

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 No. 2024-055/058

13
14 ORDER

15 The challenged decisions are city council decisions amending the city’s
16 comprehensive plan to add approximately 220 acres to the city’s urban growth
17 boundary (UGB) and to remove approximately 290 acres from the UGB. In
18 orders dated September 18, 2024, and October 3, 2024, we suspended these
19 appeals.

20 In our September 18, 2024, order, we questioned our jurisdiction over
21 these appeals and requested that the parties file memoranda addressing ORS
22 197.626(1)(b), which provides that a local government

23 “shall submit for review and the Land Conservation and
24 Development Commission shall review * * * [a]n amendment of a [
25 UGB] by a city with a population of 2,500 or more within its urban
26 growth boundary that adds more than 50 acres to the area within the
27 urban growth boundary[.]”

28 We allowed petitioner 14 days from the date of that order to file a memorandum
29 not to exceed 4,000 words explaining why LUBA has jurisdiction over the

1 appeal, and we allowed the city 14 days from the date petitioner submitted its
2 memorandum to file a response not to exceed 4,000 words.

3 Petitioner subsequently filed a memorandum regarding our jurisdiction,
4 and the city then filed a response to petitioner’s memorandum. On October 16,
5 2024, the Oregon Department of Land Conservation and Development (DLCD)
6 filed a “State Agency Response to Petitioner’s Memorandum of Jurisdiction”
7 (DLCD’s Response). DLCD is not a party to these appeals.

8 Petitioner objects and moves to strike DLCD’s Response because our
9 September 18, 2024, order does not allow it, and because DLCD is not a party
10 and it may not participate in the appeals except for the limited purpose of filing
11 a state agency brief or a motion to appear at oral argument. Petitioner argues that
12 DLCD’s Response is not a state agency brief authorized under ORS 197.830(8)
13 and OAR 661-010-0038, because briefing in the appeal has not yet commenced.¹

¹ ORS 197.830(8) provides:

“If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with [LUBA] as if it were a party. The brief shall be due on the same date the respondent’s brief is due and shall be accompanied by a filing fee of \$100.”

OAR 661-010-0038 provides:

“A state agency that wishes to file a brief under ORS 197.830(8) shall file the brief together with one copy within the time required for respondent’s brief. A state agency brief shall have yellow front

1 We agree with petitioner that as a non-party, DLCDC has no right under
2 statute or our rule to file DLCDC’s Response, at least where that response is filed
3 prior to briefing in the appeal having commenced. *Citizens for Florence v. City*
4 *of Florence*, 35 Or LUBA 255, 259-60 (1998). We also agree with petitioner that
5 DLCDC’s Response is not a state agency brief where briefing in these appeals has
6 not yet commenced. Accordingly, petitioner’s motion to strike is granted. We do
7 not consider DLCDC’s Response.

8 These appeals remain suspended.

9 Dated this 28th day of October 2024.

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Melissa M. Ryan
Board Member

and back covers. A state agency brief shall be accompanied by a
filing fee of \$100.”