



Date: March 16, 2023

To: Oregon House Committee on Housing and Homelessness

From: Willamette Riverkeeper

RE: In Opposition of HB 3442 - Relating to land use planning for affordable housing within 100-year floodplain

Dear Chair Dexter, Co-chairs Helfrich and Gamba, and Members of the House Committee on Housing and Homelessness,

Willamette Riverkeeper, an Oregon 501(c)(3) nonprofit with approximately 7,000 members and supporters, submits the following testimony in **opposition** to HB 3442. Willamette Riverkeeper works to protect and restore the Willamette River and its tributaries. Protection of floodplains is critical both for the ecological health of river systems as well as to protect the health and safety of human populations. Despite ample evidence in Oregon and in cities across the United States of the dangers of developing in floodplains, efforts continue to be made to weaken rather than strengthen protections for these high hazard flood areas. HB 3442 would allow for development of affordable housing in 100-year floodplains and lands otherwise constrained by land use planning regulations related to natural disasters and hazards.

The introduced legislation is ambiguous: The legislation appears to limit this allowance to jurisdictions with a certain percentage of their land area located in the 100-year floodplain or constrained by land use regulations pertaining to natural disasters and hazards. However, the legislation fails to actually identify where this threshold would be set. Because of this omission, it is impossible to determine where or how widely this allowance would be applied. It is important that the sponsors of this bill clearly indicate the criteria that would be used to delineate which communities would be affected by this legislation, especially when current land use code allows for affordable housing in areas that are safer and less vulnerable to climate impacts such as flooding and landslides.

Oregon should be strengthening, not weakening protection for floodplains: By definition 100-year floodplains are high hazard flood zones with a 1% annual chance of being inundated by flood waters. This risk is certain to increase over time with the growing impacts of climate change and increased extreme weather events. Placing affordable housing in floodplains would put populations that are already vulnerable at high risk and would perpetuate long standing historic inequalities associated with relegating our most vulnerable populations to high hazard areas. Historically marginalized communities should not have to shoulder the burden of living in less desirable, high risk, unsustainable housing investments. With the current state of climate change, we should be moving aggressively toward *reducing* development in floodplains, *not*

increasing development and relaxing standards. This is all the more important when it comes to vulnerable communities, who typically are the most impacted by catastrophic events.

To the degree that legislation is advanced to allow affordable housing in floodplains, it is critical that provisions also be put in places to minimize and mitigate for impacts and risks: such as balanced cut and fill, flood safe building standards, etc. Placing vulnerable communities in high hazard areas and not mitigating for the risks they will incur is not a responsible housing strategy.

Increasing development in floodplains could violate the Endangered Species Act and put communities eligibility for the National Flood Insurance Program (NFIP) at risk:

In 2016, the National Marine Fisheries Service (NMFS) issued a Biological Opinion regarding floodplain development standards in Oregon under the National Flood Insurance Program. The Biological Opinion concluded that Oregon's current standards jeopardized the continued existence of federally listed salmon and steelhead, and resident killer whales (which depend on salmon as a source of food). As a result, FEMA and local jurisdictions participating in the NFIP are required to take action to address violations of the ESA. The Oregon NFIP BiOp highlights the importance of considering the impacts of development on endangered and threatened species in floodplain areas, and the need for floodplain development standards that are consistent with the requirements of the Endangered Species Act.¹

Our land use code provides critical legal guidelines to help protect Oregonians and our quality of life. Weakening land use code in floodplains will create serious consequences for people, wildlife, the economy, and the environment. By regulating development in these areas, land use codes can help to mitigate the risks associated with flooding, protect important habitats, and promote public health and safety.

Thank you for your consideration of these comments,

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¹ **Biological Opinion on the Implementation of the National Flood Insurance Program in the State of Oregon**

Endangered Species Act Section 7(a)(2) Biological Opinion - NMFS Consultation Number: NWR-2011-3197
<https://media.fisheries.noaa.gov/2022-02/oregon-fema-biop-qa-2016.pdf>