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Via e-mail: haglu.exhibits@oregonlegislature.gov

House Committee on Agriculture and Land Use
900 Court Street NE
Salem, OR 97301

RE: HB 3272 Land Use Board of Appeals

Dear Chair Clem and Honorable Members of the Committee:

Thank you for the opportunity to comment on HB 3272. This bill would shorten the deadlines for filing a petition for review at the Land Use Board of Appeals (LUBA) when a record objection has been filed, would allow attorney fees to be awarded in more circumstances than are currently permitted, and would change the deadlines for filing certain motions. We have significant concerns about this bill and we urge you to vote it down for the following reasons:

- 1) The LUBA process is already constrained by very short timelines. In particular, the petition for review must be filed within 21 days of when the record is settled and no extensions are permitted without consent of all parties. OAR 661-010-0067(2). Given that LUBA uses regular mail to issue orders, this bill could result in a party having to draft and file their entire brief in as little as three days. This is infeasible and is unduly prejudicial to participants in the land use system.
- 2) The bill would expand the ability for LUBA to award attorney fees in for situations where a party took a position that “was made for the primary purposes of causing frustration or delay.” This provision lacks clarity and is another example of prejudice against those participating in the land use system. It also puts LUBA in the position of having to determine the intent of parties during litigation, which is difficult in a process where there is only one hearing and minimal contact between parties. Further, there is already a provision for LUBA to award fees for frivolous appeals.
- 3) Another part of the bill limits the deadline for filing a Motion to Take Evidence to the same deadline for filing objections to the record (14 days after the record is received). In the case of claims of bias, ex parte contact, or unconstitutionality of the decision (takings, first amendment, equal protection), evidence supporting these claims might not be reflected in the local record, so the bill would make it

very difficult to prove such claims. Again, this change is unduly prejudicial and heavy handed against participants in the local land use system.

- 4) Finally, the bill will limit LUBA's ability to engage in a transparent rule-making process to change its own rules and procedures relating to these issues. LUBA recently changed some rules and it sought extensive public comment. If presented with issues that need to be addressed, it would likely do so again. This bill takes away the agency's opportunity to engage in such a process.

In closing, 1000 Friends of Oregon and its members, which have long been participants in the local land use process and have participated in numerous LUBA appeals throughout the years, strongly oppose this bill and request that you vote no.

Sincerely,

Meriel L. Darzen
Rural Lands Staff Attorney