



CITY OF BEND

March 7, 2017

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Eric King

Senator Michael Dembrow, Chair
Senate Committee on Environmental and Natural Resources
900 Court Street NE, Room 347
Salem, OR 97301

RE: Testimony from the City of Bend on SB 865

Dear Chair Dembrow and Members of the Committee:

The City of Bend appreciates the opportunity to provide this testimony on SB 865, and opposes the bill as drafted. The City understands what irrigation districts are trying to accomplish through this bill, and while we oppose the bill as proposed, we also offer several suggestions for your consideration in this letter. The City of Bend recommends that the bill as drafted not be passed out of committee.

A local government's review of tentative subdivision and partition plats are land use decisions under ORS 197.015(10). The government's review of such decisions involves both notice to owners of record of property within a certain distance of the property that is the subject of the application, and to affected state agencies and local governments. These include irrigation districts if they own property within the vicinity of the site or if the proposed land division involves property within their boundaries.

The City of Bend works with four (4) irrigation districts, and provides them notice of land use applications, including tentative plats for subdivisions and partitions, at the time we give notice and request comments from property owners and other affect public agencies. This is the right time to request the irrigation district's review of a plat is when the plat is a tentative plat, and under review of the local government. That review provides an opportunity for the irrigation district to review the tentative plat, and provide comments for the record to the local government on what needs to be addressed by the applicant in order to obtain final approval of the plat. Key here is that the local government reviewing the application can only enforce their locally adopted zoning and land division regulations, not the regulations of another local government. Reasonable conditions of approval may be included if the local government finds that they are necessary to satisfy a requirement of the local

government. Irrigation district cannot have approval authority, but should be treated like other special districts (school, parks) and be kept in the loop regarding development plans that affect them, with an opportunity to comment and have their concerns addressed during the development stage.

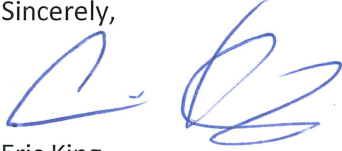
As written, SB 865 would allow the irrigation district to conduct this review and propose conditions of approval after the local government has made a final land use decision. This presents several problems for the district, the applicant, and the local government:

1. The bill provides the district with an opportunity to require things of the local government and applicant after a final land use decision has already been made. If a city or county approves a tentative plat for either a partition or subdivision that is a final land use decision upon which the applicant can rely to complete the process of creating new units of land (either parcels or lots). Introducing new requirements after this is done introduces uncertain risks and costs.
2. The city or county who has made a land use decision on a tentative plat cannot enforce another local government's regulations unless there is an intergovernmental agreement to that effect pursuant to ORS 190.
3. Some districts have codified their regulations for development within their boundaries, some have not. The process for local government review of a land use decision on a tentative plat cannot be a substitute for enforcing requirements of an irrigation district that may not have been adopted by its governing body and incorporated in its regulations.
4. The bill would give the irrigation district veto authority over a lawful land use decision made by the local government. This is contrary to ORS 197 which requires cities and counties to adopt and carry out comprehensive plans. This includes making land use decisions consistent with the adopted implementing zoning and land use regulations.
5. This exact issue was raised and rejected by the legislature in 2011 for the same reasons, after considering comments received from the Oregon Water Resources Congress, Oregon Association of Realtors, Oregon State Homebuilders Association, Oregon Homebuilders Association and Oregon Association of County Engineers and Surveyors and Special Districts Association of Oregon.
6. Some jurisdictions, such as the City of Bend, have formed partnerships with their local irrigation districts to include them substantively in the development review process. In Bend the irrigation districts are routed invitations to participate in the review of all permits and limited land use decision applications within their district boundaries. The districts are provided access to all application materials and given an opportunity to provide comments to the assigned planner. Typical comments from the districts relate to the relocation or piping of district facilities and the creation of easements to protect the districts' assets. This is appropriate timing because the city can attach reasonable conditions of approval to the land use decision that address the districts' concerns while providing the property owner or affected neighbor the due process afforded by law in instances where they believe the city and/or district is acting outside of their authority. By delaying development requirements to the signing of the final plat, the opportunity for an owner or interested party to contest the requirements is greatly

restricted. The process in Bend is working very well for the city, irrigation districts and land developers.

The City would ask and appreciate the opportunity to work with the bill sponsor to consider amendments that better address what they are trying to accomplish.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'E' followed by a cursive 'K'.

Eric King
City Manager