OREGON PROPERTY OWNERS ASSOCIATION

February 2, 2021

Oregon State Legislature
House Agriculture and Natural Resources Committee
Oregon State Capitol

Re: House Bill 2611 – Ag Buildings

Chair Witt and Committee Members:

The Oregon Property Owners Association (OPOA) submits this testimony in support of House Bill 2611, a bill that clarifies the existing exemption from the state commercial building code for barns and other agricultural buildings. The existing exemption is found in ORS 455.315.

In 1973, the legislature authorized the Oregon Director of Commerce to promulgate a state building code. Almost immediate after the Director of Commerce had completed that task, owners of agricultural buildings began complaining that the building code that applies to structures designed for human occupancy and where people are regularly present did not really fit well for agricultural buildings, which are typically occupied by no one and, when occupied, are used by a single farmer or a small group of people.

The 1973 legislature did not think to create an exemption for ag buildings, which are different in type and intensity of use than most commercial structures. Consequently, the 1975 legislature enacted Senate Bill 45 (1975) to address farmers concerns. SB 45 created an exemption for "agricultural buildings". The definition of "agricultural buildings" in SB 45 is nearly identical to the current definition in ORS 455.315. The definition has been slightly expanded to allow a building located on a farm or forest operation and used for the repair of forestry equipment to also qualify as an agricultural building, but otherwise remains the same as it was in 1975.

Until recently, there has been no controversy in the implementation of the ag building exemption in ORS 455.315 since it's enactment over 45 years ago. There is no reported case law interpreting the statute, and no issues at the state or local level challenging exemptions.

Unfortunately, an ambiguity in the definition of "agricultural building" is now causing confusion for both counties and farmers. The existing definition of "agricultural building" in ORS 455.315(2)(a) speaks of a structure located on a farm or forest operation and **used for** a laundry list of traditional farm or forest activities.

The meaning of "used for" in ORS 455.315(2)(a) is not further defined, and could have multiple interpretations. For example, a building that is used by a farmer for one of the traditional farm uses in ORS 455.315(2)(a)(A)-(E) for one day out of the year, but used for non-farm uses the other 364 days may be considered to be "used for" farm related activities and thus exempt from the state building code. If that were true, then virtually no buildings on farm or forest operations would be subject to

the state building code. We would be okay with that, but that may not be what the legislature intended in ORS 455.315(2)(a).

On the other hand, the phrase "used for" in ORS 455.315(2)(a) could be interpreted to require the farmer to use a building exclusively for the farm uses listed in ORS 455.315(2)(a)(A)-(E) in order to qualify for the exemption from the state building code. If that were the case, a farmer who made any non-farm use at all in the building would automatically be required to bring the ag building into compliance with the state building code. For example, a farmer using a barn to store the family RV would lose the ag exemption for the barn. That certainly can't be what the legislature intended – if that was the meaning, virtually every farmer in Oregon would lose the ag exemption for their non-residential structures.

In order to clarify the ambiguity and eliminate potential litigation between counties and rural property owners, HB 2611 clarifies the term "used for" in the definition of "agricultural building" in ORS 455.315(2)(a). By inserting the word "primarily" into the definition, the statute will now make it clear that in order to maintain the agricultural exemption for a non-residential structure on a farm or forest operation, the farmer must use the structure "primarily" for the traditional farm uses listed in the statute, but does not have to use the ag building "exclusively" for those uses.

In other words, Farmer Jones can use the barn for all of the normal ag activities that caused the barn to be constructed in the first place, but the barn won't have to be brought into compliance just because Farmer Jones makes some non-farm related uses in the building, like storing the family RV, as long as those uses are secondary to the farm use.

That does not mean that Farmer Jones can use this bill to allow uses that aren't allowed by the land use laws. This bill is not a land use bill – nothing in the bill changes any land use laws, or makes it easier (or more difficult) to receive approval to make a non-farm use of an agricultural building. If Farmer Jones wants to convert an ag building to a non-farm use (even if that use will not be the primary use of the ag building), compliance with all land use laws will still be required, and is not affected by this bill.

Essentially, the purpose of this bill is to strike a balance between the two extremes in the interpretation of "used for" in ORS 455.315(2)(a), so that the owners of ag buildings do not have to worry that they will be approached by a local building official and informed that because they are engaged in modest non-farm activities in an ag building, they must bring the building into compliance with the building code. That isn't fair and isn't the likely meaning of the existing law, but we are hopeful that you will clarify the statute by passing this bill, thereby eliminating the possibility of misinterpretation and a subsequent lawsuit between a farmer and a county.

Thank you for scheduling this bill. We hope you will approve it and move it to the floor with a do-pass recommendation.

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President

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