

March 26, 2025

House Committee on Agriculture, Land Use, Natural Resources, and Water
Oregon State Capitol
900 Court Street NE
Salem, Oregon 97301

Re: HB 3858 – Oppose

Co-Chair Helm, Co-Chair Owens, Vice-Chair McDonald, and members of the committee,

Thank you for the opportunity to provide testimony on HB 3858. Central Oregon LandWatch (“LandWatch”) is a land use and conservation advocacy organization that, for more than 35 years, has protected Central Oregon’s farm and forest lands, rivers and springs, fish and wildlife, and vibrant communities. We work to conserve the region’s ecosystems, wildlife habitat, and working rural lands balanced with a responsible, sustainable approach to planning and fostering thriving communities.

LandWatch opposes HB 3858. The bill, at Section 1, would add a new category to the definition of “lawfully established unit of land” at ORS 92.010(3)(a)(C) that would recognize “[t]he remainder of a lawfully established unit of land after subtracting a unit of land created under subparagraph (B) of this paragraph, even if the remainder is not separately described in a deed or land sales contract.”

This language is problematic and counter to the building blocks of Oregon land use law. Most rural lands across the state are protected for exclusive farm use and forest use by statewide land use Goal 3 and Goal 4. It is the policy of the state to preserve the “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.” ORS 215.243(2). In other words, **not breaking up farmland is essential to the land use system.**

One of the key ways this policy is achieved is by requiring proof of a lawfully established unit of land before residential development on farmland is permitted. In existing Oregon law, there are no “remainders” resulting from legal land divisions. When land is subdivided or partitioned, any underlying units of land are vacated and replaced by the new lots or parcels created by the subdivision or partition. Recognizing “remainders” as lawfully established units of land would upend this bedrock principle that helps achieve Oregon’s land use policy.



In fact, recognizing these “remainders” as developable parcels would be directly counter to existing LUBA caselaw. In 2016, LUBA held that a “remainder” unit of land is not a lawfully established unit of land, even though a county had an “informal” practice of recognizing such units of land as lawfully established. *Grimstad v. Deschutes County*, __ Or LUBA __, slip op at 8 (LUBA No. 2016-035, September 29, 2016).

Reversing this principle would alter the building blocks of Oregon land use law by allowing historic “remainders” of past land divisions to be validated as legal lots, opening up the door for increased development on rural farm and forest lands and creating confusion in Oregon’s land use system that for decades has recognized the existing ORS 92.010 methods as the exclusive means by which units of land may be validated.

We also note that increasing the methods by which units of land may be validated serves only to increase nonfarm development on farm and forest lands. Actual farming of land does not require a lawfully established unit of land.

This bill will create innumerable new conflicts throughout rural Oregon. Whereas under currently law, it is well-established that there are no “remainders” resulting from legal partitions and subdivisions of land, HB 3858 would sow confusion by allow developers to dig through historic deeds and county clerks’ and assessors’ ledgers, searching for potentially developable “remainder” parcels that would only serve to break up Oregon’s large blocks of agriculture and forest land.

In sum, we are opposed to HB 3858 because of the significant confusion and harm it would create on Oregon’s rural farm and forest lands. We respectfully urge the committee to vote against this bill.

Regards,

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Central Oregon LandWatch

