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August 6, 2020

Oregon Building Codes Division

Attention: DCBS Administrator, Rules Advisory Committee Members

C/O Alana Cox,

**RE: RAC, Northwest Code Professionals Testimony**

Please consider the following comments based on our companies 47 years in business and my personal experience in both third party and jurisdictional work as a Trades Professional, Building Official, Fire Marshal, and Code Professional serving Oregon since 1988.

There have obviously been many changes since this process started for third party providers some three and a half years ago, and while we are all anxious to resolve, the draft rules should be carefully considered and discussed amongst the RAC before any implementation. While 2020 has been a challenging year in many respects, including convening the RAC, we encourage the Department to convene the group again and continue talking through the issues we started addressing in May, rather than work from a draft that appears to take a step backward from our previous discussions. We acknowledge that we need to ensure the Attorney General's advice is resolved, but acting too quickly, or too decisively on policy issues not implicated in the AG's opinion could have dire consequences not just for the current cities using contracted building program services, but could have indirect effects on the entire code enforcement system for all cities. These risks are only magnified by the current economic crisis and budget woes for local governments. Of course, these rules also will likely mean **significant job losses for our company and our employees; a frustrating and scary result that we hope will not be overlooked.**

The Cities and Counties we serve in Oregon span across the entire state of Oregon and now 4 Tribal nations. (Please see attached map which shows a much more diverse map than the provided by BCD) The organizations representing those cities and counties (AOC, LOC) as a whole **have strongly expressed their support** to continue allowing us to provide critical assistance with services because of our outstanding relationships, customer service, technical expertise and the flexibility needed for these jurisdictions to cover the work when employees leave, when illness causes vacancies, when workloads exceed their ability to provide services in a timely manner and all at an affordable, predictable and reasonable cost for services. We serve areas that many counties simply can't afford to serve in a timely manner through our diverse locations. Also, with their support and many of them utilizing our team for

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commercial plumbing, electrical inspections, and plan review. Those inspection services may stop or costs for services will be substantially higher in some counties if these rules move forward.

Further, the draft rules should not be adopted without a deeper understanding of the devastating effects it would have on affordable housing, cost increases and insurmountable delays in permit processing. Rules that are overly broad to meet the AG's advice will not just eliminate the practice of contracting for building official but will indirectly limit the availability of contracted inspectors and other overflow services critical to all jurisdictions. What's worse, the pandemic is having a disproportionate effect on our most remote, rural areas, areas that cannot afford significant delay (or elimination) of local development. All of this exists in tandem with the clear and growing national shortage of trades people and code officials. When the available certified staffing levels drop to record levels and Oregon limits the usage of available, qualified code staff, public safety that will suffer, contractors also will lose money, and owners will experience huge delays in inspections and permitting. Permits will be delayed, costs will skyrocket for cities, counties, and contractors, but also for the common citizen who relies on our service. We can avoid this by simply working to address the contours of the AG's memo without implementing the draft rules.

Oregon continues to have a **devastating affordable housing crisis**, with no end in sight and only facing even further increased compliance challenges, fees and costs proposed by this draft.

**The following are the specific critical items we identified in the draft rules.**

1. **Fees and Billing:** Prohibiting the use of fees to contract with outside parties or third-party code is unnecessary and beyond the AG's opinion. This method is used across Oregon, the nation and the world as a standard pricing method which eliminates hours of work to review. No evidence has been given in a single incidence where this method of calculating service rates is harmful or problematic. Our projections show that this change alone could cause our hourly rates to increase about 35-40% above current levels. Mechanical permit inspection costs may double or will also indirectly drive up inspection and permitting costs for small-scale affordable housing projects.
2. **Administrative Building Official:** The draft rules do not incorporate the concept of the Administrative Building Official role – an approach working at even some of the largest jurisdictions in the Northwest. Senate Bill 1047 (2019) provided options that not only would have solved the legal issues but added to the successes, options, and oversight of the current system in use since 1977.
3. **A-Level Certification Requirements for Building Officials:** Distinctions between trained professionals and certification requirements are arbitrary and counter-productive to safety and efficient permit processing. We recommend consulting OSBEELS and the Architects Board before adding qualifications for Building Officials. Additionally, please consider existing national testing for ICC certification as a method for establishing qualifications. Such testing has been

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proven to work across the nation and is used by the Federal Government. The new mandate for 5 years' experience and A level certifications that only include A level inspectors and A Level Plans examiner with 5 years' experience in EACH category are arbitrary, require 10 years total experience, burdensome, unnecessary, and likely without a technical or legal justification.

4. **Insurance and Liability:** The need for the proposed changes to insurance requirements are unclear and have not been discussed by the RAC. Again, it is unclear why these new requirements would be imposed in light of the AG's opinion, this is something that should be addressed in legislature as it was done for the cities and counties where we serve as their agents.
5. **Implementation Timeline:** One of the most critical concerns is the timeline for meeting new rules and standards. Jurisdictions will have to employ new Building Officials who aren't currently available in this market. Our industry faces a national crisis given the shortage of available certified professionals. Developing full binding new contracts and setting new fees and revised fee schedules through the state's process will take months. Our local jurisdictions cannot afford these costs or delays during this current crisis.

A minimum of one year from the date the rules are enacted, preferably 18 months with a 6-month extension will be needed to avoid a complete cratering of permit issuance. During this period, it is reasonable to expect compliance violations, major delays and more uncertainty for jurisdictions who won't be able to meet these rules in that timeline. Many jurisdictions may then give up the programs to counties already saddled with a budget crisis. Our company likely will transfer our team member employees work to projects in other states and not risk the wrath of BCD compliance fines if we are still trying to assist non-compliant jurisdictions. The risk that these rules leave the system woefully unable to provide range of permitting service **CANNOT BE OVERSTATED.**

6. **Conflict of Interest Provisions:** The proposed language is confusing and unnecessary. As written, the proposed language appears to prohibit any person certified or licensed to perform plan review or inspection services for a municipality from making any decision that would benefit themselves, a relative or their company. The proposed language does not indicate "anyone working in the capacity of a plans examiner or inspector for a municipality" it simply puts the requirement on anyone holding a certification or license "regardless of how employed or contracted for". ORS 455.459 provides understandable specific requirements related to specialty code inspection and plan review conflict of interest. A person shall not inspect or review any project or installation in which the person, employer of the person or relative of the person has any financial interest or business affiliation. The proposed language along with language in OAR 918-098-1475 appears to reach well beyond this direction given by the legislature and further limit individuals and businesses from utilizing certified individuals to

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provide information, explanations and guidance to clients needing assistance preparing submittals for submittal and review by local jurisdictions even when the certified individual or their employer have no connection to the plan review or inspection or plan review process. This proposed language should be removed, and the Division should review current language in OAR 918-098-1475 to provide consistency with the legislative direction from ORS 455.459. Perhaps we should look at how the issue is resolved in OAR 918-674-0240 where some specifics are given.

### **Conclusion**

We urge you to work closely with RAC, other stakeholders, and BCD staff to better address the needs of our cities and counties, construction professionals and project owners. The draft rules should address any legal directives from the AG, but not aim to implement solutions where no clear problem exists. The risks of these draft rules far outweigh any purported benefits. The RAC is comprised of members who can discuss these issues and find solutions and ensure code enforcement can function legally and efficiently and ensure the safety of Oregonians. Otherwise, the risk to the system is too great to move quickly with the current draft.

Please understand our company is committed to safety, technical expertise, and transparency. Like the cities and Counties, we serve, we must be careful with our budgets, balanced in our expenditures, reasonable with our rates and fair with our customers because of the recourse of a Jurisdiction is simply finding another business to help them. We partner with the local trade professionals who love what we do and the efficient faster service we provide. The current rules will end those beneficial practices, with dire consequences for our employees, their families, and the Oregonians who expect the best from their local government. Many rural communities, already suffering, have no other choices.

I am certain the RAC can continue, but the current draft rules create more problems than they solve, or that the AG's direction call for. Let us continue our work for our employees, trades and all Oregonians.

Respectfully,

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President/Manager

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## Full-Service Cities

- 1 Aurora
- 2 Clatskanie
- 3 Dunes City
- 4 Eagle Point
- 5 Estacada
- 6 Florence
- 7 Jacksonville
- 8 Lakeside
- 9 Lebanon
- 10 Lincoln City
- 11 Lowell
- 12 Oakridge
- 13 Phoenix
- 14 Reedsport
- 15 Rogue River
- 16 Sweet Home
- 17 Vernonia



## Partial-Service Jurisdictions

- 1 Albany
- 2 Ashland
- 3 **Benton County**
- 4 **Clackamas County**
- 5 Coos Bay
- 6 Corvallis
- 7 Hood River
- 8 Independence
- 9 **Jackson County\***
- 10 **Josephine County**
- 11 **Lake County**
- 12 **Lane County**
- 13 **Lincoln County**
- 14 **Linn County**
- 15 **Marion County**
- 16 Newport
- 17 Springfield
- 18 **Tillamook County**
19. **Curry County\***
20. Baker City



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**Tribes: Coos, Coquille, Chinook, CTUIR**

**\*Pending Contract Requests**