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HOUSE COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES
Oregon State Capitol
900 Court Street NE
Salem, OR 97301

Re: Opposition to HB 2144 - Permits owner of land to continue nonconforming land use if owner provides evidence that use qualified for all permits and approvals required by law when use commenced

Dear Chair Clem and Members of the Committee:

Article I of the Constitution provides flatly that "no State shall pass any ex post facto Law." The same article prohibits Congress from enacting such laws. "Ex post facto Laws," whatever they are, were thoroughly opposed by the Framers of our Constitution. The language is such that it such laws are completely impossible under our system of law. Yet we see a version implicit in HB 2144.

An "ex post facto Law" is any law that is retrospective. It is a law that is made after the doing of the thing to which it relates, and retroacting upon it. These laws are unfair, because, in the nature of the case, the person, or persons involved in the behavior to which such a law relates, can have had no notice, when the behavior took place, of such and after-made law which applies to it.

James Madison, writing in Federalist 44 describes the harm a measure such as HB 2144 poses:

"The sober people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and indignation that sudden changes and legislative interferences, in cases affecting personal rights, become jobs in the hands of enterprising and influential speculators, and snares to the more-industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some thorough reform is wanting, which will banish speculations on public measures, inspire a general prudence and industry, and give a regular course to the business of society."

The explicit after the fact provisions of this bill open the door to a death by a thousand cuts of Oregon's land use system. The look back provisions create an onerous burden on planners citizens committed to the principles of Oregon's land use system to show what laws and regulations were in place should the property owner have complied with, but did not. The Bill is nothing less that the revival of Measure 37. The measure is an upside down bill of attainder, punishing neighboring land owners who would be required to accept after the fact what they would have opposed at the time.

Thank you for your consideration,

Richard van Pelt