

January 30, 2025

RE: House Bill 3013

To: House Committee on Agriculture, Land Use, Natural Resources and Water Resources

We write in support of this bill, which addresses a significant gap in Oregon’s land use laws, specific to enforcement of reversals and remands issued by the Land Use Board of Appeals (LUBA). Specifically, contrary to popular opinion, LUBA orders depend on voluntary compliance and LUBA does not seek enforcement of its orders in Circuit Court, though it has statutory authority to do so.

The legal disputes at the Aurora Airport have gone on for almost fifteen years and most have been land use appeals up to the Court of Appeals and the Supreme Court. The most recent of these cases (LUBA No. 2020-108) has brought into view a problem in the land use legal system where recipients of a LUBA reversal and remand choose not to comply—in this case two state agencies (Department of Environmental Quality and Department of Aviation) and Marion County.

Specifically, ORS 197.825(3)(b) authorizes LUBA and parties to a LUBA appeal to enforce LUBA orders in the circuit court. LUBA does not enforce its orders, and relies on the parties in an appeal to take corrective action. In this case Joseph Schaefer filed a complaint in Circuit Court but the Marion County Circuit Court recently ruled that a project opponent (party) that won a LUBA appeal cannot enforce LUBA's order asserting they “don’t have standing.”

This the importance of addressing this problem goes far beyond enforcement of the original LUBA reversal and remand, due to the precedent set by this Circuit Court order. It means only the very limited number of parties that actually sign an agreement have standing, which sets the terrible precedent that governments and developers can ignore LUBA’s order and citizens and organizations not party to the specific agreement do not have standing.

ORS 197.825(3)(b) and ORS 197.625(5) should make LUBA orders self-executing. If permits were issued or construction commenced based on a land use decision that is later reversed by LUBA, the permits shall be revoked, and all constructed improvements shall be removed. Additionally, a party to the LUBA appeal has the right to enforce LUBA's order in the circuit court.

Importantly, the passage of this bill not only corrects the identified problem, but by making LUBA reversals and remands self-executing, does so without the burden to the State of cost or additional headcount.

We ask for support of this bill and that it be advanced out of committee out of committee with support of the House Committee on Agriculture, Land Use, Natural Resources and Water Resources.

Sincerely

A handwritten signature in blue ink that reads "Benjamin D. Williams". The signature is written in a cursive style and is positioned above a light blue rectangular stamp.

Ben Williams, President