

## LUBA Case Summaries April 2024

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● ***1st John 2:17, LLC v. Morrow County* (LUBA No 2022-014, Apr 4, 2024)**  
(Opinion by Rudd, Board Member)

Petitioners appealed a decision by the county public works director denying petitioners' application for a road approach permit and construction permit. Held: The parties stipulated that this appeal be dismissed. Dismissed.

● ***Mr. Tree, Inc. v. Clackamas County* (LUBA Nos 2023-042/043, Apr 4, 2024)**  
(Opinion by Rudd, Board Member)

Petitioners appealed an email from county staff stating that petitioners' development permit had expired. Held: The parties stipulated that this appeal be dismissed. Dismissed.

● ***Cottrell Community Planning Org. v. Clackamas County* (LUBA No 2023-084, Apr 5, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a hearings officer's decision approving an application to construct an emergency access road to serve a proposed water filtration facility. Held: The parties stipulated that this appeal be dismissed. Dismissed.

● ***Easterly v. City of Salem* (LUBA No 2023-092, Apr 12, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a city ordinance amending the city's transportation system plan. Held: Any error by the city in characterizing the decision as a minor comprehensive plan amendment, as opposed to a major comprehensive plan amendment, was harmless, because the city ordinance's minor comprehensive plan amendment approval criteria included the two criteria applicable to major comprehensive plan amendments. The city's finding that the minor comprehensive plan amendment does "not require significant factual or policy analysis," one of the approval criteria for a minor comprehensive plan amendment, was supported by an adequate factual base. Petitioner did not develop their arguments that applicable approval criteria were not addressed or inadequately addressed. Petitioner could not collaterally attack the approval of a street alignment in a prior, final development approval. The city was not required to apply Goal 5 (Natural

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Resources, Scenic and Historic Areas, and Open Spaces) to the challenged decision because the decision did not amend a portion of the comprehensive plan adopted in order to protect a Goal 5 resource or allow new uses that could be conflicting uses with a listed Goal 5 resource. Petitioner did not address the city’s findings that Goal 6 (Air, Water and Land Resources Quality) was met. Petitioner did not show that the challenged decision violated OAR 660-012-0060, and did not develop their argument explaining why Goal 12 (Transportation) requires the city to address certain city transportation policies. Affirmed.

● ***Meyer v. City of King City* (LUBA No 2023-052, Apr 18, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a city council decision adopting a transportation system plan. Held: Petitioner did not adequately develop their argument that the city’s findings fail to discuss roads planned to cross over petitioner’s airstrip and compliance with state land use law applicable to airports. Petitioner did not adequately develop their argument that the city was required to adopt findings addressing Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces). The city did not misconstrue a Metro ordinance’s condition of approval requiring the city to “work with the [land trust] to protect, to the maximum extent possible, the portion of the [property] covered by the conservation easement.” The city’s findings supporting the conclusion that the conservation easement is protected to the maximum extent possible was supported by an adequate factual base. Affirmed.

● ***Roberts v. City of Cannon Beach* (LUBA No 2023-066, Apr 24, 2024)**  
(Opinion by Zamudio, Board Member; Ryan, Board Chair, concurring)

Petitioners appealed a city council decision on remand from *Haystack Rock, LLC v. Cannon Beach*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2022-041, Mar 16, 2023) denying a development permit for a single-family dwelling and associated vehicular access and tree removal on property zoned Residential Lower Density and within the Oceanfront Management (OM) overlay zone. Held: The city’s interpretation that the OM zone is limited to only those improvements enumerated in Cannon Beach Municipal Code (CBMC) 17.42.030 is inconsistent with the text of that section and implausibly prohibits uses permitted in the underlying residential zone. The city’s interpretation that the city’s ocean yard restrictions apply to a city right-of-way is inconsistent with the code text. The city’s application of the term “structure,” as defined in CBMC 17.04.540, is impermissibly unclear and violates the requirement that the city “apply only clear and objective standards” to applications for “the development of housing.” *Former* ORS 197.307(4) (2022), *amended by* Oregon Laws 2023, chapter 533, §1, *renumbered as* ORS 197A.400(1) (2023). The development of vehicular access in a city right-of-way that is necessary to develop and use a dwelling on residentially zoned property within the city is “the development of housing.” *Former* ORS 197.307(4) (2022). The city did not err in concluding that the proposed dwelling development is not “needed housing” and, thus, the city did not err in failing to provide petitioners an opportunity to offer amendments or propose conditions of approval that would make the application consistent with applicable regulations, as required by ORS 197.522(3). Intervenor-respondent established in a cross-assignment of error, and the city conceded, that the city failed to make findings addressing criteria regulating removal of stabilizing vegetation. CBMC 17.42.040(C). Remanded.

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- ***Ellison v. Clackamas County* (LUBA No 2023-047, Apr 26, 2024)**  
(Opinion by Zamudio, Board Member)

Petitioner appealed a hearings officer's denial of petitioner's application for a property line adjustment. Held: Petitioner requested that this appeal be dismissed. Dismissed.

- ***Ferguson Creek Investment, LLC v. Lane County* (LUBA No 2023-087, Apr 29, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a hearings officer's decision on remand from *Ferguson Creek Investment, LLC v. Lane County*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2022-099, June 9, 2023) denying petitioner's application for nonconforming use verification of a dwelling on property zoned Exclusive Farm Use (EFU). Held: The hearings officer's determination that the subject dwelling did not become a nonconforming use at the time the property was first zoned EFU because that zoning allowed dwellings in conjunction with farm use, misconstrued ORS 215.130(5) because the initial EFU zoning newly regulated dwellings. The hearings officer's conclusion that the dwelling's nonconforming use status was lost because evidence in the record is that the use of the dwelling was abandoned in the 1990s, misconstrued ORS 215.130(11) because that statute bars consideration of the status of the dwelling more than 20 years prior to the date of application. Remanded.

- ***Haugen v. City of Scappoose* (LUBA No 2023-001, Apr 30, 2024)**  
(Opinion by Rudd, Board Member)

On remand from the Court of Appeals. Petitioner appealed a city council decision approving a planned development overlay zone designation, a conditional use permit, a tentative subdivision plat, and a sensitive lands development permit required to subdivide the subject property and develop numerous single-family residential lots. Held: Information submitted by the applicant after the city reopened the record pursuant to ORS 197.522(3) was "evidence" within the meaning of ORS 197.797(9)(b), and the city was required to allow petitioner an opportunity to respond to the new evidence. The city's decision limiting the approval to 44 lots contained inadequate findings and was not supported by substantial evidence because the remainder of the decision and supporting evidence was directed at a 48-lot subdivision. Remanded.

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