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House Committee on Agriculture, Land Use, Natural Resources and Water House Bill 3362 Letter in Opposition

Dear Chair Helm and Committee Members,

I write on behalf of LandWatch Lane County and in opposition to House Bill 2192.

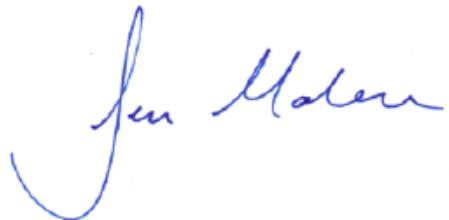
LandWatch understands that this bill is intended to resolve an issue in Lane County where certain individuals purchased lots that were not lawfully established based upon fraudulent deeds and a fraudulent property description card. Lane County instituted an enforcement action to revoke the permits stemming from the unlawfully created units of land. The affected individuals appealed the revocation to LUBA, and LUBA reversed the decision based upon the doctrine of collateral attack. The matter is currently on appeal to the Oregon Court of Appeals. First, because the matter has not been resolved by the courts, the bill is premature.

Second, the proposed bill is unnecessary because ORS 92.018 already provides a remedy for those that purchased a unit of land that is not a lawfully established unit of land. Unlawfully established units of land are nothing new in Oregon, and a remedy for purchasing an unlawfully established unit of land was first promulgated in 1983. ORS 92.018(1) provides as follows: “If a person buys a unit of land that is not a lawfully established unit of land, the person may bring an individual action against the seller in an appropriate court to recover damages or to obtain equitable relief. The court shall award reasonable attorney fees to the prevailing party in an action under this section.” Moreover, caselaw on ORS 92.018 indicates that there is no limit on the damages available to someone that purchased an unlawfully established unit of land: ORS 92.018 “does not contain any limit on the damages that a buyer can recover.” *DLK Investment Co v. Inter-Pacific Development Co.*, 195 Or. App. 256 (Or. Ct. App. 2004); *Porter v. Marion County*, LUBA No. 2007-227 (“ORS 92.018 appears to embody one remedy that the legislature created for buyers of lots and parcels that are not created in conformance with applicable subdivision or partition regulations – rescission or damages.”). The affected individuals have not sought redress under ORS 92.018, and, therefore, the affected individuals have a remedy at law that they have not yet pursued.

Because the bill is premature and unnecessarily redundant, LandWatch cannot support the bill. I would have liked to testify at today’s hearing, but I will be traveling with family at that time.

Thank you for the opportunity to submit testimony in opposition to this bill.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sean T. Malone".

Sean T. Malone
Attorney for LandWatch Lane County

Cc:
Client