



Oregon

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To: The Honorable Representative Brian Clem, Chair
House Committee on Rural Communities, Land Use and Water

From: Bob Rindy, Legislative Coordinator
Department of Land Conservation and Development

Regarding: House Bill 3282

Under current law, the Department of Land Conservation and Development (DLCD) and (upon appeal) the Land Conservation and Development Commission (LCDC) are required to review an amendment to an urban growth boundary (UGB) by a city over 2,500 in population that adds more than 50 acres to the UGB. However, if a local land use plan amendment does not amend the UGB, such amendments are reviewed by LUBA rather than DLCD and LCDC.

House Bill 3282 would require DLCD and LCDC to “parse work tasks” for a UGB amendment in a manner that allows the issuance of “final orders approving or remanding sequential phases” of the UGB amendment. The bill would allow a city to make separate submittal of its analysis of 20-year land needs, to be followed by a subsequent submittal of any actions to address any land need. Presumably a local government could divide up its UGB amendment into multiple work tasks, rather than the two divisions described here. Each submittal could be approved by the DLCD director, remanded by the director, or referred to LCDC, all within 90 days of submittal by the local jurisdiction. The bill applies to any UGB amendment that has not become acknowledged on or before the effective date of the bill, without regard to whether the local review or amendment of the UGB was initiated on, before or after the effective date of the bill.

The department understands that this bill is at the request of the city of Bend, and DLCD has been in conversation with the city to better understand their concerns and intent. In summary, the department believes that the intent of this bill is already achieved under current law. A process exists in state law that allows the sequential review of UGBs (and which also resolves the technical concerns with the bill described below). The existing periodic review process under ORS 197.633 enables local governments to adopt sequential work tasks, and provides for the sequential review by DLCD and LCDC of these work tasks, which could include individual tasks for UGB need analysis and UGB amendments. We note that while the periodic review process provides a “mandatory” schedule by which cities over 10,000 periodically evaluate their UGBs, the law also provides for “voluntary” participation in periodic review by any local government. Indeed, the periodic review process, as modified by state laws more than a decade ago, applies only to urbanization planning work such as UGB evaluation or amendment. DLCD has begun discussion of this option with the city of Bend because it is our opinion that would provide the most direct route to achieve the intent of this bill.

With that in mind, we have described some problems with the current draft of the bill, below. It is important to note that if the bill were to be redrafted to resolve these issues, the department believes the bill would describe a process that would look very much like the current periodic review process. That current process has existed in law for over a decade and there is a body of experience and case law that puts it on a firm legal footing. That would not necessarily be true of a new set of laws such as may be contemplated by this bill. While the city of Bend has proposed this bill, it would (as currently drafted) apply statewide, and as such while some of these concerns may not necessarily be concerns in the context of Bend, they could be serious problems with other cities. While the department has not taken an official position on this bill, we have noted below for the committee's consideration several conceptual or drafting issues with the introduced version of the bill.

First, this bill seems to authorize (or require) LCDC review of local comprehensive plan amendments that precede a UGB amendment even though the UGB has not yet been amended. That seems to directly contradict state law that requires LCDC review only of amendments that have added more than 50 acres to a UGB. In most cases, a preliminary analysis of, for example, housing land need would not determine the amount of land to be added. Rather, such analysis would identify a deficiency in available opportunities to develop housing that could be accommodated either within the existing UGB (such as by rezoning land) or by adding land to the UGB. Since there would be no actual amendment of the UGB in this preliminary phase, state law today would direct LUBA rather than DLCD and LCDC to review that plan amendment. The bill does not explain how to resolve this apparent contradiction in state law, and as such this confusion would have to be resolved on a case by case basis by the courts. As such, rather than improve the UGB process, this bill would probably add confusion and delay.

Second, this bill would authorize a city to amend its local land use plan so as to declare that its UGB provides an insufficient land supply for housing, but take no action in response to that need, such as by adding land to the UGB in order to resolve the deficiency. This is in direct contradiction of ORS 197.296 (referenced in the bill) which requires that "a local government shall demonstrate that its comprehensive plan or regional plan provides sufficient buildable lands within the urban growth boundary established pursuant to statewide planning goals to accommodate estimated housing needs for 20 years." As such, this bill would authorize a city to submit an amendment to its comprehensive plan for DLCD and LCDC review and (in the case of an initial land need analysis) typically that submittal would, on its face, violate state law and the statewide planning goals. DLCD and LCDC would be required in every case to remand the amendment to the city. Therefore, this bill would not accomplish the intent of the proponents.

Third, under statewide land use Goal 14 concerning UGBs, amendments to UGBs must be adopted by both the city and the county – almost every UGB amendment includes land under land use jurisdiction of the surrounding county rather than the city itself. The bill does not resolve (or even mention) this important procedural aspect. Were the bill to be enacted in its current form, either the courts or LCDC (through rulemaking) would have to infer the legislative intent and resolve this procedurally.

Fourth, the bill reduces the department's current 120-day review timeline to 90 days. The department is concerned it does not have the ability to adequately review a submittal with this reduced time frame. While the department is committed to speedy review of submittals – and occasionally completes reviews in less than 120 days – many UGB submittals are complex and controversial and 90 days is simply not enough time to coordinate with the affected local government and prepare a reasoned response to testimony.

Thank you for considering this testimony. If you have questions, please contact Bob Rindy, DLCD Legislative Coordinator, 503-934-0008, bob.rindy@state.or.us, or Rob Hallyburton, Community Services Manager, 503-931-7823, rob.hallyburton@state.or.us.

Copy: Greg Macpherson, LCDC Chair

