

LUBA Case Summaries January 2025

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● ***Fraley v. Clackamas County*, LUBA No 2024-092 (Jan 3, 2025)**
(Opinion by Rudd, Board Member)

Petitioner appealed county approval of a development permit authorizing temporary paving, utility relocation, and permit review. Held: Petitioner requested that this appeal be dismissed. Dismissed.

● ***Caprari v. Jackson County*, LUBA Nos 2024-060/066/067/068 (Jan 13, 2025)**
(Opinion by Zamudio, Board Chair)

Petitioner appealed four enforcement orders issued by a county hearings officer concerning unpermitted structures on petitioner's property. Held: Petitioner filed a petition for review that did not substantially conform to the requirements of OAR 661-010-0030. Petitioner did not file an amended petition for review after the Board notified petitioner of the noncompliance, and the Board refused to consider the petition for review. Dismissed.

● ***Pahlisch Homes, Inc v. City of Bend*, LUBA No 2024-051 (Jan 17, 2025)**
(Opinion by Zamudio, Board Chair)

Petitioner appealed a city ordinance adopting amendments to the city's tree preservation code provisions. Held: Petitioner requested that this appeal be dismissed. Dismissed.

● ***Campbell v. Benton County*, LUBA No 2024-062 (Jan 21, 2025)**
(Opinion by Ryan, Board Member)

Petitioners appealed a planning commission decision approving a conditional use permit for the expansion of a parish hall and the addition of a parsonage to an existing church structure. Held: Petitioners requested that this appeal be dismissed. Dismissed.

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- ***Cottrell Community Planning Organization v. Multnomah County*, LUBA No 2023-086 (Jan 22, 2025)**
(Opinion by Rudd, Board Member)

Petitioners appealed a county hearings officer's decision approving a drinking water filtration facility, communication tower, and associated pipelines. Held: The hearings officer did not misconstrue Multnomah County Code (MCC) 39.7515 in concluding that the county was not required to consider construction impacts under the community use criteria or the state statutory farm impacts test in ORS 215.296. The hearings officer did not misconstrue ORS 215.296(1) because it does not apply to the water treatment facility as the use is on land zoned MUA-20, which is not an exclusive farm use zone, and therefore not an allowed use under ORS 215.283(2). Accordingly, the hearings officer was not required to interpret MCC 39.7515(C) consistent with interpretations of the almost identical language in ORS 215.296(1), because MCC 39.7515(C) does not adopt or implement ORS 215.296(1). The hearings officer considered alternative alignments as required by ORS 215.275(2) and made adequate findings supported by substantial evidence that the selected alignment met project objectives, including providing the greatest seismic resiliency. The hearings officer misconstrued the community use natural resources criterion, MCC 39.7515(B), and failed to adopt adequate findings supported by substantial evidence. Remanded.

- ***Brand Land Use, LLC v. City of Salem*, LUBA No 2024-041 (Jan 22, 2024)**
(Opinion by Rudd, Board Member)

Petitioners appealed a city council decision approving a comprehensive plan amendment and zone change. The city withdrew the decision for reconsideration pursuant to ORS 197.830(13)(b) and OAR 661-010-0021. Held: Petitioners did not refile their original notice of intent to appeal, or an amended notice of intent to appeal in accordance with OAR 661-010-0021(5)(a). Under, OAR 661-010-0021(5)(e), the appeal is dismissed. Dismissed.

- ***PGE v. Clackamas County*, LUBA No 2024-069 (Jan 23, 2025)**
(Opinion by Zamudio, Board Chair; Ryan, Board Member, Concurring)

Petitioner appealed a planning director decision that petitioner's application for alteration of a nonconforming use was void because it was not authorized by the owners of all the affected properties. Held: The planning director misconstrued Clackamas County Zoning and Development Ordinance (ZDO) 1307.07(A), which provides that certain entities may initiate land use permit applications. ZDO 1307.07(A) does not prohibit a public utility with condemnation authority from initiating a land use application. *Schrock Farms, Inc. v. Linn County*, 31 Or LUBA 57, *aff'd*, 142 Or App 1, 919 P2d 519 (1996); *1st John 2:17, LLC v. City of Boardman*, LUBA No 2022-029 (Oct 13, 2022). Remanded.

- ***Hanson v. Yamhill County*, LUBA No 2024-065 (Jan 27, 2025)**
(Opinion by Ryan, Board Member)

Petitioner appealed a land use compatibility statement (LUCS) issued to the Oregon Water Resources Department by the county planning director and upheld on appeal by the board of

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commissioners, concluding that a water impoundment for irrigation of vineyards is a permitted use on property zoned Agriculture-Forestry 20. Held: The county correctly concluded that the proposed water impoundment is a farm use that is allowed without review under Yamhill County Zoning Ordinance section 403 and ORS 215.203(2)(b)(G). Thus, the LUCS is not a land use decision subject to LUBA review. *See* ORS 197.015(10)(b)(H)(ii) (setting out the LUCS exclusion). Dismissed.

• ***Gould v. Deschutes County*, LUBA Nos 2024-034/035 (Jan 31, 2025)**
(Opinion by Ryan, Board Member)

Petitioners appealed a county planning staff decision approving one-year extensions of previously approved site plans for a golf course and lakes on land zoned exclusive farm use. Held: OAR 660-033-0140 is a Land Conservation and Development Commission rule that governs the expiration and extension of discretionary permits for development on farm or forest land. OAR 660-033-0140(3) provides that permit extension decisions on farm or forest land are not land use decisions under ORS 197.015, which describes decisions that are subject to LUBA review under ORS 197.825(1). The county's decisions extending permits for development on farm land are not land use decisions subject to LUBA's jurisdiction. *Jones v. Douglas County*, 63 Or LUBA 261, *aff'd*, 247 Or App 81, 270 P3d 278 (2011). Petitioners filed a contingent motion to transfer these appeals to circuit court. ORS 34.102; OAR 661-010-0075(9). Transferred.

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