Oregon

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MEASURE: HB 3085
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SUBMITTED BY: Bob Rindy

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TO: The Honorable Bryan Clem, Chair
House Committee on Land Use

FROM: Bob Rindy, Department of Land Conservation and Development

RE: DLCD testimony regarding HB 3085

This bill makes a number of technical changes in the process for dedicating or conveying property as part of the subdivision or partition platting process. The department is not concerned with the intent of this legislation – we agree that confusion over the term "tract" should be resolved in some manner. However, this issue is complex as described below, and resolution should be pursued in consultation with land use planners and other land use interests to make sure the method to resolve the problem does not itself create further confusion. The department is providing this letter to note some potential problems with the manner in which HB 3085 attempts to resolve this issue.

The bill is intended to resolve a longstanding issue regarding the creation of certain units of land in subdivision and partition plats identified on the face of the plats as "tracts." These "tracts" are not lots or parcels, and are not identified and numbered as such. While the creation of "tracts" in the platting process has been a widespread practice, usually for units of land reserved for various common elements in subdivision and condominium developments, there is no explicit authority for creating "tracts" in Oregon subdivision law (ORS Chapter 92). As such, the legal land use status for such units of land is unclear. This can create a number of problems for cities and counties regarding the permissible use, development, or conveyance of these units of land.

First, the term "tract" proposed for insertion into ORS Chapter 92 by this bill will conflict with the current definition of that term in a closely related chapter: ORS 215. That chapter of Oregon law defines "tract" as "one or more contiguous lots or parcels under the same ownership." Not only is this substantially different, ORS 215 currently incorporates the definitions in ORS 92 into ORS 215 by reference. As such, this bill will cause confusion, not only by creating different definitions for the same term in closely related statutes, but also by indirectly creating two definitions for the same term in ORS 215.[1] We also note that the term "tract" as currently defined in ORS Chapter 215 is also used in other related laws, in administrative rules under OAR 660, divisions 6 and 33, and is incorporated into many local government ordinances.

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[1] One idea to address this would be by revising the definitions section of 215 in the manner proposed in the 2011 version of this bill (HB 3386-A). With this revision, the proposed definition would apply only to the use of the term in Chapter 92, while the alternate definition in 215 would be limited in application to ORS 215 (primarily for EFU and forest zoning), ensuring that "technically" there would be a mutually exclusive definition of the term in the two statutes. However, this would not eliminate all confusion about this – a better solution would be two different terms.

Second, related proposed changes to ORS 92 for internal consistency would also have unintended consequences. The bill proposes to simply substitute the term "lot or parcel' for "tract" wherever "tract" is currently used in the ORS 92.192 provisions for property line adjustments. However, the word "tract" was intentionally used here in place of "lot or parcel" to signify common ownership. The proposed substitution of "lot or parcel" for "tract" would therefore result in significant changes to substantive requirements for property line adjustments in EFU and Forest zones under ORS 215. The current law at ORS 92.192 was enacted to prohibit certain property line adjustments in EFU or forest zones, and this change would undo the intent of that law. One way this could be remedied would be specifying that the ORS 215 definition of "tract" applies for purposes of this particular section of ORS 192.[2]

Finally, the bill describes permissible uses of land in the newly defined "tract." Note that ORS 92 currently – and in our opinion, appropriately – does not provide any "land use" authorization for lots or parcels. However, HB 3085 declares that the newly defined tract "may be used for purposes such as open spaces, wetlands, private roads, utility infrastructure, recreational facilities or other shared public or private uses; and … may not be used for purposes such as residential dwellings or commercial buildings."

This may be intended to describe circumstances when a "tract" rather than a lot or parcel should be created. However, if so, this should be specified in a manner that does not suggest legislative intent to proscribe permissible land uses for the "tract" after it is created. Further, in describing allowed uses, the words "such as" and "other shared uses" are also of concern, since they may leave these authorizations open ended. By stating further that residential and commercial buildings are not allowed, it is unclear whether, by inference, other types of buildings are allowed. The department suggests that providing land use authorizations and prohibitions may set up a conflict with ORS 215 and related land use statutes, as well as local plans, which are intended to specify which uses are allowed on lots, parcels or "tracts."

Thank you for this opportunity to provide you with information about HB 3085. If committee members have questions about this testimony, I may be reached at 503-373-0050 Ext 229, or through email at bob.rindy@state.or.us.

[2] The proposed change to this section, deleting the term "tract" and substituting "lot" and "parcel", would allow a property line adjustment to add acreage to a farm or forest parcel so long as it did not result in the individual parcel qualifying for a dwelling. However, it could have the effect of qualifying the total ownership (or "tract" under ORS 215) for a dwelling. ORS 92.192 was intended to avoid that consequence.