

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 SANE ORDERLY DEVELOPMENT,
5 *Petitioner,*

6
7 vs.

8
9 CITY OF ROSEBURG,
10 *Respondent.*

11
12 LUBA Nos. 2024-055/058

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from City of Roseburg.

18
19 Zack P. Mittge represented petitioner.

20
21 Jim Forrester represented respondent.

22
23 RYAN, Board Member; ZAMUDIO, Board Chair; RUDD, Board
24 Member, participated in the decision.

25
26 DISMISSED

27 12/10/2024

28 You are entitled to judicial review of this Order. Judicial review is
29 governed by the provisions of ORS 197.850.

NATURE OF THE DECISION

In these consolidated appeals, petitioner appeals two city council decisions relating to the city’s amendment of its comprehensive plan to add approximately 220 acres to the city’s urban growth boundary (UGB) and to remove approximately 290 acres from the UGB.¹

JURISDICTION

ORS 197.626(l)(b) provides that a local government “shall submit for review and the Land Conservation and Development Commission shall review * * * [a]n amendment of a [UGB] by a city with a population of 2,500 or more within its urban growth boundary that adds more than 50 acres to the area within the urban growth boundary[.]”²

ORS 197.825(2)(c) provides that, as relevant here, LUBA’s jurisdiction:

“Does not include a local government decision that is:
“(A) Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.651 or a matter arising out of a

¹ We refer to the challenged decisions collectively as the UGB Amendment.

² OAR 660-024-0080 provides:

“A metropolitan service district that amends its UGB to include more than 100 acres, or a city with a population of 2,500 or more within its UGB that amends the UGB to include more than 50 acres shall submit the amendment to the Commission in the manner provided for periodic review under ORS 197.628 to 197.650 and OAR 660-025-0175.”

1 local government decision submitted to the department for
2 acknowledgment, *unless the Director of the Department of*
3 *Land Conservation and Development, in the director's sole*
4 *discretion, transfers the matter to [LUBA] * * *.* (Emphasis
5 added.)

6 The Land Conservation and Development Commission (LCDC) adopted OAR
7 660-025-0250 to implement the transfer provisions in ORS 197.825(2)(c)(A),
8 and it provides:

9 “(1) The director may elect to transfer a matter to the Land Use
10 Board of Appeals (board) under ORS 197.825(2)(c)(A),
11 including but not limited to an appeal of the director's
12 decision pursuant to OAR 660-025-0150(6).

13 “(2) The director may transfer matters to the board when:

14 “(a) The matter is an urban growth boundary expansion
15 approved by the local government based on a quasi-
16 judicial land use application and does not require an
17 interpretation of first impression of statewide planning
18 Goal 14, ORS 197.296 or 197.298; or

19 “(b)(A) The matter concerns a provision of law not directly
20 related to compliance with a statewide planning goal;

21 “(B) The matter is an appeal of the director's decision and
22 concerns a clearly identified provision of the work task
23 submittal that is alleged to violate a provision of law
24 and clearly identifies the provision of law that is
25 alleged to have been violated; and

26 “(C) The matter is sufficiently well-defined such that it can
27 be separated from other issues in the work task that are
28 not transferred to the board.

29 “(3) When the director elects to transfer a matter to the board,
30 notice of the decision must be sent to the local jurisdiction,
31 the appellant, any objectors, and the board. The notice shall

1 include identification of the matter to be transferred and
2 explanation of the procedures and deadline for appeal of the
3 matter to the board.

4 “(4) The director’s decision under this rule is final and may not be
5 appealed.”

6 LUBA’s rule at OAR 661-010-0075(11) provides the procedure for when the
7 director of DLCD transfers a matter to LUBA pursuant to OAR 660-025-0250.³

³ OAR 661-010-0075 provides, in relevant part:

“(11) Where the Director of the Oregon Department of Land Conservation and Development transfers a matter to LUBA pursuant to ORS 197.825(2)(c)(A), the case shall proceed as provided in LUBA’s rules, subject to the following:

“(a) The date of the notice from the Director making the transfer shall begin the running of a 21-day period within which one or more parties in the proceedings before the department may file a notice of intent to appeal with LUBA. A notice filed thereafter shall not be deemed timely filed, and the appeal shall be dismissed.

“(b) Except as provided in this section, the notice of intent to appeal shall conform to the requirements of OAR 661-010-0015, including payment of the filing fee. The notice of intent to appeal shall identify the local government as the respondent, rather than the Oregon Department of Land Conservation and Development or the Land Conservation and Development Commission.

“(c) On receipt of a notice of intent to appeal, the Board shall, by letter, establish a deadline for the respondent to file the portion of the local record necessary to review the transferred matter. In all other respects, an

1 The appealed decisions relate to the city’s amendment of the urban growth
2 boundary (UGB) that adds approximately 220 acres to the city’s UGB and
3 removes approximately 290 acres from the UGB. The city explains that the city’s
4 population is more than 2,500, and that on October 1, 2024, the city submitted
5 the decisions to the Department of Land Conservation and Development for
6 acknowledgment under ORS 197.626. Accordingly, the city argues, LUBA lacks
7 jurisdiction over the appeals.

8 Petitioner argues that the city’s amendments were processed under ORS
9 197A.312, which allows cities to utilize a simplified method of amending their
10 UGBs. Amendments relying on ORS 197A.312 and LCDC’s rules that
11 implement the statute at OAR 660-038-0000 *et seq.* are processed as post
12 acknowledgment plan amendments pursuant to ORS 197.610 to 197.615, which
13 are appealable to LUBA. ORS 197A.325(1); OAR 660-038-0020(10). Relatedly,
14 petitioner argues that the city’s amendment of its UGB had the net effect of
15 subtracting approximately 70 acres of land from the UGB, and accordingly, the
16 UGB amendment does not “add[] more than 50 acres” and therefore is not subject
17 to acknowledgement by DLCD under ORS 197.626.

18 The city responds that its UGB amendment was processed under LCDC’s
19 rules at OAR 660, division 24, and specifically under OAR 660-024-0070, and

appeal of a transferred matter shall proceed according
to LUBA’s rules.”

1 the city did not rely on ORS 197A.312.⁴ Respondent’s Memorandum on
2 Jurisdiction 9 (citing LUBA No. 2024-055 Amended Notice of Intent to Appeal
3 Exhibit A, 21). We agree with the city that its UGB amendment was not
4 processed pursuant to ORS 197A.312 or LCDC’s rules that implement the statute
5 at OAR 660-038-0000 *et seq.* Accordingly, the UGB amendment was not a post
6 acknowledgement plan amendment over which LUBA has jurisdiction.

7 Because the decisions have been submitted to DLCD for
8 acknowledgement under ORS 197.626(1)(b), LUBA ceases to have jurisdiction
9 over those submitted decisions or over matters arising out of those submitted
10 decisions unless the director of DLCD transfers matters to LUBA pursuant to

⁴ OAR 660-024-0070 provides, in relevant part:

“(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB. *The requirements of section (2) of this rule apply when removing land from the UGB. The requirements of Goal 14 and this division [and ORS 197.298] apply when land is added to the UGB, including land added in exchange for land removed. The requirements of ORS 197.296 may also apply when land is added to a UGB, as specified in that statute.* If a local government exchanges land inside the UGB for land outside the UGB, the applicable local government must adopt appropriate rural zoning designations for the land removed from the UGB prior to or at the time of adoption of the UGB amendment and must apply applicable location and priority provisions of OAR 660-024-0060 through 660-020-0067.” (emphasis added.)

1 OAR 661-025-0250(2).⁵ *Swalley Irrigation District v. City of Bend*, 59 Or LUBA
2 52, 59 (2009).

3 The appeals are dismissed.

⁵ Petitioner's arguments challenging DLCD's jurisdiction over the UGB amendment under ORS 197.626(1) may be presented to and resolved by DLCD.