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February 15, 2011

House Judiciary Committee  
State Capitol  
900 Court St. NE  
Salem, Oregon 97301

RE: HB 2610; relating to land use appeals

Dear Co-Chair Barker, Co-Chair Krieger, and members of the Committee:

Thank you for this opportunity to present testimony on HB 2610. 1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to enhance our quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural and scenic areas.

HB 2610 would limit the ability of Oregonians to appeal certain local land use decisions to the Land Use Board of Appeals (LUBA). Oregon has a long history of citizen involvement in all levels of government decision-making, not just land use. Participation in local decisions contributes to Oregonians' sense of community. This ethic is reflected in Goal One of the land use program, which is: "To develop a citizen involvement program that insures the opportunity for citizens to be involved in *all* phases of the planning process."

HB 2610 would severely restrict citizen involvement in at least three ways.

First, HB 2610 provides that if a local land use decision involves housing or industrial development inside an urban growth boundary (UGB), or aggregate, only those who own, lease, or rent property within 1000 feet of the proposed use, or can show their property will be "adversely economically affected" in excess of \$5000, can appeal to LUBA. Government decisions made throughout neighborhoods and towns can impact one's quality of life, regardless of whether one lives within 1000 feet, and not all impacts are economically quantifiable. Examples include traffic generated by a development, the dust and noise of an aggregate operation, the cost to the community of providing infrastructure to a development, and the loss natural resources impacting air or water quality. With HB 2610, only the wealthy who can show a large impact on their pocket book will be able to appeal local decisions. The land use process will be unnecessarily slowed and made more costly by legal arguments over whether a particular petitioner can meet these standards.

Second, HB 2610 allows LUBA in its discretion to award attorney fees to the prevailing party. This is unnecessary. LUBA is already *required* to award attorney fees to the prevailing party if a frivolous case is brought.<sup>1</sup> HB 2610's impact would be to discourage citizens *with appeals that have*

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<sup>1</sup> ORS 197.830(15)(b)



*merit* from participating in the LUBA process, due to the deterrent effect of possibly being assessed attorney's fees. The existing law is the proper balance – those that bring frivolous cases are penalized by paying the other party's appeal fees while those bringing cases that have merit are not penalized.

Third, HB 2610 provides that an incorrect and incomplete “record” of the local proceedings cannot delay the filing of a petitioner's brief for more than 60 days unless LUBA determines “the interests of justice require otherwise.”

- This is a solution in search of a problem. LUBA already has short timelines for filing the local record and resolving any disputes concerning its accuracy and completeness.<sup>2</sup>
- Providing a complete and correct record of the decision is the sole responsibility of the local government. If the local government cannot do this competently, why punish the petitioner?
- This creates a perverse incentive on the part of local governments to delay filing the record. This does not speed litigation, it delays it.
- The parties will argue over what is meant by the “interests of justice,” thereby taking more time and costing more money. That will not speed resolution of appeals.

The purpose of this legislation is to dissuade citizens from fully participating in land use decisions in their communities. This will not succeed in making local concerns go away, it will only cause frustration by those shut out of the process. The land use program reflects a philosophy Oregonians decided over three decades ago when the program was first adopted – let citizens participate in all levels of the decision-making; our communities will be the better for it.

We urge you to not pass HB 2610. Thank you for consideration of our testimony.

Sincerely,

A handwritten signature in black ink that reads "Mary Kyle McCurdy". The signature is written in a cursive, flowing style.

Mary Kyle McCurdy  
Policy Director

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<sup>2</sup> OAR 661-010-0026.