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Oregon Senate Committee On Environment and Natural Resources
900 Court Street
Salem, OR 97301

Re: Support for HB 3024

Dear Senators,

I am a land use and natural resources lawyer, and I represented the King family before the Oregon Court of Appeals and the Oregon Supreme Court in the case that precipitated HB 3024 (*LandWatch Lane County v. Lane County*). I urge you to support this bill in order to provide clarity and equity to the statute governing replacement dwellings on farmland.

The King family has endured nearly three years of litigation as a result of permits they received from Lane County to rebuild three dwellings that were historically located on their 100 acre farm near Florence. The Kings lawfully demolished these dwellings in 1997 because the dwellings were in poor shape and the Kings wanted to avoid creating an attractive nuisance on the property. The Kings applied to Lane County for land use permits to replace these dwellings in 2016. Lane County approved the permits and LandWatch Lane County litigated the permits all the way to the Oregon Supreme Court. The court issued its opinion in this case two weeks ago.

Part A of this letter provides background on the current version of the replacement dwelling statute. Part B explains the history of the King case and Part C offers concluding thoughts in support of HB 3024.

A. The 2013 replacement dwelling statute and LCDC's rules

2013 HB 2746 was designed to encourage farmers to follow the Kings' example by allowing former dwellings in Exclusive Farm Use (EFU) zones to qualify for replacement dwelling permits. The idea was that this would incentivize farmers to remove dilapidated dwellings and would allow the next generation of family farmers to live on their land.

As a result of the legislative process, however, the final version of the 2013 legislation included complex provisions about property tax assessment, including a loophole allowing replacement of dwellings that had been "improperly removed" from the tax roll. The 2013

statute defines “improperly removed” broadly to encompass a variety of circumstances, including the following:

- Any former dwelling destroyed by fire, regardless of the date, as long as property ownership has changed since the fire; and
- Any current or former dwelling that a former owner removed from the tax roll under false pretenses.

Although the improperly removed exception is broad, it does not apply to the Kings because they (a) paid all required property taxes on their dwellings; (b) properly removed the dwellings from the tax roll following lawful demolition; and (c) have owned the property continuously since removing the dwellings. The Kings therefore sought replacement dwelling permits under a different provision of the 2013 statute.

The portion of the statute that the Kings utilized is paragraph 2(2)(b). This paragraph generally requires the dwelling that will be replaced to have been assessed as a dwelling in recent tax years, but includes an exception for destroyed and demolished dwellings.¹

Following enactment of the 2013 statute, the Oregon Land Conservation and Development Commission (LCDC) promulgated rules interpreting the statute. These rules explicitly allow replacement of any destroyed or demolished dwelling as long as the former dwelling was lawfully established and the property owner paid applicable property taxes until the dwelling was destroyed or demolished. *See* OAR 660-033-0130(8)(a). Local land use rules, including Lane County’s rules, reflect LCDC’s interpretation of paragraph 2(2)(b) of the statute.

¹ Paragraph 2(2)(b) reads as follows:

“(2) The dwelling may be altered, restored or replaced if, when an application for a permit is submitted, the permitting authority:

* * * * *

(b) Finds that the dwelling was assessed as a dwelling for purposes of ad valorem taxation for the lesser of:

(A) The previous five property tax years unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling; or

(B) From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010 unless the value of the dwelling was eliminated as a result of the destruction, or demolition in the case of restoration, of the dwelling.”

(emphasis added).

B. History of the King case

Following a lengthy local process, Lane County issued the Kings' replacement dwellings permits over LandWatch's objection. LandWatch then appealed the county's decision to the Land Use Board of Appeals (LUBA) and LUBA interpreted paragraph 2(2)(b) of the 2013 statute to impose a five year time limit on replacement of former dwellings.

The Kings then appealed to the Oregon Court of Appeals. The court reversed LUBA's decision, holding that paragraph 2(2)(b) does not impose a time limit on replacement of former dwellings. The Court of Appeals' decision was written by Judge Garrett (now Supreme Court Justice Garrett), who served in the legislature and was a member of the 2013 House committee that heard the replacement dwelling bill that year.

LandWatch then petitioned the Oregon Supreme Court and the court accepted the case for review. The Supreme Court issued an opinion on April 25, 2019 agreeing with LUBA's interpretation of the statute. In our arguments to the court, we explained the scope of the "improperly removed" provision of the statute and how LUBA's interpretation of paragraph 2(2)(b) creates complex and arbitrary distinctions between landowners in only slightly different circumstances. The court responded in its opinion that land use legislation is "necessarily complex" because of the "multiple and sometimes competing goals that policymakers seek to advance." *LandWatch Lane County v. Lane County*, 364 Or 724, 741 (2019).


C. Conclusions

I respectfully disagree with the Supreme Court that land use legislation needs to be as complicated as the replacement dwelling statute has become. Certainly there is no reason to treat landowners like the Kings who have acted responsibly and followed the rules worse than landowners who have benefitted from tax evasion.

HB 3024 gives the legislature an opportunity to simplify a needlessly complex statute and ensure that farm owners are treated equitably. The bill does not allow any more dwellings than were historically present on farmland in our state, and it provides opportunity for the next generation of farmers to live on the land that they steward.

For these reasons, I urge you to pass HB 3024.

Sincerely,



Michael J. Gelardi