as condos below. I will point out that it's unusual to see that many (56) detached houses sold as condos. Most of those are houses that were built new with detached ADU(s). The new houses + ADU(s) built on that property were sold separately as condos (according to RMLS).

Let me know if you have any other clarifying questions!

Thanks,

Julia Michel

Economic City Planner II

City of Portland, Bureau of Planning and Sustainability

[My pronouns are: she, her, hers](#)

503-823-5468

Sold Units by Property Type and Unit Type		Unit Type						
		ADU	Attached House	Cottage Cluster	Duplex	Fourplex	House	Triplex
Property Type	Attached	0	121	0	37	44	0	12
	Condominium	94	10	9	89	120	56	9
	Detached	41	0	2	4	13	1117	1
	Manufactured Home on Real Property	0	0	0	0	0	2	0
	Grand Total	135	131	11	130	177	1175	22
								1781