

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3
4 ERIC HOFFMAN and RONNA HOFFMAN,
5 *Petitioners,*

6
7 vs.

8
9 DESCHUTES COUNTY,
10 *Respondent,*

11
12 and

13
14 MARK LATHAM EXCAVATION, INC.,
15 *Intervenor-Respondent.*

16
17 LUBA No. 2009-061

18
19 MARK LATHAM EXCAVATION, INC.,
20 *Petitioner,*

21
22 vs.

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24 DESCHUTES COUNTY,
25 *Respondent,*

26
27 and

28
29 ERIC HOFFMAN and RONNA HOFFMAN,
30 *Intervenors-Respondents.*

31
32 LUBA No. 2009-062

33 ORDER

34 **MOTION TO INTERVENE**

35 Mark Latham Excavation, Inc. (Latham), moves to intervene on the side of the
36 respondent in LUBA No. 2009-061, and Eric Hoffman and Ronna Hoffman (the Hoffmans)
37 move to intervene on the side of the respondent in LUBA No. 2009-062. There is no
38 opposition to the motions, and they are granted.

1 **RECORD OBJECTIONS**

2 The Hoffmans and Latham separately filed precautionary record objections on
3 October 5, 2009. OAR 661-010-0026(2).¹ On November 2, 2009, the county filed a
4 preliminary response to those precautionary record objections and advised LUBA that the
5 parties were continuing to attempt to reach agreement on how those precautionary record
6 objections should be resolved. Respondent also moved for an extension of time until
7 November 10, 2009 to file its final response to the precautionary record objections and
8 advised LUBA that all parties joined in that motion. On November 10, 2009, the county
9 filed a second motion requesting an extension of time until November 16, 2009 to file its
10 final response to the precautionary record objections and advised LUBA that all parties
11 joined in that motion.

12 On November 16, 2009, the county filed its final response to the pending
13 precautionary record objections. With one possible exception (Latham's fifth objection) all
14 precautionary record objections either have been resolved by the parties or will be resolved
15 when the county submits a supplemental record and corrected table of contents. The parties
16 anticipate that Latham's fifth objection will be resolved by the supplemental record table of
17 contents.

18 The OAR 661-010-0026(2) authorization for precautionary record objections was
19 adopted to encourage precisely the kind of collaborative resolution of record problems that
20 has occurred in this appeal. Such collaboration eliminates the possibility that LUBA will
21 erroneously resolve complicated record objections or resolve them in a way that will have

¹ OAR 661-010-0026(2) provides in part:

An objection to the record or an objection to an amendment or supplement to the record shall be filed with the Board within 14 days of the date appearing on the notice of record transmittal sent to the parties by the Board. *A party may file a precautionary record objection while continuing to resolve objections with the governing body's legal counsel. * * ** (Emphasis added.)

1 unintended consequences or complicate resolution of an appeal on the merits. The Board
2 appreciates the professional manner in which the parties in this appeal have resolved the
3 precautionary record objections. A very different approach has been followed in other recent
4 appeals involving other parties, and many months were required to settle the record.

5 When the Board receives the supplemental record and corrected table of contents, it
6 will issue its customary letter advising the parties of the receipt of the supplemental record
7 and establishing a briefing schedule. If any party believes the supplemental record or
8 corrected table of contents does not fully resolve the pending precautionary record objections
9 as agreed, an additional precautionary record objection may be filed.

10 Dated this 24th day of November, 2009.
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17 Michael A. Holstun
18 Board Member