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Vice Chair Bill Post
House Agriculture and Land Use Committee
Oregon House of Representatives
900 Court Street, Office H-373
Salem, OR 97301

April 1, 2019

Re: House Bill 2225

Dear Vice Chair Post:

I am writing to share with you my observations and comments on HB 2225. I was made aware of this bill too late to be able to testify at the hearing on February 5, 2019. I hope that my comments will be entered into the record and you may take a moment to consider a few observations from what is obviously the other side of the table from what was presented at the February hearing.

I have worked in forestry, real estate brokerage and land use planning for the past 43 years. My observation is the provisions of the forest template dwelling are a splendid example of what works well in our state wide land planning system. I don't represent large scale developers, my clients are typically referred to me by attorneys in Lane, Linn, Benton and Douglas Counties and quite typically are elderly land owners attempting to provide for what is often characterized as estate planning. Not uncommonly my clients are the heirs to such estates, now in the position of having to carry out the distribution of the land that their parents held onto for decades.

In the first step of problem solving we usually start with the question: Is there a problem? I think it is appropriate to start at that point in examining what is being addressed in HB 2225. The testimony of the Department of Land Conservation and Development representatives speaks directly to this question. In 26 years that the forest template dwelling test has been used to gain approval for placement of a dwelling in forest zoned tracts of land there have been 5,337 such dwellings approved. If across the state of Oregon we are seeing an average of 232 houses per year being allowed in forest zoned lands, I think the question must be asked, is there a problem?

I will share with you that from my personal experience in working with landowners that bring me their property hoping to obtain an approval for placement of a dwelling at least a third of them do not qualify. The most common reason is the parcel is at the edge of lands that have been residentially improved and characterized by small rural tracts, but the subject property abuts larger blocks of industrial and government timberland and the property simply won't meet the standards of the

template test, commonly 11 parcels and at least three dwellings that existed on or before January 1 of 1993. In short, the template test performs well to limit the intrusion of residential uses into commercial forestlands, the intent of Goal 4 in Senate Bill 100.

In the testimony that was given in February no information is given as to how many of those 232 houses per year would have been approved without the limitations of HB 2225 or how many would have been precluded. Again to the question, is this something that demands correction?

I share the concerns voiced by the Department of Land Conservation and Development at the February 5 hearing. I would be more direct and say that much of the language in HB 2225 is poorly written and troublesome in its potential enactment. I am enclosing at Attachment 1a and 1b two examples of the situation that is created in attempting to carry out the requirements for identifying the "center of the parcel" using the standards of the bill. Under Section 1(1) the "center of the subject tract means the point of intersection of two perpendicular lines, of which the first bisects the longest side of the parcel and the second bisects the longest side adjacent to the longest side of the parcel." Whew! If the parcel is a simple rectangle this wording can be made workable. The reality is thousands of tracts of land in Oregon simply don't fit this formulary. In the two enclosed examples the language of HB 2225 creates a center of the tract that cannot be located within the center of the parcel or is simply so poorly defined no such center can be identified. The testimony of the DLCD representatives spoke to this matter, the enclosed examples will give you a picture of what is troublesome in the language of the bill.

Continuing with Section 1 is the requirement that "The center of the subject tract must be designated by demarcation on a survey map by a licensed surveyor." Currently the applicant for a template dwelling is able to submit a copy of the county assessment and taxation map for the subject property showing the center of the tract, commonly established by the simple test of balancing a cutout of the property on the head of a pin or small nail. It sounds a bit crude, but it works remarkably well and accurately depicts the center of the parcel. The requirement to now retain the services of a surveyor adds hundreds, if not thousands, of dollars to the cost of such an application. I work with a number of very qualified and competent surveyors, each of them has told me this language will require them to complete a full survey of the property – note the language: "a survey map." The professional requirements of a licensed surveyor will stipulate the need for a complete survey of the property. This requirement is subtle, but clear, each parcel of land must be surveyed. I have dealt with survey requirements that have run into the tens of thousands of dollars. The language of HB 2225 is being carefully crafted to simply price out of existence the placement of dwellings in forest zoned tracts of land.

In Lane County the current filing fee for a Special Use Permit to allow a dwelling in forest zoned property using the template test is $2,600. This fee usually comes on the heels of having to go through what is called a Legal Lot Verification, which will entail another fee usually running between $1,500 and $1800, depending on the number of deeds that must be examined to establish that the parcel was "lawfully created." If the applicant attempting to work through this process finds themselves having to hire a consultant to assist with these applications they can expect to pay something in the range of $3,000 to $7,000 for such assistance. Besides costing upwards of $10,000 to simply get the applications before the county staff, the entire process will take nearly a year to complete as the county planning staff is bogged down with an appeal of virtually every application from LandWatch Lane County, one of the

groups that testified in favor of HB 2225 at the February 5 hearing. This bill simply gives fresh fuel to groups like LandWatch that have virtually paralyzed the planning process in Lane County and many other counties.

While I have made a fairly decent living advising clients in the land use process, I believe government that requires the average citizen to hire someone like me to process what should be a straightforward application is not good government. We have sacrificed much of the general population's confidence that government exists to work for them. This bill further erodes that confidence.

My concerns with HB 2225 continue under Sections 1(5) d, e and f. These provisions are attempting to preclude the placement of a dwelling on any parcel that has undergone "any reconfiguration or change in ownership of any lot, parcel or tract after January 1, 1993."

How does this impact a parcel of land that has had a change of ownership as a result of being transferred by settlement of an estate or sale?

Throughout western Oregon the minimum parcel size for forest zoned parcels is 80 acres. My interpretation of Section 1(5)(e) of HB 2225 is that if Mom and Dad's estate provided for the transfer of their 40 acre parcel to their son or daughter, such child will be precluded from applying for a dwelling on that tract as it does not meet "any applicable minimum lot size" following the change in ownership.

Furthermore, if Mom and Dad carried out any kind of property line adjustment to change the boundary of what has been approved as a lawfully created unit of land, as that term is defined in state statute, such adjustment will preclude the "reconfigured parcel" from qualifying for placement of a dwelling. Mom and Dad that carried out a completely legal action, and probably spent a goodly sum of money to do so, will now find the parcel of land they hoped to sell to supplement their retirement or convey a legacy to their children will be squashed.

Over the years my work has resulted in the identification of numerous parcels of land that meet a very rigorous standard for recognition as having been lawfully created, but such parcels do not have assigned tax lots. The land is certainly "on the property tax rolls' – taxes have been paid on it – but may not have been given a tax lot identification. Not uncommonly, these parcels were created by deed prior to the adoption of land use regulations and prior to the establishment of our current property tax system. The language of this bill is very poorly worded. How does one define "listed on the property tax rolls?"

The same dilemma will result if a party in good faith purchased a parcel of land that is less than 80 acres in size that was lawfully created by a property line adjustment, anticipating paying off the land to construct their "dream home" in their retirement. Are these people now to be foreclosed out of their ability to place a home on their property as it was created sometime over the past 30 years in accordance with rules in place at the time?

The language in Section 1(5)(e)(A) that only allows a dwelling to be placed on a parcel that on January 1, 1993 would have allowed such a dwelling is poorly written. An interpretation can be made of this requirement that such an approval must have been available as an outright approved use, no such

ability exists in Lane County Code or any other county with which I work. All such approval falls under the provisions of a Special Use Permit or Conditional Use Permit. The adoption of this section of statute throws open the door to a legal challenge to, literally, every application for approval of a forest template dwelling on any parcel that has had even the most modest change in boundary lines.

Section 3 of the proposed bill is an effort to circumvent the requirements to pay just compensation for changes in land use laws that result in a loss of value to a landowner. While this bill sets forth "compensation is not due for the enforcement or enactment of a land use regulation established under the amendments to ORS 215.750 by section 1 of this 2019 Act..." it does not address that ORS 195.305 resulted from the voter's passage of Ballot Measure 49 with a nearly two-thirds positive vote. Can this provision be seen as anything other than a breaking of faith with the voter's intent in Measure 49?

There is an inherent injustice in applying this bill retroactively to landowners that have broken no laws, who, on the contrary, worked within an expensive and time consuming system to create a parcel of land perhaps as long as 25 years ago for the purpose of sale or devise to their children and now find the value of that work is no longer lawfully recognized.

The complaints made at the February 5 hearing about small, irregular parcels being modified by property line adjustment to create more usable parcels can possibly be argued as having merit, but no evidence was presented that this is a widespread action. The example presented by LandWatch Lane County is of a realignment that occurred 20 years ago. The example presented by the Bowerman family was of a realignment occurring over 5 years ago. It can be argued that a dozen building sites were created in these two actions, but taken in context the question is begged: Is this a major problem?

I will admit to over the years having had my differences of opinion with the Department of Land Conservation and Development, but their summary in the testimony of February 5 deserves attention. The DLCD conclusion that the question of Measure 56 impact is not defined is the height of understatement. This bill will be challenged in court for months, if not years, and if it is upheld the requirement for notice under Measure 56 is unarguable. The cost of such notice will run into hundreds of thousands of dollars if for nothing more than postage. I cannot open a newspaper without seeing a headline discussing some financial dilemma being faced by the State of Oregon: PERS, school funding, healthcare, the list is lengthy.

Is it appropriate to be expending thousands of dollars to "fix" a problem that arguably exists only in the minds of a very small group of people in this state?

Thank you for your time in reading this lengthy letter.

Sincerely,

Jim Belknap

James E. (Jim) Belknap
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FOR ASSESSMENT AND TAXATION ONLY

SECTION 25 T.20S. R.3W. W.M.
Lane County
1" = 400'

Attachment 1a