Representative Marsh,

You asked for a response to the March 1, 2023, letter from attorney Charles Greeff that appears as written testimony on OLIS as opposition to Introduced House Bill 3151 and was submitted by the Oregon Park Owners Alliance. The letter pertains to the amendments to ORS 90.514 by section 1 of the bill. Section 1 is not affected by the posted -3 amendments.

The bill is scheduled for a public hearing tomorrow and therefore, time constraints prevent me from preparing a formal opinion. You are welcome to share this email with the committee or to post it to OLIS. I will try to make myself available during tomorrow's hearing if there are further questions.

The letter is correct that the use of the word "improvements" in ORS 90.514 is defined in ORS 90.512, which cross references ORS 646A.050. And it is true that "improvements" is defined broadly, but it explicitly refers only to "goods and services not included in the base price that are, in general, needed to prepare a site and complete the setup of the manufactured dwelling..." Therefore, "improvements" do not include features of, or repairs to, the "base" manufactured dwelling itself. In context, ORS 646A.050 and ORS 646A.052 (2)(d) are about regulating the sales by a manufactured dwelling dealer to ensure that the dealer fully discloses any itemized costs that are in addition to the base price of the dwelling, so that a purchaser does not incur a surprise "downspout installation fee," for instance, after purchasing the manufactured dwelling from the dealer.

Although a manufactured park dealer could include the costs of various "improvements" in the purchase agreement, ORS 90.514 (2) as amended by HB 3151 would prohibit a landlord from requiring that a tenant purchase an improvement that "cannot be reasonably removed and owned by the tenant at the termination of the tenancy, except for porches, stairs, decks, awnings, carports, sheds or vegetative landscaping on the site or any other improvements necessary for the safe and lawful installation of the manufactured dwelling."

The OPOA letter states that "The following improvements, which are common and typically required as part of a park tenancy, and which have nothing to do with the safe and lawful installation of the home, would be prohibited by HB 3151: sidewalks; concrete work; skirting; railings; garages; gutters; downspouts; rain drains; heat pumps; and air conditioners." I would agree that HB 3151 could prohibit a landlord from requiring a tenant to install a new outdoor heat pump, air conditioner or garage. And a landlord probably could not require that a tenant pay to install sidewalks, except to the extent that they were as part of an allowably required porch, stairs or deck. With respect to skirting, railings, gutters, downspouts and rain drains, to the extent that they are connected to and become part of the manufactured dwelling rather than the space, could presumably still be required as they would become part of the manufactured dwelling that is owned by the tenant.

The OPOA letter incorrectly states that because various improvements will not "be owned by the tenant after the home is sold, [therefore] they could not be required at any time by the landlord if HB 3151 were to become law." This appears to misunderstand what it means that a tenant owns the manufactured dwelling and certain improvements. Of course the tenant does not own an improvement after the tenant sells the manufactured dwelling: once you sell something, you no longer own it. But, during the tenancy, the tenant does own the improvements to the dwelling, including railings, gutters, siding and roof, in the sense that the tenant could choose to terminate the tenancy and remove the manufactured dwelling from the premises along with these improvement and re-site it in another park or on privately owned land. That this would be in many cases economically impractical does not change

the legal concept of the tenant's ownership of the improvements. Therefore, a landlord could continue to require these dwelling-affixed improvements under the amendments to ORS 90.514 (2) by HB 3151. There may remain edge cases, such as a rain drain, where it may not be obvious whether it is part of the dwelling or part of the dwelling site and where the ORS 90.514 (2) does not explicitly include them as something that a landlord may require that the tenant is responsible for installing.

Although under HB 3151 a landlord could not *require* certain items listed above, a landlord could *allow*their construction. Therefore, to the extent that tenants agreed with the letter that those items "benefit and enhance the ... manufactured home and its ultimate sale price" tenants could choose to install them before or during the tenancy.

The letter goes on to imply that under HB 3151 a landlord could not require a tenant to prime or paint the exterior or to maintain gutters, siding, roofing or to restore disrepair or deterioration. This is incorrect. HB 3151 does nothing to amend ORS 90.5050 (1)(b) or 90.632, which the OPOA letter describes in page 3 of the letter. However, the letter concludes that "[maintenance, repair and code correction items] too could not be required of the tenant by the landlord at any time during the tenancy—not just at the outset." That is incorrect. Nothing in ORS 90.512, before or after the HB 3151 amendments, affects the definitions of disrepair or deterioration or the landlord's remedies for those conditions. The improvements mentioned in ORS 90.512, only refer to pre-site repairs a landlord can require as a condition of the tenancy. ORS 90.632 (4) already makes clear that the disrepair or deterioration that a landlord may require that tenant remedy is limited to the manufactured dwelling itself and not to the improvements to the site. A landlord could always pursue the tenant for the cost of repairs if the tenant's negligence caused damage to the dwelling site or the park or may terminate the tenancy for the tenant's violation of the lease agreement with respect to the site or park under ORS 90.630. But again, none of this is changed by HB 3151.

Robert L Mauger
Deputy Legislative Counsel
Cell: (503) 967-5205