



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Land Conservation and Development

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**TO:** The Honorable Representative Brian Clem, Chair  
House Rural Communities and Economic Development Committee

**FROM:** Carrie MacLaren, Deputy Director  
Department of Land Conservation and Development

**RE: DLCD Testimony Regarding HB 4078**

House Bill 4078 would deem that the amended urban growth boundary (UGB) adopted by Metro on October 20, 2011, meets all statewide land use planning goals and laws and is “validated” without regard to a pending review by the Oregon Court of Appeals.

Under law, changes to Metro’s UGB must be approved by the Land Conservation and Development Commission (LCDC), and LCDC’s decision in turn may be appealed to the Oregon Court of Appeals. LCDC approved Metro’s decision on June 14, 2012 and issued its final order on December 21, 2012. LCDC’s approval was challenged by several parties and is under review by the court. By agreement of the parties, the case is being held in abeyance pending the outcome of a separate appeal of Metro’s urban and rural reserves decision, which all parties agree should be decided first.

The department has concerns that the intervention by the legislature in this complex and very important local land use decision preempts the longstanding state process for public review of such decisions. The bill would foreclose the ability of citizens, which in this case includes both property owners and advocacy groups, to reasonably obtain legal redress regarding aspects of the decision that they believe may be in violation of existing statutes and rules. Furthermore, the proposal would preempt a court appeal that has been underway for some time, and in doing so may lead to significant confusion regarding this and other related decisions. Finally, the department is concerned that this legislation, if enacted, would establish a precedent and will undoubtedly lead to future legislative proposals to invalidate or preempt local land use decisions throughout the state.

### Background

Oregon law requires Metro to establish an urban growth boundary and to maintain development capacity within the boundary sufficient for a 20-year period based on periodic assessments. Under a cycle established by law, Metro generally takes five years to assess the capacity of its UGB and to consider and approve amendments to the boundary, if necessary. However, given the enactment of a new process regarding Urban Reserves (2007 legislation), in this instance, Metro took approximately seven years to adopt the amended UGB, and chose to base that decision on its previous decision to establish urban reserves. We note that the process for

Metro's and the subsequent LCDC consideration includes participation by citizens and stakeholders.

After submittal of a UGB decision by Metro, the department generally takes 180 days to consider a UGB amendment of this magnitude and to provide a report and recommendation to LCDC for the commission's review of the boundary. This timeline is already prescribed by administrative rule, and includes public comment periods.

LCDC then holds a public hearing on the submittal, and makes a decision to approve the UGB amendment, or to remand the matter to Metro for additional evaluation. Given the complexity of the supporting information provided by Metro, the volume of public comment, and the necessity for thorough legal analysis, issuance of the final written order takes at least 180 days to prepare. Given other department demands and limited DOJ resources, completing the final written order within such timeframe already requires considerable staff time and deferral of other issues. As such, 180 days is the minimum that could be accomplished under the department's approved budget.

The department is aware of Metro's letter suggesting amendments to this legislation. These proposed amendments would propose a time limit of 120 days for LCDC to issue its final written order for Metro UGB amendments in the future, and would expedite court review of LCDC decisions concerning such amendments. We understand that the Metro proposal would substitute these provisions for the current bill, that is, the amendments would remove the provisions that validate the latest UGB decision and preempt state and court review. The department would like to work with Metro in designing such an alternative, but with the caveat that such timelines will have a fiscal impact to the department because current resources would not be sufficient.

Thank you for this opportunity to provide you with information about HB 4078. If committee members have questions about this testimony, I may be reached at 503-934-0051, or by email at [carrie.maclaren@state.or.us](mailto:carrie.maclaren@state.or.us).

cc: Rep John Davis; Richard Whitman; Marilyn Worrix; Tom Hughes