

1                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3  
4                   COLUMBIA PACIFIC BUILDING TRADES  
5                   COUNCIL, PORTLAND BUSINESS ALLIANCE, and  
6                   WESTERN STATES PETROLEUM ASSOCIATION,  
7                                   *Petitioners,*

8  
9                                   and

10  
11                   WORKING WATERFRONT COALITION,  
12                                   *Intervenor-Petitioner,*

13  
14                                   vs.

10/05/18 PM 2:06 LUBA

15  
16                   CITY OF PORTLAND,  
17                                   *Respondent,*

18  
19                                   and

20  
21                   COLUMBIA RIVERKEEPER, OREGON  
22                   PHYSICIANS FOR SOCIAL RESPONSIBILITY,  
23                   PORTLAND AUDUBON SOCIETY, and CENTER  
24                   FOR SUSTAINABLE ECONOMY,  
25                                   *Intervenors-Respondents.*

26  
27                                   LUBA No. 2017-001

28  
29                                   FINAL OPINION  
30                                   AND ORDER

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32                   Appeal on remand from the Court of Appeals.

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34                   William L. Rasmussen, Portland, represented petitioners.

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36                   Phillip E. Grillo, Portland, represented intervenor-petitioner.

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38                   Lauren A. King, Deputy City Attorney, Portland, represented respondent.  
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1 Maura C. Fahey, Portland, represented intervenors-respondents.

2  
3 BASSHAM, Board Member; ZAMUDIO, Board Member, participated in  
4 the decision.

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6 RYAN, Board Chair, did not participate in the decision.

7  
8 REMANDED 10/05/2018

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10 You are entitled to judicial review of this Order. Judicial review is  
11 governed by the provisions of ORS 197.850.

**NATURE OF THE DECISION**

Petitioners appeal a city ordinance that adopts legislative text amendments to the city’s zoning ordinance to prohibit new bulk fossil fuel terminals (FFTs) and the expansion of existing FFTs.

**FACTS**

The relevant facts are set out in our earlier opinion, *Columbia Pacific Building Trades Council v. City of Portland*, \_\_ Or LUBA \_\_ (LUBA No. 2017-001, July 19, 2017), *rev’d and rem’d in part*, 289 Or App 739, 412 P3d 258 (2018). LUBA’s opinion reversed the city’s decision for violation of the dormant Commerce Clause of the United States Constitution. LUBA also addressed the remaining assignments of error presented by petitioners and intervenor-petitioner Working Waterfront Coalition (WWC), sustaining some and denying others.

On appeal of our decision to the Court of Appeals, the court held that the city’s ordinance did not violate the dormant Commerce Clause (petitioner’s ninth assignment of error and WWC’s fourth assignment of error). The court also reversed LUBA’s conclusion that the city’s ordinance was inconsistent with the city’s obligations under Statewide Planning Goal 12 (Transportation) (petitioners’ second and fourth assignments of error). Finally, the court affirmed LUBA’s conclusion that certain findings supporting the city’s ordinance were not supported by an adequate factual base as required by

1 Statewide Planning Goal 2 (petitioners' first assignment of error and WWC's  
2 first assignment of error). LUBA's dispositions of the remaining assignments  
3 of error were not challenged on appeal.

4 **DISPOSITION**

5 On remand from the Court of Appeals, our dispositions of petitioners'  
6 second, fourth, and ninth (WWC's fourth) assignments of error must be  
7 modified. Pursuant to the court's direction, petitioners' second, fourth, and  
8 ninth (WWC's fourth) assignments of error are denied.

9 Our next task is to determine the appropriate disposition of this appeal  
10 based on assignments of error that we sustained and that were either affirmed  
11 or not challenged on appeal. These consist of petitioners' first, sixth and  
12 seventh assignments of error, and WWC's first and second assignment of error,  
13 subassignment (iii), which we sustained or sustained in part. These  
14 assignments and subassignments of error concern insufficient findings or  
15 evidence, or misconstructions of law that do not support a conclusion that the  
16 decision is prohibited as a matter of law. Accordingly, the appropriate  
17 disposition of this appeal under OAR 661-010-0071 is remand. OAR 661-010-  
18 0071(2)(a), (b) and (d).<sup>1</sup>

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<sup>1</sup> OAR 661-010-0071 provides, in relevant part:

“(1) The Board shall reverse a land use decision when:

“\* \* \* \* \*

1 The city's decision is remanded.

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“(c) The decision violates a provision of applicable law and is prohibited as a matter of law.

“(2) The Board shall remand a land use decision for further proceedings when:

“(a) The findings are insufficient to support the decision, except as provided in ORS 197.835(11)(b);

“(b) The decision is not supported by substantial evidence in the whole record; [or]

“\* \* \* \* \*

“(d) The decision improperly construes the applicable law, but is not prohibited as a matter of law[.]”