



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

TO: Rep. Maxine Dexter, Chair, House Committee on Housing & Homelessness
Members, House Committee on Housing & Homelessness

FROM: Palmer Mason, Department of Land Conservation and Development

DATE: March 28, 2023

RE: **House Bill 3197**

The Department of Land Conservation and Development (DLCD) appreciates the opportunity to comment on HB 3197, which clarifies that “clear and objective” standards apply to residential development within urban growth boundaries (UGBs). DLCD supports this bill and asks for a favorable vote from the committee.

ORS 197.307 provides that local governments must apply “clear and objective” standards, including procedures and permit conditions, to all residential development. Case law holds that standards are not “clear and objective” if they use subjective analyses such as balancing tests or professional judgment. The same line of case law also holds that “clear and objective” standards apply to the subject property, adjoining properties and the community.

When the Legislature adopted the “clear and objective” statute, it intended the statute to apply to residential development within UGBs. However, a case decided by the Land Use Board of Appeals (LUBA), Community Participation Organization 4M and Jill Warren vs. Washington County (LUBA No. 2020-110), reached a different conclusion, holding that the statute applied to “the development of housing.” HB 3197 was introduced to correct LUBA’s interpretation of the “clear and objective” statute.

Why is HB 3197 important? Housing on farm, forest or mixed farm-forest lands is allowed only under special and limited circumstances. In these cases, local governments should have some discretion to weigh a variety of factors in deciding whether residential use will impact adjacent uses or undermine local agricultural or forest economies. Applying “clear and objective” standards in these cases would prevent the balancing of these site-specific factors.

More important, applying “clear and objective” standards outside of UGBs will undermine the protection of water quality, wildlife habitat and other natural resources. For years, counties have implemented zoning standards to protect natural resources, including setbacks from riparian areas and buffers for wildlife habitat. These rules typically rely on standards like “minimizing adverse impacts” that require professional evaluation. But LUBA has decided that such standards are not “clear and objective.” Without the passage of HB 3197, these rules are in jeopardy when applied to residential development, meaning the state’s natural resources are also in jeopardy.

HB 3197 does not create barriers to housing production. The bill simply preserves the status quo for the very limited number of residential units developed outside of UGBs. More critically, it ensures the continued protection of agricultural, forest uses and natural resources such as water quality and wildlife habitat.