



May 8, 2023

Dear Chair Fahey and Members of the House Committee on Rules.

I am writing on behalf of Willamette Riverkeeper to express our strong **opposition to HB 3414**. Our concerns relate specifically to Section 2 of HB 3414 which would require municipalities to give variances from land use regulations to housing developers. **We view Section 2 as potentially resulting in the largest rollback of environmental protections on urban landscapes since the land use system was put in place.** We do not oppose other elements of this legislation and would be able to support it if Section 2 were removed.

While we recognize the urgency of the statewide housing crisis, Section 2 of HB 3414 is an extreme measure that would require local municipalities to give variances (exceptions) from a vast swath of land use regulations to housing developers without requiring any public benefit in return. Our land use regulations have been carefully crafted over decades to advance the health, safety, livability and equity in our communities. They balance a variety of important goals. Section 2 of HB 3414 uses the housing crisis to unnecessarily and indiscriminately allow housing developers to bypass a remarkably broad swath of land use regulations that goes far beyond anything that can credibly be viewed as addressing primary causes of the crisis.

The base bill would require municipalities to provide variances upon request for any land use regulation not related to health, safety, height or FAR. Remarkably, housing developers could receive an unlimited number of variances and are not required to demonstrate that these variances result in either increased housing units or decreased housing costs. A developer building mansions is just as eligible to receive variances under this legislation as a developer building affordable housing. The amendments would somewhat reduce the range of variances that would be required to be granted upon request, but still leave a vast array of land use regulations vulnerable. (Only the -5 amendments which were released as we were finalizing these comments really begin to address our concerns and would still require some additional work).

Under this legislation for example, a riverside housing developer building a mansion could request, and a municipality would be required to grant variance that would allow them to cut down on all the trees on the property, encroach into environmental zones, build in the floodplain and encroach in the Willamette River Greenway.

We have been in communication with the Governor's office and are working to ameliorate the worst environmental impacts of this legislation. However, we believe that it remains far too extreme and poorly targeted to advance during the 2023 legislative session. **We urge the House Rules Committee to remove Section 2 from HB 3414 and set up an interim task force to develop a most strategic approach to granting variance to promote housing goals.**

Our specific concerns include the following:

- **HB 3414, Section 2, would result in among the biggest rollbacks of urban environmental protections since the land use planning system was put in place. It would reverse decades of progress protecting the environment on urban landscapes.**
- HB 3414, Section 2, would require municipalities to grant variances from a vast range of land use regulations upon request as long as the land on which the development is occurring is zoned for housing. Developers are not required to demonstrate any public benefit that would occur as a result of the variance(s) including increased housing units or decreased housing costs. It is an unnecessary and poorly targeted measure that will provide increased profits to developers at the expense of our communities and our environment.
- HB 3414, Section 2, will require municipalities to grant variances to housing developers unless the regulation falls within a very narrow band of regulations excluded from this measure. If a municipality does deny a variance, it must make substantive findings within a very short time period and the denial can be appealed. This in essence puts municipalities in the position of having to defend existing land use regulations, to the degree that this legislation allows municipalities to defend them at all, on a case by case basis, in extreme time constraints and then be subject to appeal. The staffing, timing and legal hurdles will make it extremely difficult for municipalities to defend any land use regulations at all.
- If Section 2 does advance, we have made the following recommendation to the Governor's office:
 - Add a sunset clause of no more than 3 years. Sweeping changes of this magnitude to the land use planning system merit a quick return to review the impacts and efficacy of the measure.
 - Require that developers demonstrate that any variance will result in a public benefit of either increased housing units or decreased housing costs that otherwise would be possible without a variance on the development site. Developers should not be able to attain variances and simply pocket the increased profits.
 - Only allow modifications of land use regulations rather than complete variances.
 - Make the variances discretionary rather than mandatory.
 - Add the following exceptions for Section 2 to ensure that municipalities retain the ability to protect the environment on urban landscapes.

- Protection of wildlife or wildlife habitat: Current amendments only address habitat of "threatened, endangered, sensitive or species of concern." However, most urban wildlife and wildlife habitat protections are not focused on specific species but rather the quality and importance of the habitat itself. Notably Goal 5 which provides for protection of habitat already requires a very extensive balancing test that includes consideration of other land uses and which often results in very limited habitat protection when Goal 5 protections are put in place.
- The water exemptions in the amendments should be made much clearer. I would suggest "Regulations to protect ground or surface water including but not limited to aquifers, rivers, streams, wetlands, floodplains, and to address stormwater."
- Protection for trees: As written and potentially amended, this legislation would leave urban trees completely exposed. Communities put tremendous value on their trees to clean air and water, reduce pollution, sequester carbon, reduce urban heat island effects, provide habitat connectivity, etc. Communities are also recognizing that many marginalized and vulnerable communities are also in tree deficient areas of our cities. This legislation should fully exempt regulations related to protecting trees.
- Goal 15-Willamette River Greenway: This legislation should fully exempt any regulation designed to protect the Willamette River Greenway. Without such an exemption, we could see significant encroachment into the greenway by riverside property developers.
- Regulations related to cleanup of hazardous/ toxic substances
- We would specifically suggest exempting any regulations associated with Goals 5, 6, 7, 15, 16, 17, 18.
- We would also specifically suggest exempting regulations related to Goal 1 (public participation). Public involvement is critical when making these kind of decisions which will have significant impacts on our communities

We have heard the governor's office and others suggest that housing was neglected when the land use planning system was established. That is also true of natural resources as well. Furthermore, we tended to build our urban and suburban landscapes with reckless disregard for the natural environment. We have been slowly putting on regulations over the past 40+ years to protect what little is left and to slowly claw back the most important places over time. This has only become more imperative as we recognize the threats to our communities posed by climate change and the considerable inequities associated with not ensuring a healthy environment (air pollution, water pollution, urban heat island, lack of access to nature, etc.) for all residents. As written and amended, HB 3414 kicks urban environmental protections established over the past 40 years hard into reverse. My list in Section 7 above is not comprehensive. I am sure as this plays out we will see many more unanticipated impacts---that is the danger of this kind of comprehensive waiver legislation which begins by erasing decades of careful planning.

We appreciate you consideration of these comments.

Respectfully,

Bob Sallinger
Urban Conservation Director
Willamette Riverkeeper