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March 30, 2023

House Committee on Agriculture, Land Use, Natural Resources and Water
House Bill 2192 Letter in Opposition

Dear Chair Helm and Committee Members,

I write on behalf of LandWatch Lane County and in opposition to House Bill 2192, including the -3 amendments.

The intention of this bill, at first, was to ensure that if an individual's forestland dwelling was destroyed by fire that the individual could get a replacement dwelling. The proponent of the bill has never established that anyone has been denied such a replacement dwelling, and I am not aware of any such instance. For that reason, the bill is not necessary.

Regardless, in an effort to reach consensus, I reached out to Mr. Honeycutt after the first hearing on House Bill 2192, and indicated how the bill could be changed to ensure that a forestland dwelling that was destroyed could be replaced. My suggestions also ensured that the promises made during the 2019 legislation (HB 3024 (Oregon Laws 2019, Chapter 440)) would be honored. My suggestions were not adopted by the -1, -2, or -3 amendments. For that reason, LandWatch opposes the bill.

The bill also purports to amend ORS 92.176, which governs validations of units of land. If the proposed bill is intended to address replacement dwellings on forestland, then the bill should not change any component of ORS 92.176 because it is irrelevant to the initial intention of the bill. There appears to be an ulterior motive by proposing amendments to ORS 92.176. Because the bill proposes changes to ORS 92.176, LandWatch cannot support the bill.

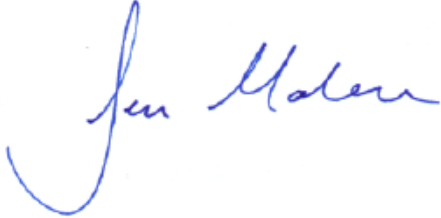
This morning additional changes have been proposed (-3 amendments), and I believe it is bad public policy to be making changes to a bill at the last minute, especially where small changes could have significant implications. There are many stakeholders that appeared at the first hearing that simply cannot be updated on these most recent changes before the hearing. For that reason, LandWatch opposes the bill.

I am also attaching my prior testimony on House Bill 2192.

I would have liked to testify at today's hearing, but I will be traveling with family at that time.

Thank you for the opportunity to submit testimony in opposition to this bill.

Sincerely,

A handwritten signature in blue ink that reads "Sean T. Malone". The signature is written in a cursive style with a large, sweeping initial "S" that loops under the first name.

Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client

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February 21, 2023

House Committee on Agriculture, Land Use, Natural Resources and Water
House Bill 2192 Letter in Opposition

Dear Chair Helm and Committee Members,

I write on behalf of LandWatch Lane County and in opposition to House Bill 2192.

Background of the Replacement Dwelling Provisions

The background of the HB 2192 has been a decade-long rollback of the farmland replacement dwelling statute that is now proposed for forestland replacement dwellings. Prior to 2013, to obtain a replacement dwelling on farmland required that the dwelling “has” four components¹. In 2013, through HB 2746 (Oregon Laws 2013, Chapter 462), the farmland replacement dwelling statute was amended, requiring that the dwelling “has, or formerly had” the four components and that the applicant paid taxes on the dwelling for the prior five years, effectively creating a five-year look-back provision.² In 2019, through HB 3024 (Oregon Laws 2019, Chapter 440), the 2013 language was *temporarily* amended, requiring that the dwelling “has, or formerly had” the four components as far back as 1973, effectively creating a 46-year look-back period. This allowed for the replacement of any dwelling with the four components that existed within the last 46-years. Importantly, as part of the justification for that bill and its significant look-back period, the provision would sunset in January 2024.

HB 2192 applies the rollbacks from the 2019 legislation (HB 3024) to forestlands and eliminates the sunset provision

First, I respectfully oppose the bill because it applies the rollback provisions from the 2019 legislation (HB 3024) for farmland replacement dwellings to forestland replacement dwellings.

¹ (1) Intact exterior walls and roof structure; (2) indoor plumbing; (3) interior wiring; and (4) a heating system.

² LandWatch Lane County successfully litigated the 2013 language to the Oregon Supreme Court in 2018, and I was the attorney for that litigation. The 2019 legislation effectively overruled the Supreme Court’s decision but only *temporarily* because of the January 2024 sunset provision.

This will allow forestland dwellings long-gone to be resurrected if the dwellings were demolished or destroyed as far back as 1973. This will result in additional dwellings on forestland that have not existed for almost half-a-century, and it is directly contrary to the policy embedded in Goal 4 “[t]o conserve forest lands by maintaining the forest land base”

Second, I respectfully oppose the bill because it eliminates the sunset provision that was put in place by the 2019 legislation. The significant look-back provision in the 2019 legislation was justified as *temporary*, and this bill aims to make that significant look-back provision permanent for both farmland and forestland replacement dwellings. Therefore, this bill will allow for the further proliferation of dwellings on farmland that have not existed for many decades, as well as forestlands. As such, this bill is also contrary the policy enshrined in Goal 3 (“To preserve and maintain agricultural lands.”) and the State’s agricultural land use policy, *see* ORS 215.243(2) (“The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state’s economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.”).

Simply put, if this bill was intended to assist those that could not replace a dwelling following a wildfire, then not only would the proponents of the bill identify an instance where a replacement dwelling was denied after a fire occurred, but there would also be no reason to create a 46-year look-back period for replacement. The bill proposes a solution to a problem that does not exist.

Third, I respectfully oppose the bill because it unnecessarily increases the time for demolition, removal, or conversion from three months to one year, increasing the likelihood of speculative applications.

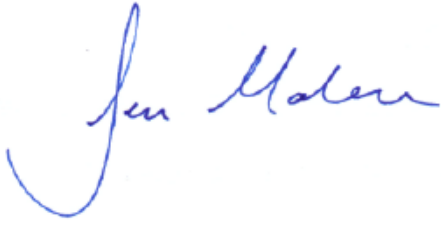
Fourth, I respectfully oppose the bill because the proliferation of dwellings on forestlands will increase the likelihood of wildfire on Oregon’s forestlands. As the legislature is well aware, wildfires in Oregon come at a tremendous cost to life, property, and the economic base envisioned by Goal 4. This bill unnecessarily increases the likelihood of more wildfires in Oregon’s forestlands.

Misinformation in the Justification for the Bill

Finally, I am compelled to address some misinformation related to the justification for the bill. For those that lost a dwelling in the 2020 Labor Day wildfire, the legislature passed special legislation in 2021 session allowing homeowners who lost their homes to have them replaced for a period of up to 10 years. This bill does not assist or alleviate those who lost a dwelling in the Labor Day 2020 wildfire because the legislature has already addressed that particular issue.

Thank you for the opportunity to submit testimony in opposition to this bill.

Sincerely,

A handwritten signature in blue ink that reads "Sean T. Malone". The signature is fluid and cursive, with a large initial "S" and "M".

Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client