

Tracey Tomashpol
3816 Rocky Ridge Ct.
Hood River, OR 97031
tomashpol@gmail.com; 714-349-6630

TO: House Committee on Human Services and Housing
Rep. Alissa Keny-Guyer, Chair
Committee Members

Re: Senate Bill 8A – **Oppose** (Requires payment of LUBA costs if an appeal is lost and the subject is affordable housing)

I believe that Senate Bill 8A represents a significant overreaction to concern over a single issue that resonates strongly with people throughout the state: the provision of affordable housing. By choosing to burden citizens who bring an action and lose with the cost of attorney fees, on **this single issue**, the state is creating a burden for citizens, public interest groups, and those who are not supported by the financial resources of either a development entity or a city to challenge local actions that may threaten the environment, appropriate land use rules, or other issues.

This bill pretends to be a way to avoid lengthy delays by people who are opposed to affordable housing and who, by filing lawsuits with LUBA, create burdens and delays for affordable housing supporters. However, there is little evidence shown for that claim. In the 2017-2018 figures cited on LUBA's own website¹, we find only 131 actions that went before LUBA, and not all of those related to affordable housing. LUBA's own performance metric shows that "89% of final opinions are issued within statutory deadlines or no more than a 7-day appeal." Citizens can have legitimate concerns about any housing development – whether it's an "affordable housing" project or a subdivision filled with "McMansions." Those can range from environmental impact on animals or endangered plant habitat, to drainage or wetlands issues, to transit or soil remediation. Active citizen involvement in all those land use reviews is an essential part of our local democracy. Local councils should have citizen oversight.

To frighten citizens from making an appeal about a meaningful issue related to a housing development through the threat of onerous attorney's fees in the event they do not prevail is wrong. What comes next? Will the next issue in the state that lawmakers believe merits a higher level of protection than citizen participation or the freedom to challenge in a court of law become protected by more muzzling? Senate Bill 8A is merely an illegitimate way to close down legitimate citizen concerns, and to muzzle opposition and citizen oversight and involvement. It's overkill, and bad public policy.

A citizen or public interest group that believes it has a legitimate claim involving land use has no way of knowing whether or not their claim will prevail. There is already a statute that allows those who are involved in a lawsuit but who had "positions without

¹ <https://www.oregon.gov/LUBA/docs/reports/annualreport.pdf>

probable cause to believe the position was well-founded in law”² to be charged with costs involved for attorney fees. That is strong enough to deter frivolous claims. Senate Bill 8A instead seeks to move a single issue to a unique position wherein few individuals or citizens’ groups will feel willing to expose themselves to the additional financial risk of attorney fees in the event of an adverse ruling. It will likely have a chilling effect on Goal 1: Citizen Involvement in land use planning.

For the Oregon legislature to take an approach of selectively choosing which favored projects will receive additional protection by stifling citizen involvement is the wrong thing to do.

One of the letters³ opposing Senate Bill 8A came from Heather Staten, the Executive Director of Thrive Hood River, a non-profit group in Hood River where I live. Thrive Hood River strongly supports zoning changes for affordable housing. I have disagreed with their support for converting an existing park in town to housing. I regret that the town has set up an adversarial situation where one cannot support both affordable housing and public parks. But I agree with Ms. Staten’s concern over SB8 and its negative effects. She has also expressed opposition on behalf of her group. The fact that so many people who differ on a variety of land use issues have come forward to oppose SB 8A should lead the House Committee to reject this measure.

Respectfully,

Tracey Tomashpol

² ORS 197.830.15b <https://www.oregonlaws.org/ors/197.830>

³

<https://olis.leg.state.or.us/liz/2019R1/Downloads/CommitteeMeetingDocument/184318>