

# Appendix V.A.3. Oregon Land Use Board Of Appeals (LUBA) 2004 Headnote Index June 26, 2013

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LUBA's Disclaimer LUBA provides headnotes as a research aid only. Changes made prior to publication in the Oregon LUBA Reports may not be reflected here. Headnotes are not considered part of the Board's opinions and should not be cited as legal authority.

Headnotes However, two most valuable features of LUBA's website are the LUBA headnotes and search features. The headnotes will give a summary of law concerning various issues, with citations to the case law. Reading the cases will then give a more detailed explanation, with further citations to statutes, goals, rules and cases. The search feature makes it easy to find the cases in the opinions feature (search case name). You can also search the cases back to 1990 using the key word search feature.

Its very important when building a case at the local level to try to base your arguments on state law (statutes, rules, or goals) if possible, to avoid "deference" problems with local interpretations of the local government's own ordinances.

## 1. ADMINISTRATIVE LAW

- 1.1 Interpretation of Law (see also 29.4 and 30.4)
  - 1.1.1 Generally
  - 1.1.2 Rules of Construction
  - 1.1.3 Effect of Local Government Interpretation
  - 1.1.4 Procedural Requirements
- 1.2 Denials
  - 1.2.1 Generally
  - 1.2.2 Requirements for
  - 1.2.3 Burden to Challenge
  - 1.2.4 Evidence to Support
- 1.3 Findings Generally
  - 1.3.1 What Constitutes
  - 1.3.2 Necessary Elements
  - 1.3.3 Form of
- 1.4 Adequacy of Findings
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  - 1.4.2 Applicable Standards
  - 1.4.3 Facts Relied on
  - 1.4.4 Explanation of Rationale
  - 1.4.5 Related Findings
  - 1.4.6 Issues Addressed
  - 1.4.7 Scope
  - 1.4.8 Logic and Consistency
- 1.5 Requirement for Findings

- 1.5.1 Generally
- 1.5.2 Statutes
- 1.5.3 Statewide Goals
- 1.5.4 Administrative Rules
- 1.5.5 Local Standards
- 1.6 Substantial Evidence
  - 1.6.1 Generally
  - 1.6.2 Definition Of
  - 1.6.3 Official Notice
  - 1.6.4 Expert Testimony
  - 1.6.5 Conflicting Evidence
- 1.7 Evidence Which Clearly Supports
- 1.8 Burden of Proof

## 2. CONSTITUTIONAL LAW

- 2.1 Oregon Constitution
  - 2.1.1 Procedural Issues
  - 2.1.2 Nonprocedural Issues
- 2.2 U.S. Constitution
  - 2.2.1 Procedural Issues
  - 2.2.2 Nonprocedural Issues
- 2.3 Nonspecific Constitutional Claims

**3. EFU STATUTE/ORDINANCES (SEE ALSO 7.1 TO 7.7)**

- 3.1 Generally
- 3.2 Farm Uses
  - 3.2.1 Generally
  - 3.2.2 Farm Dwellings
  - 3.2.3 Other Uses
- 3.3 Nonfarm Uses
  - 3.3.1 Generally
  - 3.3.2 Mineral Operations
  - 3.3.3 Dwellings
  - 3.3.4 Compatibility Standard
  - 3.3.5 Noninterference Standard
  - 3.3.6 Stability Standard
  - 3.3.7 Unsuitability Standard
  - 3.3.8 No Significant Change/Increase Std
  - 3.3.9 Other Uses
- 3.4 Land Divisions
  - 3.4.1 Generally
  - 3.4.2 Minimum Lot Sizes
- 3.5 Statutory Policy
- 3.6 Lot of Record Dwellings

**4. STATEWIDE PLANNING GOALS/LCDC RULES**

- 4.1 Applicability
- 4.2 Compliance With
- 4.3 Definitions
- 4.4 Acknowledgment

**5. GOAL 1 - CITIZEN INVOLVEMENT**

**6. GOAL 2 – LAND USE PLANNING**

- 6.1 Generally
- 6.2 Coordination
- 6.3 Exceptions/ Exception Rule
  - 6.3.1 Generally
  - 6.3.2 Developed
  - 6.3.3 Committed
  - 6.3.4 Reasons
  - 6.3.5 When Required
  - 6.3.6 Changes to
- 6.4 Alternative Courses of Action
- 6.5 Adequate Factual Base

**7. GOAL 3 – AGRICULTURAL LANDS/ GOAL 3 RULE (SEE ALSO 3.1-3.6)**

- 7.1 Generally
- 7.2 Agricultural Land Definition
  - 7.2.1 Generally
  - 7.2.2 Soil Classes
  - 7.2.3 Other Suitable Land
  - 7.2.4 Other Necessary Land

- 7.3 Minimum Lot Size Standard
  - 7.3.1 Commercial Agricultural Enterprise
  - 7.3.2 Operation and Effect of
- 7.4 Land Divisions
- 7.5 Multiple Resource Lands
- 7.6 Exceptions to
  - 7.7 Farm Uses
    - 7.7.1 Generally
    - 7.7.2 Farm Dwellings
- 7.8 Nonfarm Uses

**8. GOAL 4 – FOREST LANDS/ GOAL 4 RULE**

- 8.1 Generally
- 8.2 Forest Land Definition
- 8.3 Forest Uses
- 8.4 Nonforest Uses
- 8.5 Land Divisions
  - 8.5.1 Generally
  - 8.5.2 Minimum Lot Sizes
- 8.6 Multiple Resource Lands
- 8.7 Exceptions to
  - 8.8 Forest Dwellings
  - 8.9 Lots of Record
  - 8.10 Forest Practices Act

**9. GOAL 5 – OPEN SPACES AND NATURAL RESOURCES/ GOAL 5 RULE**

- 9.1 Generally
- 9.2 Resource Inventory
- 9.3 Conflicting Use Identification
- 9.4 ESEE Consequence Determination
- 9.5 Resource Protection Programs

**10. GOAL 6 - AIR, WATER AND LAND RESOURCE QUALITY**

**11. GOAL 7 - NATURAL DISASTERS AND HAZARDS**

**12. GOAL 8 - RECREATIONAL NEEDS**

**13. GOAL 9 - ECONOMY OF THE STATE/ GOAL 9 RULE**

**14. GOAL 10 - HOUSING/ GOAL 10 RULE**

**15. GOAL 11 - PUBLIC FACILITIES AND SERVICES/ GOAL 11 RULE**

**16. GOAL 12 - TRANSPORTATION/ GOAL 12 RULE**

## **17. GOAL 13 - ENERGY CONSERVATION**

## **18. GOAL 14 - URBANIZATION/ GOAL 14 RULE**

- 18.1 Generally
- 18.2 Establishment of UGB
- 18.3 Amendment of UGB
- 18.4 Conversion Factors
- 18.5 Urban Uses on Rural Land
- 18.6 Annexations/Incorporation
  - 18.6.1 Goal Standards
  - 18.6.2 LCDC Rule
- 18.7 Exceptions to
- 19. Goal 15 - Willamette River Greenway
- 20. Goal 16 - Estuarine Resources
- 21. Goal 17 - Coastal Shorelands
- 22. Goal 18 - Beaches and Dunes
- 23. Goal 19 - Ocean Resources

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- 24.1 Before Local Government
- 24.2 Before LUBA
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  - 24.2.2 Requirement to Establish
  - 24.2.3 Appearance
  - 24.2.4 Right to Notice
  - 24.2.5 Adverse Effect
  - 24.2.6 Aggrievement
  - 24.2.7 Quasi-judicial Decision
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  - 24.2.9 Limitations on
  - 24.2.10 State Agencies
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  - 25.3.2 Applicable Criteria
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  - 25.3.4 Hearings
  - 25.3.5 Time Limit for Final Action
  - 25.3.6 Findings
  - 25.3.7 Notice of Decision
  - 25.3.8 Appeals
  - 25.3.9 Raise It/Waive It (ORS 197.763)
  - 25.3.10 Limited Land Use Decisions
- 25.4 Compliance with Local Ordinances/Regs
  - 25.4.1 Generally
  - 25.4.2 Application Requirements
  - 25.4.3 Notice Requirements

- 25.4.4 Requirements for Standards/Criteria
- 25.4.5 Deviations From
- 25.4.6 Changes in Law
- 25.4.7 Appeal Requirements
- 25.5 Delegation of Authority
- 25.6 Hearings
  - 25.6.1 Generally
  - 25.6.2 Limitations on Presentation
  - 25.6.3 Evidence
  - 25.6.4 Site Visits
  - 25.6.5 Impartial Tribunal
  - 25.6.6 When Required
- 25.7 Legislative/Quasi-judicial Distinction
- 25.8 Discretionary/ Ministerial Distinction
- 25.9 Formalities of Decisions
- 25.10 Necessity for Objections to
- 25.11 Action After Remand
- 25.12 Other

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  - 26.2.2 Final Decision
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- 26.3 Land Use Decision: Significant Impact Test
- 26.4 Land Use Decision: Exclusions
- 26.5 Exhaustion of Remedies
- 26.6 Mootness
- 26.7 Effect of LCDC Proceedings
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## **27. LUBA PROCEDURES/RULES**

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- 27.2 Perfecting an Appeal
  - 27.2.1 Generally
  - 27.2.2 Notice of Intent to Appeal
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- 27.3 Record
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  - 27.6.5 Depositions
- 27.7 Parties
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  - 27.11.3 Record and Objections
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- 27.13 Attorney Fees
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- 28.3 Goal Exceptions
- 28.4 Post-acknowledgment Amendments
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- 28.6 Waiver of Issues
  - 28.6.1 Failure to Raise in Prior LUBA Appeal
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- 28.7 After Remand by Court
- 28.8 Grounds for Reversal/Remand
  - 28.8.1 Generally
  - 28.8.2 Lack of Jurisdiction
  - 28.8.3 Unconstitutionality
  - 28.8.4 Procedural Errors
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  - 29.2.5 Map Amendment: Standards
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  - 29.3.2 As Decision Criteria
  - 29.3.3 Effect of Acknowledgment
  - 29.3.4 Subarea Plans
- 29.4 Interpretation

## **30. ZONING ORDINANCES**

- 30.1 Adoption
  - 30.1.1 Generally
  - 30.1.2 Procedure
  - 30.1.3 Standards
- 30.2 Amendment
  - 30.2.1 Generally
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  - 31.1.2 Application Requirements
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  - 31.1.4 Use of Conditions
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- 31.2 Types
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  - 31.3.12 Destination Resorts
  - 31.3.13 Golf Courses
  - 31.3.14 Churches
  - 31.3.15 Schools
  - 31.3.16 Manufactured Homes

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- 33.2 Partitions
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- 36.3 Determination of Existence
- 36.4 Abandonment/Interruption
- 36.5 Alteration/Change
- 36.6 Expansion
- 36.7 Restoration/Replacement

- 36.8 Regulation
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- 38.1 Generally
- 38.2 Permits
- 38.3 Local Gov't Compatibility Determinations

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- 39.1 Generally
- 39.2 Incorporation/Formation
- 39.3 Annexation
- 40. Wetlands
- 41. Urban Renewal Plans
- 42. Wrecking Certificates
- 43. Special Districts
- 44. Marginal Lands

### **45. CONDITIONS OF APPROVAL**

- 45.1 Generally
- 45.2 Authority to Impose
- 45.3 Exactions
- 45.4 Consents to Annexation
- 45.5 Waivers of Remonstrance

### **46. OUTDOOR MASS GATHERINGS**

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