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February 13, 2017

House Committee on Agriculture and Natural Resources
State Capitol
900 Court Street NE
Salem, OR 97301

RE: HB 2144 – Legislation addressing nonconforming uses

Chair Clem and members of the Committee:

Thank you for the opportunity to provide testimony on HB 2144, a bill addressing nonconforming uses. 1000 Friends of Oregon is a nonprofit, membership organization that works with Oregonians to support livable urban and rural communities; protect family farms, forests and natural areas; and provide transportation and housing choice.

HB 2144 addresses the regulation of nonconforming uses, which are uses that preexist land use regulation. Such uses, if commenced today, would either not be permitted or would require land use approvals. Nonconforming uses can be anything from surface mines to home occupations to dog boarding. This bill appears to address concerns about how nonconforming uses can be recognized by counties such that they can continue without challenge.

1000 Friends of Oregon appreciates the intent of the bill and supports the concept of requiring nonconforming uses to have been lawful at the time of commencement in order to be recognized in the present. Thus, we support the addition to ORS 215.130(e)(A), requiring a property owner to show that all permits and approvals required at the time of commencement were obtained. One clarification to this subsection would be to add “federal, local and state” so it’s clear that it’s not just local approvals that were required at the time the use commenced.¹

In contrast, the proposed section added as ORS 215.130(e)(B) is not an effective addition to the statute and should not be added. By allowing property owners to show that they could have obtained the required permits at the time they commenced the use, but they did not, the statute rewards noncompliant behavior. This section should be removed from the bill as proposed.

To the extent that Oregon continues to recognize and protect nonconforming uses, the protection should be limited. HB 2144 should be amended as suggested above to allow counties and cities to more effectively regulate such uses.

Respectfully submitted,

Meriel L. Darzen
Circuit Rider Staff Attorney

¹ We propose 215.130(e)(A) to read: “Obtained all **federal, state and local** permits and approvals required by law at the time the use was commenced.”