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May 6, 2013

To: House Committee on Land Use
State Capitol
900 Court Street NE
Salem, OR 97301

Re: SB 77

Chair Clem and Members of the Committee:

Thank you for this opportunity to testify on SB 77 which amends provisions relating to appeals to the Oregon Land Use Board of Appeals (LUBA). 1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities, protect family farms and forests, and provide transportation and housing choice.

SB 77 would consolidate appeals at LUBA and it would require LUBA to collect and report more information. We do not oppose the bill in its current form.

Goal One of the land use program is Citizen Involvement. Its purpose is: "To develop a citizen involvement program that insures the opportunity for citizens to be involved in *all* phases of the planning process." Oregonians have participated in the development and implementation of the land use plans of their communities by serving on local planning commissions, crafting local plans, attending meetings, testifying, and sometimes even appealing their local government's decisions if they believe the decision is illegal.

This gives citizens the opportunity to fully participate in the planning process. But the law also recognizes the responsibilities that come with that right. Before appealing a local decision to LUBA, the person must have testified in the local government decision making process and raised all legal issues at that level.¹ This lets the local government know what the concerns are, and gives them a full opportunity to address those at the local level. And, if an appellant brings a frivolous appeal, LUBA must require them to pay their opponent's attorney fees.²

Every year, local governments make an estimated 15,000-20,000 land use decisions.³ Of those, only 150-250 are appealed every year,⁴ and the past few years have seen even fewer appeals. That's 1-2% of all

¹ "Raise it or waive it" applies to quasi-judicial decisions.

² ORS 197.830(15)(b) says "The board *shall* also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information." (emphasis added). "Probable cause" is an objective standard that is generally considered to exist when facts and circumstances are sufficient to warrant a person of reasonable caution to believe something is true.

³ The range is due to the economy and consequent building activity.

⁴ See attachment.

land use decisions. Appeals to LUBA are quick,⁵ and because LUBA's decisions are thorough, very few of them are appealed to the Court of Appeals, and that court rarely overturns a LUBA decision.

The concept of consolidating appeals from multiple land use decisions that are spawned by the same permit application and the proposal for LUBA to collect and publish more data are both fine proposals. Once statistics are collected and analyzed it will be possible to move beyond isolated anecdotes and make decisions based upon the facts. We believe that the data will show that few appeals take place, that they are supported by the laws and the facts, and that very few frivolous appeals take place.

It takes time and commitment to participate in local land use decisions, and even more to appeal a decision. Citizens get involved when they believe the decision impacts their community, for better or worse. Citizens caring about their neighborhoods is a good thing. And very few local land use decisions actually get appealed to LUBA.

Citizen participation is a core value of Oregonians and of the land use program. We ask that if you move SB 77, it not be amended to restrict appeals to LUBA. Thank you for consideration of our comments.

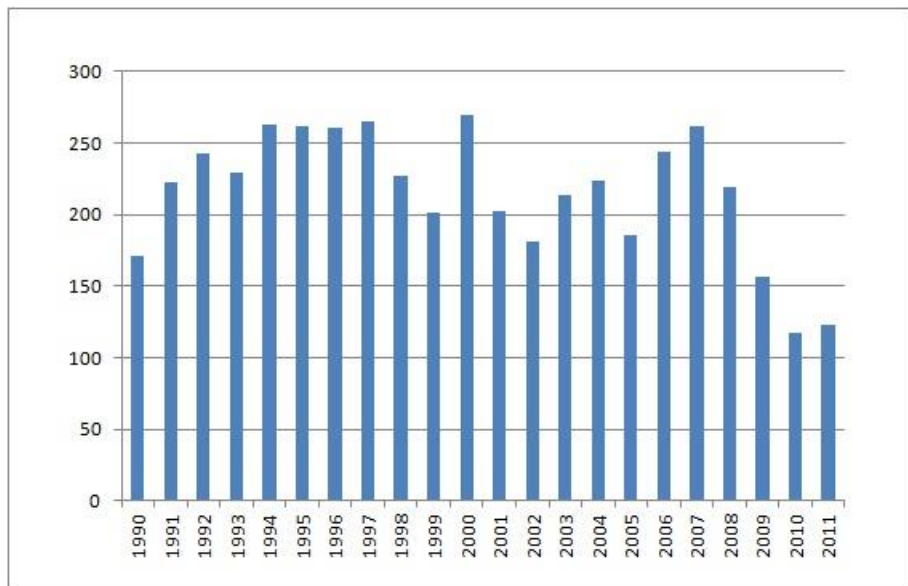
Sincerely,

A handwritten signature in black ink, appearing to read 'S. McCoy', with a stylized, cursive flourish extending to the right.

Steven D. McCoy
Farm and Forest Staff Attorney

⁵ LUBA is required to make its decisions within 77 days of receiving the record of decision from the local government and there is expedited appeal for LUBA cases that go to the higher courts.

Attachment: Appeals to LUBA by Year



Source: Land Use Board of Appeals