

May 11, 2023

Chair Golden, Vice Chair Girod, Members of the Senate Natural Resources Committee.

As many of you are probably familiar with, local land use changes, such as our Comprehensive Plans and zoning changes, are subject to appeal. It is not uncommon for a decision to end up in LUBA, especially if it is an update to the local codes due to legislative actions. Once the issue is at LUBA, the issue could get remanded for more evidence. Then under the current system, additional appeals are made, thus ensuring the land use change does not go into effect and remains, perpetually in a state of unknown at LUBA.

An individual who is opposed to the land use change, under the current system, can raise their arguments for the first time in a brief to the Land Use Board of Appeals. This denies the local government the opportunity to consider any potential challenges and address them before the LUBA appeal is filed. If a local government makes a decision to adopt the same code amendment with revised findings after it has been remanded by LUBA, an interested party has the opportunity to challenge those new findings.

House Bill 3458A attempts to address these issues. Before the first LUBA decision is made, the procedures remain the same. Any individual can bring new issues in their briefs to LUBA. However, if the issue is remanded to the local government to adopt supplemental findings or consider additional evidence, and the local government adopts substantively the same package, parties may not raise new issues if it could have been addressed in the first appeal. Individuals would only challenge the revised findings or the new evidence.

House Bill 3458A would also allow LUBA to partially affirm a decision related to an acknowledged comprehensive plan or regulation. This would provide local governments the opportunity to put a portion of the change into effect if it can be shown that the regulation contains a severability clause, and if portions of the change are complete and capable of being executed with the intent of the Legislature.

It is important to note that House Bill 3458A does not take the appeal process away from the interested parties. Instead, it simply limits the number of new appeals that come forward, if they could have been raised during the first appeals process.

This bill has the potential to save local governments thousands of dollars through LUBA appeals a year.

The Association of Oregon Counties respectfully requests your support on House Bill 3458A.

Branden Pursinger
Legislative Affairs Manager for Natural Resources
Association of Oregon Counties