

**Summary of Significant LUBA Decisions Addressing
Historic Property Designation and Regulation**

Carlton Dev., LLC v. City of Portland, No. 201-068, 2010 WL 4364753 (2010)

Issue: The developer altered the historic Carlton Court Building's wood sash windows and the city issued the developer an enforcement penalty, asserting that the alteration required an historic design review permit. In the building's Nomination form, the city described the wood sash windows, but the city did not explicitly state that the wood sash windows contribute to the building's historic value. Under the city code, does the city's Nomination of the building "specifically list" the building's wood sash windows as an attribute that contributes to the building's historic value, which requires a historic design review permit prior to alteration?

Conclusion: Yes. The building's exterior features, described in the Nomination form's Description paragraph, are the features that led the Nomination's author to conclude, in the Significance paragraph, that the building contributes to the district's historic value. A contrary interpretation means that the Nomination form does not "specifically list" any features of the building, which is not what the author intended.

Demlo v. City of Hillsboro, No. 2000-160, 39 Or LUBA 307 (2001)

Issue: Eighteen years after the city council adopted the nomination of the county hospital to the city's cultural resource inventory, the county who owned the hospital requested that the hospital be undesignated. ORS 197.772(3) says, "A local government shall allow a property owner to remove from the property a[n] historic property designation that was *imposed* on the property by the local government." (Emphasis added). For an historic-property owner to remove the property's designation, must that designation have been "imposed" on the owner against the owner's will?

Conclusion: Yes. An owner cannot accept designation and then remove designation under ORS 197.772(3). The context of ORS 197.772(3) indicates that the legislature intended that an owner could always object to the property's classification, but that the owner must object at the time of designation; an owner can object after designation only if the owner never initially consented.

Burgess v. City of Corvallis, No. 2007-060, 55 Or LUBA 482 (2008)

Issue: The city's code provisions are tied to and implement the Secretary of the Interior's standards for protecting historic property. When the city council interprets ambiguity in its historic preservation code, must it consider the Secretary's standards?

Conclusion: Yes. The Secretary's standards are context for put the city's historic preservation code provisions, which must be considered in interpreting.

DLCD v. Yamhill County, Nos. 89-040 and 89-042, 17 Or LUBA 1273 (1989)

Issue: The county adopted an ordinance requiring landowner consent before for an historic property could be designated on the county's inventory. Does the ordinance violate the Goal 5 and OAR 660-16-0000 et seq. process for protecting historic resources?

Conclusion: Yes. "Under OAR 660-16-000(5)(c), when information is available on the location, quality, and quantity of a site, and the local government determines the site to have historic significance as a result of its data collection and analysis, it must include the site on its plan inventory."

Paulson v. Washington County, No. 2001-079, 40 Or LUBA 345 (2001)

Issue: A historic district in the county includes “all buildings and structures’ in the county’s cultural resources inventory.” However, within the historic district, only buildings and structures that the inventory describes as “significant, important, or contributing to the significance of the resource” are subject to the county’s historic review process. Are arches that are outside of a building that the inventory describes as significant subject to the city’s historic review process when the arches are included in a drawing of the house in the Nomination, are mentioned in the house’s description in the National Register, but are not explicitly described as significant themselves?

Conclusion: No. Because the arches are not described in the inventory as significant the historic review process does not apply to them. The hearing officer’s decision concluding that the arches’ removal does not impact an inventory-protected resource is affirmed.

Save Amazon Coal. v. City of Eugene, No. 95-087, 29 Or LUBA 335 (1995) (*Amazon IV*)

Issues: (1) The city’s code provided that applications to designate historic landmarks must be consistent with the comprehensive plan’s historic preservation policies, but the city’s code does not mention applications to demolish historic landmarks. Must applications to demolition historic landmarks also comply with the comprehensive plan’s historic preservation policies?

(2) Does the city’s pre-application permit requirement that an historic property owner must “endeavor to prepare an economically feasible plan” for preservation and “solicit purchase offers” mean that the owner must, in good faith, find and consider reasonable purchase offers to protect the property?

Conclusions: (1) No. The city’s code is written generally, and since the ordinance was silent on demolition, the city is not clearly wrong in interpreting the comprehensive plan and city code to say that applications to demolish historic landmarks need not comply with any comprehensive plan policy.

(2) No. The owner can decide whether to sell the property; only the owner’s personal situation and needs determine whether it is economically feasible to preserve the historic resource.

Historical Dev. Advocates v. City of Portland, No. 94-036, 27 Or LUBA 617 (1994)

Issue: The city did not adopt an historic resources inventory as part of its comprehensive plan. The city later shortened its historic resource demolition process without using post-acknowledgement plan procedures. Did the city violate Goal 5?

Conclusion: No. “[T]he inventory is not part of the acknowledged comprehensive plan or land use regulations” and the city’s decision is not a de facto plan amendment; Goal 5 does not apply to the decision to shorten the code demolition permit process.

Cox v. Polk County, No. 2004-166, 49 Or LUBA 78 (2005)

Issue: The county amended its comprehensive plan to allow a new use, dog control facilities, on any publicly-owned land. Does the county’s amendment violate Goal 5 by permitting the new use outright on a non-designated, publicly-owned park, in which is a historical designated cemetery?

Conclusion: Yes. Although the designated cemetery is zoned to allow any use on the property consistent with the comprehensive plan, the county cannot amend the zone to allow what could be a conflicting use on or near the designated cemetery without either adopting findings showing compliance with Goal 5, or seeking an exception from Goal 5.

NWDA v. City of Portland, No. 2003-162 et seq., Or LUBA 533 (2004)

Issues: An ordinance authorized the construction of several commercial parking garages as outright permitted uses. The garages would be located in the Alphabet Historic District and the ordinance authorized the demolition of a structure listed in the National Register’s Inventory. (1) By authorizing the demolition, does the ordinance “amend[] a resource list” under OAR 660-023-0250(3)(a), which requires Goal 5 compliance?

(2) Because the city’s code does not include “commercial parking” as a permitted use in the underlying zone, does the ordinance allow a new conflicting use that implicates OAR 660-023-0250(3)(b), (requiring a new Goal 5 analysis)?

Conclusions: (1) No. The city’s acknowledged Goal 5 inventory is not the National Register Inventory, it calls the structure “noncontributing[,]” and it does not protect noncontributing structures.

(2) Not answered because either way, the city’s findings comply with Goal 5. When a post-acknowledgement plan amendment allows a new and potentially Goal 5-conflicting use, the city need not necessarily complete the whole process again, which includes the ESEE analysis; often a description of how the program continues to protect Goal 5 resources is sufficient.

Pearl Dist. Neighborhood Assoc. v. City of Portland, No. 2001-047, 40 Or LUBA 436 (2001)

Issue: A designated landmark was located inside two design review districts. Before physically altering the landmark, the owner proceeded through the historic design review process, but the owner ignored the two other design review districts’ processes. The city council interpreted the city code to apply historic design review and not the two additional design review districts’ processes. Did the city err?

Conclusion: No. The city council gets deference when it interprets its own ordinances and its resolution of a conflict in the code language in favor of the most recent amendments—specifically a provision excepting historic landmarks from going through multiple design review processes—is not beyond its “interpretational discretion.”

Other cases of note:

Cecil v. City of Jacksonville, No. 90-013, 19 Or LUBA 446 (1990)

Knapp v. City of Jacksonville, No. 90-064, 20 Or LUBA 189 (1990)

McLaughlin v. Clackamas County, No. 91-056, 22 Or LUBA 198 (1991)

Champion v. City of Portland, No. 94-130, 28 Or LUBA 618 (1995)

Save Amazon Coal. v. City of Eugene, No. 95-042, 29 Or LUBA 565 (1995) (*Amazon I*)

Save Amazon Coal. v. City of Eugene, No. 95-087, 29 Or LUBA 581 (1995) (*Amazon III*).

Goose Hollow Foothills League v. City of Portland, No. 99-105, 37 Or LUBA 631 (2000)

Multi-Light Sign Co. v. City of Portland, No. 2000-208, 39 Or LUBA 605 (2001)

Boly v. City of Portland, No. 2003-152, 46 Or LUBA 197 (2004)

West v. City of Salem, No. 2010-013, 61 Or LUBA 166 (2010)