



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

www.oregon.gov/LCD

February 28, 2013



TO: The Honorable Senator Roblan, Chair
Senate Committee on Rural Communities and Economic Development

FROM: Matt Crall, Department of Land Conservation and Development

SUBJECT: Senate Bill 465

Overview

The Oregon Department of Land Conservation and Development supports Senate Bill 465. The department is, however, concerned that the bill creates a new definition for the term “substantial damage” that is inconsistent with how that term has already been defined by the Federal Emergency Management Agency (FEMA) and based on that, in local regulations and in the state’s floodplain management program. We would encourage the committee to allow additional time to prepare amendments to the bill.

Benefit of the Bill

When a building is substantially damaged by a flood, the repair must include bringing the building into compliance with the local government’s floodplain ordinance, if it is within the Special Flood Hazard Area defined by FEMA, or within a flood inundation area mapped by the local government. This bill allows a “notice of substantial damage” to be recorded by the county clerk to ensure that prospective buyers are aware of the damage and the requirement to bring the building into compliance with current floodplain regulations.

In the past, problems have arisen when a damaged building is sold, especially when it is sold through a foreclosure process, to a buyer who is unaware of the damage and the requirement to comply with current floodplain regulations. Bringing a building into compliance can be expensive, especially if the building was originally constructed before floodplain regulations were in effect and needs to be elevated above the base flood elevation.

Empowering local governments to have the county clerk record a notice of substantial damage will give them another tool to help manage floodplains if they so choose. It will not create any additional requirements for local government nor will it create any new restrictions for property owners.

Definition of “Substantial Damage”

The bill, as introduced, would create a new definition of substantial damage that is narrower in two aspects than the FEMA definition. First, FEMA includes all structures, not just “residential improvements”. Second, FEMA includes all types of damage, not just “flood-related damage”. We recommend that the definition of substantial damage in the bill be expanded to match FEMA’s definition. FEMA defines substantial damage as:

“... damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.”

FEMA regulations allow local government to apply a lower percent as the threshold for substantial damage, and this flexibility is captured in the definition in the bill.

Conclusion

Thank you for this opportunity to provide you with information about SB 465. If committee members have questions about this testimony, I may be reached at 503-373-0050 Ext 272, or through email at matthew.crall@state.or.us.