



26 March 2025

Hon. Ken Helm & Hon. Mark Owens, Co-Chairs  
Members of the Agriculture, Land Use, Natural Resources, and Water Committee  
Oregon State Capitol  
900 Court St. NE  
Salem, OR 97301

RE: Testimony in Support of HB 3858

Dear Co-Chair Helm, Co-Chair Owens, Members of the Committee,

This letter is written in strong support of HB 3858. Thank you for the opportunity to present this testimony. I am an attorney who has practiced Oregon Land Use law since 1997. I have no direct personal stake in this legislation, but it greatly affects my practice area. My testimony is provided in the spirit of furthering the correct and fair application of Oregon's Land Use laws.

HB 3858 has a narrow but critical focus: it involves units of land that were lawfully created by deed prior to the time the state enacted partitioning laws. Many Oregon landowners are affected hereby. HB 3858 is intended to bring the law back to the common sense understanding that existed prior to the recent LUBA case entitled *Carroll v. Lane Co.*, \_\_Or LUBA \_\_ (LUBA No. 2024-054) (Dec. 11, 2024).

Prior to *Carroll*, practitioners understood that if a property owner had lawfully sold *a portion of* their property by deed and thereby "created" a new unit of land, that the parcel the seller retained was also a lawfully created unit of land with the same date of creation. *Carroll* upended that understanding by concluding that the retained land is not "lawfully created" until such future point in time when a new deed is recorded which includes a legal description of the property. Under *Carroll*, if that subsequent deed creation of the retained parcel occurred prior to the enactment of partitioning laws, the retained land is deemed to be "lawfully established." However, if the local government enacted partitioning laws in the interim, then the retained land is retroactively deemed to be "unlawfully created." This result is deeply unfair and furthers no legitimate planning goals.

The consequences resulting from being deemed "unlawfully created" are severe. Under all zoning codes I have ever read, unlawfully created parcels cannot be used, occupied, transferred, developed or redeveloped. Even the right to a replacement dwelling is denied. Under state law, a buyer of an unlawfully created unit of land has a statutory cause of action against the seller for either damages or rescission and is entitled to attorney fees. ORS 92.018. Furthermore, it is technically a crime to sell an unlawfully created unit of land. ORS 92.990.

Thus, *Carroll* creates bad law borne out of a confused reading of the statute, and HB 3858 restores the correct public policy.



LandWatch Lane County opposes the bill, stating:

HB 3858 is about legalizing units of land known in land use parlance as remainders, which LUBA has previously stated are not recognized in state land use law - see *Hartman v. Washington County* (LUBA No. 98-172, July 16, 1999), *Grimstad v Deschutes County* (LUBA No. 2016-035, September 29, 2016), and *LandWatch Lane County v. Lane County*, \_\_ Or LUBA \_\_ (LUBA No. 2019-044, Oct. 15, 2019).

Prior to *Carroll*, no case addressed the precise issue in question.

As relevant here, *Hartmann* stands for the rather unremarkable proposition that the “date of creation” of all parcels created by partition is the date of the partition plat, as opposed to the idea that one of the parcels retains the creation date of the parent parcel being partitioned. That principle is not at issue here.

Although factually complicated and nuanced, *Grimstad* turns on local code provisions and the fact that certain land sale contract documents which might have justified the creation of one or more of the parcels at issue were lost to history. *Grimstad* says nothing definitive, as a general matter of law, about whether land kept by a seller when he or she lawfully sells a portion of a lawfully created parcel of land via a deed can be considered a lawfully created “remainder.” In fact, Deschutes County never based its decision on that rationale.

Finally, *LandWatch Lane County v. Lane County (Doughty)*, *supra*, involves two parcels of land that were unlawfully created by deed at a time when partitioning laws were in effect. That situation is beyond the scope of HB 3858. Nothing about this bill would change the result in *Doughty*. Ironically, *Doughty* stands for the unremarkable proposition that an unlawful division of land creates two unlawful units of land, as opposed to an unlawful unit of land and a lawful remainder. Logic dictates that the opposite is also true: that a lawful division of land by deed prior to the enactment of partitioning laws creates two lawful units of land; and that both the land conveyed, and the land retained should be given equal status under the law.

*Carroll* is a travesty and needs to be fixed. Please recommend passage of HB 3858.

Sincerely,

**VF LAW**

/s/ *Andrew H. Stamp*

Andrew H. Stamp  
*Of Counsel*

ASTA/bmay