WASHINGTON COUNTY
OREGON

May 14, 2025

Senator Khanh Pham, Chair
Senator Dick Anderson, Vice-Chair
Members of the House Committee on Housing and Development

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

Thank you for the opportunity to provide testimony on behalf of Washington County in opposition to House Bill 2658.

While we understand and appreciate the bill's intent—to protect developers from bearing inappropriate costs associated with planned public projects—the reality is that property owners are already afforded well-established constitutional protections that have already been explained by the U.S. Supreme Court in the cases *Nollan v. California Coastal Commission* (1987), *Dolan v. City of Tigard* (1994), and others.

In *Dolan v City of Tigard* (1994), the U.S. Supreme Court ruled that governments can require developers to help pay for public improvements, but only when those exactions on the developer are roughly proportional to the impact of the development and when the exaction has an essential nexus to a legitimate state interest. In plain language, local jurisdictions can't ask for more than what's reasonably needed to offset the project's effects, and the conditions imposed can't be arbitrary. The Court's ruling both limits what a government can ask of property owners and supports the idea that private development should help cover the proportional costs it creates.

In the unusual and unfortunate instance that a jurisdiction asks for public improvements that are not proportional to the impact of the development or are unreasonable, that matter would be best settled by the Land Use Board of Appeals or the judiciary through a *Nollan/Dolan* challenge.

We agree that developers should not be asked to take on more than their fair share of development-related costs. Local governments have a duty to ensure that any conditions tied to development are reasonable and directly connected to the project's impact. To help ensure this, Washington County accounts for the safeguards provided by the courts and maintains a policy that no public improvements are required by new development when they are already a part of a planned and funded project scheduled to begin construction within 12 months of the proposed developments approval date.

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Furthermore, in considering the bill as introduced and the -1, we are concerned that if advanced, the bill could shift the reasonable and proportional costs entirely to local governments—even when a development has legitimate and significant impacts and clearly increases the need for new infrastructure. Such a shift is not only unnecessary, but undermines the balance recognized by the U.S. Supreme Court and places an unfair burden on local governments and taxpayers.

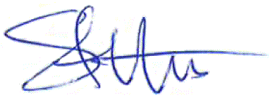
HB 2658, as proposed, includes terms that lack definition and that are not clear and objective, which will lead to inconsistent interpretation and implementation, and ultimately legal challenges. We are particularly concerned with the vague language in Section 1, with the proposed addition of ORS 215.416(4)(f), which does not provide sufficient clarity to determine when a county can condition development permits for an improvement with a similar function and location that has already been allocated funding.

The proposed language does not clearly identify a bright line between when an infrastructure project is considered fully funded and sufficiently advanced such that it may no longer be a condition of development approval. Particular attention should be given to funding programs that collect revenue towards an identified list of specific projects, such as System Development Charges (SDCs). The language proposed is unclear if identified improvements on SDC project lists are "allocated" – we would posit they are not. Given the lack of clarity in the proposed bill, HB 2658 may have significant consequences for infrastructure funding programs far beyond what may be envisioned or intended.

We urge the committee to reconsider this measure and recommend that it be referred to a workgroup and not advance as proposed. This concept needs significantly more work to allow impacted stakeholders to collaborate to refine the bill's vague language, account for existing protections provided by LUBA and the courts, address technical concerns, and craft a solution that maintains local control and ensures that private development contributes its fair share.

Thank you for your consideration. I am happy to answer any questions.

Sincerely,



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