

COURTNEY NERON
STATE REPRESENTATIVE
DISTRICT 26



HOUSE OF REPRESENTATIVES
Testimony in Support of HB 3013

February 3, 2025

Co-Chairs Helm and Owens, Vice-Chair McDonald, and members of the House Committee on Land Use,

For the Record, my name is Courtney Neron, State Representative for House District 26 which includes the growing communities of Wilsonville, Sherwood, King City, Tigard, and the surrounding precious farms, forests and wetlands.

I am here in **support of HB3013 with the -1 or further amendment. It is a bill to make LUBA decisions self-executing.** This bill clarifies an important gap in the interpretation of Oregon's land use laws and ensures that when a land use decision is reversed or remanded by LUBA, that decision is fully implemented by all parties, without delay or dispute.

Oregon's land use laws outline the responsibilities of local governments and state agencies to develop land use planning programs, issue land use decisions, and establish processes for appeals and enforcement once those decisions are challenged. Unfortunately, as a result of a recent ruling by a County Circuit Court in Schaefer v. Oregon Department of Aviation, there is now room for significant uncertainty around the enforcement of LUBA orders. The circuit court decision has created an unfortunate situation where, after a LUBA ruling reverses or remands a land use decision, permits issued and construction commenced under that decision may continue—unimpeded by the ruling, despite the fact that it is determined to be **unlawful**.

HB 3013(-1) is a direct response to this situation and serves the purposes 1) of **correcting any precedent set by any misinterpretation of the law** by the circuit court and 2) **restoring the intent of Oregon's land use laws**. Specifically, the bill aims to clarify that once a LUBA decision has been finalized, all parties involved in the appeal have a legal duty to comply with that decision. This includes the revocation of permits and the removal of any constructed improvements that were based on an unlawful land use decision.

The purpose of an appeal to LUBA is to ensure that land use decisions comply with Oregon's land use laws. However, the court's ruling in *Schaefer v. Oregon Department of Aviation* (23CV14126) has raised serious concerns: it ruled that even when a party wins a LUBA appeal, that party has no right to enforce the LUBA order in circuit court. This ruling contradicts ORS 197.825(3)(b), which explicitly grants the right to enforce LUBA decisions in circuit court. This ruling also undermines the very purpose of land use appeals by allowing construction and permits to stand, even when the land use decision is ultimately reversed.

If a land use decision is reversed or remanded by LUBA, it means the development at hand is in violation of the law. By allowing permits to remain valid and construction to continue, we are allowing unlawful projects to proceed, disregarding the legal protections that should be afforded to the public, the environment, and communities at large.

HB 3013(-1) corrects the circuit court's error by explicitly stating that when LUBA orders a reversal or remand, all affected parties—developers, state agencies, and local governments—have a duty to comply with that decision.

As was made clear in the LUBA decision in *Western States Development Corp. v. Multnomah County* (2000), anyone who proceeds under an unacknowledged land use regulation does so at their own risk. If LUBA reverses a decision or remands it, the applicant assumes the risk that their improvements may need to be undone. **Unfortunately, this understanding was disregarded by the recent circuit court decision, where the affected county and two state agencies ignored LUBA's decision and allowed construction to proceed despite the fact that the land use decision was deemed unlawful.** HB 3013 seeks to prevent such disregard of LUBA rulings in the future.

This is a matter of legal consistency and fairness. If a land use decision is overturned, the ruling should be respected through the revocation of any permits and removal of any construction that was initiated under that decision. This bill will eliminate the possibility that a developer can proceed with an unlawful project in our communities.

I want to emphasize that my intent in introducing HB 3013 is not to create new burdens but to clarify existing law and reinforce the proper enforcement of land use decisions. ORS 107.013 already affirms that enforcement of land use laws is a matter of statewide concern.

Moreover, it is critical that this bill empowers all participants in a LUBA appeal—the successful appellant, local governments, and agencies—to enforce the outcome of that appeal in circuit court. If a party wins a land use appeal, they should have the right to hold other parties accountable for complying. What is the use of having a Land Use Board Of Appeals (LUBA) make decisions about land use, if their decisions are unenforceable? **Without an enforcement mechanism, the LUBA process becomes meaningless, and land use laws lose their integrity.**

In conclusion, HB 3013 is an important step in ensuring that Oregon's land use system functions as it was intended. It will provide clarity to our legal framework, ensure the swift implementation of LUBA's decisions, and prevent disregard for land use laws.

I urge my colleagues to support HB3013, not only to correct a legal misstep but to ensure that our land use laws remain clear, effective, and fair to all Oregonians.

Thank you for your time.

Sincerely,



Representative Courtney Neron
House District 26: King City, Sherwood, Tigard, Wilsonville