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Chair Marsh
Vice Chairs Anderson and Breese-Iverson
House Committee on Housing and Homelessness

Bill No. HB4113
Opposition

Dear Chair Marsh and Committee Members:

Thank you for holding this hearing. I appreciate being able to give testimony on this important bill.

I am testifying in opposition to HB4113 and to request that if there is further consideration of it that it be done so in a regular legislative session where the issues can be adequately addressed. My comments are based on what I understand to be a current draft as of last Friday.

Testimony Background

My background is as an attorney who worked on Metolius River issues and Jefferson County land use planning for over 30 years. I represented the Confederated Tribes of the Warm Springs Reservation of Oregon on the Metolius Wild and Scenic River plan and also for them on Jefferson County land use issues as an associate with Karnopp Petersen in the 1990s. Then from the early 2000s to 2020, I represented Central Oregon LandWatch and Friends of the Metolius on legal issues concerning the Metolius ACSC designation and was Executive Director for LandWatch in the 2010s.

As I am now retired, I am only representing myself here. My comments are mine alone.

HB4113 Is Not Appropriate Compensatory Legislation

HB4113 has been characterized as providing compensation for what developers claim they lost with the adoption of the Metolius Area of Critical State Concern (ACSC) in 2009.

To the contrary, HB4113 is but the latest proposed legislation that threatens to undermine the careful compromises that were made when the Metolius ACSC was adopted in 2009. The basic premise then was to protect the Metolius from destination resorts and other impactful development and offer instead a small-scale recreation community elsewhere.

One of the developers, the Metolian, initially elected to seek approval of the small-scale recreation community but then let the required timeframe pass. What followed for the past 15 or so years has been periodic submittals of bills to the Legislature to give that property owner extensions of expired deadlines. HB4113 is an attempt to get around the fact that the deadline for the Metolian has expired and to obtain “one-off” legislation that would be more lucrative.

HB4113’s proposed compensation is not connected to the kind and amount of development that was considered by the Legislature in the ACSC. Because what the developers were giving up in the ACSC was proposed resort development, the Legislature gave the option of the developers doing “small-scale recreation-oriented development.” The compensation provided a number of options, such as “up to twenty-five residential units and up to ten additional overnight accommodations.” What is proposed in HB4113 ignores this legislative history and the inconsistency between what was offered in the ACSC and what is being proposed here.

HB4113 not only fails to follow like-kind development but also fails to give an equal amount of development. I understand that one proposal for HB4113 would provide for 960 residential units and associated undefined commercial development. That would not only be a windfall for the developer, but it could also overwhelm the county where the 960 units would be imposed and/or impact nearby cities. In itself, that level of development would approximate a small town.

HB4113 Lacks a Management Plan

There is no underlying management plan for development of the 960 residences and associated commercial development, as was done in the 48-page ACSC Management Plan. No true guardrails are given in this bill to protect the interests of counties or cities in the counties that would be impacted by this bill.

Such a plan would be needed to protect a myriad of issues facing counties and cities and siting any such development. Instead of presenting a Management Plan, HB4113 provides a series of ambiguities with its “conservation offset housing

opportunity,” such as commercial uses must “[p]rimarily” serve goods and services at a “smaller” scale than as “typical lands” and to “the minimum necessary” to “support and integrate viable” commercial and residential uses. Added to the ambiguity, HB4113 provides that the developer must apply for its undefined “conservation offset housing opportunity” on or before January 1, 2037.

Other Issues Need to Be Addressed

Because HB4113 lacks clarity and a Management Plan, it is unclear how much of the ACSC Management Plan is being changed and in what respects. By mixing old and new provisions of this legislation and bill, it appears that HB4113 is altering the ACSC by allowing both the new conservation-offset housing opportunities while maintaining the right to develop properties in the Metolius.

It is also not clear to what properties this HB4113 would apply. At several places in HB4113 there are references not only to “the” resort (the Metolian resort?), but also to “a” resort as being addressed by this proposed legislation. Is this a reference to another proponent of a destination resort in the Metolius, the Colson family? If HB4113 is adopted, will the Colson family demand a better deal like the Metolian’s? At one point, I heard that the Metolian was going to obtain the Colson claim and pursue it. If HB4113 is further considered, all affected parties and their claims must be identified.

Another critical issue is the right of public comment and public appeal. HB4113 appears to provide that only counties and the developer may appeal a DLCD decision reviewing a development. Any right of further appeal to LUBA and the Court of Appeals isn’t identified and the review issues by DLCD are too general to be effective.

Conclusion

Thank you for your consideration.

Very truly yours,

/s/ Paul Dewey

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