

AOC ASSOCIATION OF OREGON COUNTIES

Date:	February 27, 2025
To:	Senator Khanh Pham, Chair Senator Dick Anderson, Vice Chair Members of the Senate Housing and Development Committee
From:	Association of Oregon Counties Legislative Affairs Manager Branden Pursinger
Subject:	Senate Bill 438 and Senate Bill 878

The Association of Oregon Counties (AOC) is a non-partisan member organization that advocates on issues that unite all county governing bodies and have an impact on county functions, governance, budgets, and services.

The Association of Oregon Counties would like to share some concerns regarding the introduced version of **SB 438**. During the Senate Housing and Development Committee public hearing, it was stated by the bill sponsors they were interested in combining SB 438 and SB 878. As those two bills are quite similar, below are comments that could pertain to both bills, however the Section references are for SB 438. Finally, the bill proponents indicated a forthcoming amendment to alleviate some concerns that had been raised with the base bill. Those comments are discussed at the end of this testimony.

Permissive vs Mandatory:

As drafted, **Section 2(1)** states “the owner of a lot or parcel outside an urban growth boundary *may* site [...]”. This optional behavior falls to the landowner but not to the county. Thus, it appears the county is **required to allow** these new additional dwellings, regardless of whether the county believes these types of dwellings are necessary in their jurisdiction or would be located in areas not suitable for development. The bill does not contemplate FEMA floodplain regulations for example. As drafted, the bill would not allow the county to pick and choose the locations within the county where the dwellings could or should be permitted. Counties respectfully request the bill give counties the flexibility to identify areas within our boundaries where these types of dwellings could or should be located.

Land Use Goals:

Counties are required to administer all of Oregon’s Land Use Goals through the approved comprehensive plans. As drafted, the bill appears to create a loophole around Goal 5 (Natural Resources, Scenic and Historic Areas, Open Spaces). Counties are required to ensure a level of protection that is appropriate for each resource site and adopt codes to put those policies into effect. This bill does not take any of these areas into consideration. The bill as drafted appears to allow these family dwellings outright on resource lands. This would be contrary to Land Use Goals 3 and 4 (Farm and Forest Lands). Counties are not only required to preserve but we also strive to maintain the high value soils on lands and parcels zoned farmland (ORS 215.243(4)).

Logistical Issues:

The bill as drafted requires the existence of one single family dwelling to already exist on the lot or parcel to allow a second “single family dwelling or manufactured dwelling” (Section 2 (1)). However, the owner of the parcel is already permitted to have the existing primary dwelling, as well as a medical hardship dwelling, and potentially a rural ADU all located on the same parcel, and now the additional “family dwelling.” Having this many dwellings would lead to logistical issues like driveway permits, water / well access, electrical hookups, and others.

The bill states in **Section 2(2)(b)** which family members are allowed to reside in these new family dwellings. In order for the permit to be issued, the local planning department will be responsible for ensuring the occupant is the: parent, stepparent, sibling, child, spouse, grandchild or grandparent and/or their spouses. This requirement would fall on the planning department to ensure they are who they say they are. What happens if the county planning department gets it wrong? One could argue that the dwelling was not permitted properly and thus the dwelling and all services to the dwelling need to be removed. As this is not something County Planning Departments are currently responsible for, nor have the expertise or resources to do, it will be very difficult for county planning departments to enforce these occupancy rules.

There is also not a minimum lot size requirement for allowing these new “family dwellings.” Currently, rural residential ADUs require a minimum of 2 acres, however with this bill, any size parcel would be entitled to a second dwelling, and as stated earlier, the county planning department is prohibited for denying the permit. This becomes very problematic to ensure adequate access for firefighting equipment and safe evacuations if an issue arises.

Furthermore, the bill states in **Section 2(3)** that for 18 months the family dwelling can be rented out to a nonfamily member when the family dwelling becomes vacant. After that time, the dwelling must remain empty until a new family member moves in or the property sells. When the property itself sells, **Section 2(4)** states the family dwelling is no longer required to be used for this purpose and could become a rental property. The bill does not require the county to be notified upon vacancy to start the 18-month clock. However, even if it did, this is not an appropriate requirement for the local planning departments.

Forthcoming amendment:

During the Senate Housing and Development Committee hearing on February 26, it was stated the intent by the bill sponsors is to combine Senate Bill 438 and Senate Bill 878 into one bill going forward. The sponsors indicated an amendment was forthcoming that would do the following:

- Place a size limitation on the second dwelling of 2500 square feet;
- Ensure all local ordinances pertaining to water and sewer were followed;
- Not be a vacation rental
- Tether the new dwelling to the existing residence.
- Familial ties requirement is removed

AOC appreciates these potential changes the bills sponsors are planning on bringing forward as they will alleviate many concerns raised above, however AOC would like to see the proposed amendments language to ensure County Planning Departments are able to implement the bill if passed.

The potential forthcoming amendment does not yet however resolve the permissive / mandatory issue raised above, nor the land use goals that must be met. It is unclear at this time without seeing the amendment to know if the familial ties is removed at point of permitting or at point of sale.

SB 878 requires “adequate” access for firefighting equipment and safe evacuations is needed. However again, adequate is not defined and the bill implies these dwellings would be Type 1 land use, but with the discretion added in for “adequate” they could be considered a Type 2 use. Type 2 implies the request could be denied, however, decisions related to discretionary regulations could differ based on the county or even the planner reviewing the application. This becomes very problematic.

This being said, AOC welcomes the opportunity to work with the bill sponsors to address the remaining concerns counties have before the bill advances to a work session.

Thank you.