



Oregon

Tina Kotek, Governor

HPAC Work Group Recommendation Template

Work Group

- Availability of land
- Land development permit applications
- Codes and design
- Workforce shortages
- Financing

Recommendation

Create electronic filing system for LUBA by either:

- A) Adding LUBA to the Appellate Case Management System (ACMS), or;
- B1) Creating a new, standalone filing system for LUBA, or;
- B2) Creating a new, state-managed filing system for all land use review bodies.

Related Work Plan Topics

Assess potential changes to the current public participation and land use appeals process to address barriers to housing development. Issues to assess include standing, evidence, time, expense, and fees.

Adoption Date

Oct 10, 2023

Method of Adoption

Describe if the adoption was a vote, by consensus, etc., and if the recommendation is unanimous.

Unanimous via Group Meeting.

Co-chairs Guidance: Standards for Analysis

1. Clearly describe the housing production issue that the recommended action(s) will address.

Uncertainty and delay when securing entitlements increases the cost of development. By shortening the time to resolve appeals, development (of all types) will see increased financial feasibility.

2. Provide a quantitative, if possible, and qualitative overview of the housing production issue.

Summarize the quantitative and qualitative information available, and reviewed by the work group, that informed the analysis of the barrier or solution and led to the recommendation included in this form.

There is little direct data on the relationship between uncertainty/delay in the entitlement process and production; LUBA sees relatively few pure-housing appeals and there is not uniform local-level data to analyze. However, the development community and many local jurisdictions have reported that the threat of being taken to LUBA creates a chilling effect on development (by either forcing applications and jurisdictions to make modifications to plans that they otherwise would not, or by abandoning projects all together).

3. To assess the issue and potential action(s), include subject matter experts representing all sides of the issue in work group meetings, including major government, industry, and stakeholder associations.

List the observers and participating SMEs at the work group meetings as the recommendation was developed. Identify which participating SMEs provided information to the work group and how. Summarize the information and perspective provided by the participating SMEs. If the participating SMEs expressed disagreement or concern with the work group recommendation, describe the reason.

- Interviews with LUBA members
- Interviews with land use attorneys
- Interviews with design professionals

4. Provide a quantitative, if possible, and qualitative overview of the outcome of the recommended action(s).

Outline the impact of the recommendation on housing production.

Successful implementation will decrease the time required to obtain a final land use decision. All actions before LUBA (notices, motions, filings of briefs) are accomplished by first class mail or private courier service; deadlines are tied to the date of mailing, not date of receipt. Electronic filing will immediately shorten turnaround times; once established, statutory/OAR intermediate times may be shortened (see diagram on page 6).

Significant additional time gains can be made if record transmission and settlement are streamlined (i.e., local approving authorities use the same electronic case management system).

Finally, uniform electronic case management will significantly increase transparency to the general public and their ability to participate in the land use process.

5. Provide an estimate of the time frame (*immediate, short, medium, long-term*), feasibility (*low, medium, high*), and cost (*low, medium, high*) for implementation of the recommended action(s).

Outline the work group's estimate of the time for implementation of the recommendation and its impact on housing production once implemented. Describe the work group's assessment of the feasibility of the recommendation being implemented and feasibility of success. Provide any estimates on the cost for implementation.

Of the two options presented, including LUBA in ACMS is the quicker, cheaper, and more straightforward path. The State has invested extensive resources and time in developing an appeals management system for the judicial branch; allowing LUBA to take advantage of already existing infrastructure is a low-risk proposition. Implementation should be possible within 12 months.

Creating a new land-use appellate system will require significant up-front work and dedicated staffing to administer (and train a broad user base). Rolling out an electronic system to all land use decision makers will take significant technical assistance and training.

| | Time Frame | Feasibility | Cost |
|-------------------------------------|-------------------|--------------------|-------------|
| ACMS for LUBA | Short | Medium | Low |
| New System; LUBA Only | Medium | High | Medium |
| New System; All Land Use | Long | Medium | Medium |

6. Provide a general overview of implementation, the who and how for the recommended action(s).

To the extent the work group knows, is this implemented in state statute or rule, by the state or local government, by a particular agency, etc.

ACMS is managed by the judicial branch. Integration would require legislative direction/authorization and buy-in from the Chief Justice and other judicial leadership.

Creation of a new system would require legislative authorization & appropriation; creation of new positions within LUBA to administer the system (or corresponding support from DAS IT); and training resources for local governments.

If the system is extended to local decision making bodies, then it would properly be housed in DLCDC. Like a LUBA-only system, new, dedicated staff would be required together with appropriations for training, rollout, etc.

7. Outline the data and information needed for reporting to track the impact and implementation of the recommended action(s).

Identify the data the Governor's Office would need to track to determine if the recommendation is increasing housing production.

- Time to transmit and settle record
- Total time to resolve appeals

NOTE: Implementing a uniform, state-wide system will allow for the collection of significant, real-time data related to land use. This insight into our land use system is a worthwhile goal as a standalone objective.

8. Identify any major unknowns, tradeoffs, or potential unintended consequences.

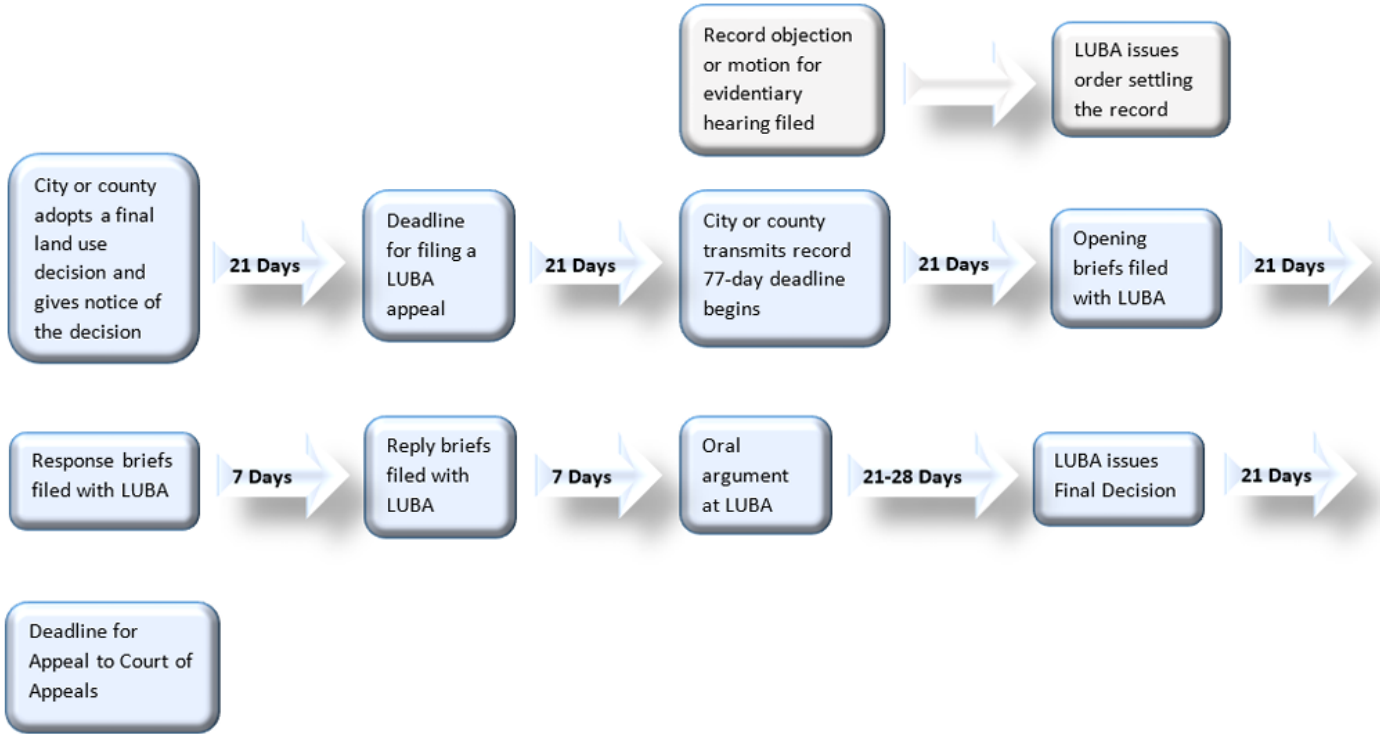
Based on the work group's analysis and information provided by participating SMEs, outline what is unknown, the tradeoffs exist by implementing the recommendations, and any known potential unintended consequences.

| | Pros | Cons |
|---------------------------------|---|---|
| ACMS for LUBA | <ul style="list-style-type: none"> • Existing system designed for appeals • | <ul style="list-style-type: none"> • Separation of powers; judicial branch responsible for administering executive branch appeals system • Not user-friendly for non-attorneys |
| New System; LUBA Only | <ul style="list-style-type: none"> • Can be tailored to the land use process • Preserves separation of powers. • Can be designed for maximum public transparency + participation | <ul style="list-style-type: none"> • Expensive and time consuming to establish. • New, dedicated staff required; additional training for local jurisdictions • State has poor track record with IT rollouts. |
| New System; All Land Use | <ul style="list-style-type: none"> • Removes record transmission and settlement issues • Brings Goal 1 into the modern era | <ul style="list-style-type: none"> • Higher cost • Potential reluctance from local jurisdictions to conform to state mandate system • Complex system would be required to conform to unique local rules. |

Please include any relevant reports, data analyses, presentations, or other documents that would be informative and useful for the full HPAC as the recommendation is discussed and considered.

PROGRAM UNIT - LAND USE BOARD OF APPEALS

LUBA REVIEW OF LAND USE DECISIONS



This review process is significantly more expedited and efficient than the writ of review process in circuit court, which was the review process used prior to LUBA's creation.