



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

12/17/2009

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Gold Beach Plan Amendment
DLCD File Number 001-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Tuesday, December 29, 2009

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Jodi Fritts, City of Gold Beach
Gloria Gardiner, DLCD Urban Planning Specialist
Dave Perry, DLCD Regional Representative

<paa> YA/I

Notice of Adoption

THIS FORM **MUST BE MAILED** TO DLCD
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18

In person electronic mailed

DATE STAMP

DEPT OF

DEC 10 2009

LAND CONSERVATION
AND DEVELOPMENT

For DLCD Use Only

Jurisdiction: **City of Gold Beach**

Local file number: **GB CP/Z-0901**

Date of Adoption: **Nov 11, 2009**

Date Mailed: **Dec 7, 2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: 3/23/2009

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

The City adopted a formal line to delineate the common boundary between the Beaches and Dunes Conservation zone and the Commercial zone for a portion of the City's oceanfront parcels.

Does the Adoption differ from proposal? Please select one

Yes, I don't think we actually had a proposal in March we just notified you that we were underway.

Plan Map Changed from:

to:

Zone Map Changed from: Conservation

to: Commercial

Location: most parcels south of the fairgrounds to Sebastian Shores

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

OPRD

Local Contact: Jodi Fritts, Associate Planner
Address: Curry Co Public Services PO Box 746
City: Gold Beach Zip: 97444

Phone: (541) 247-3263 Extension:
Fax Number: 541-247-4579
E-mail Address: frittsj@co.curry.or.us

ADOPTION SUBMITTAL REQUIREMENTS

This form **must be mailed** to DLCD **within 5 working days after the final decision**
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing **larry.french@state.or.us**.
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **<http://www.lcd.state.or.us/>**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **larry.french@state.or.us** - **Attention: Plan Amendment Specialist.**

ORDINANCE NO 627

**AN ORDINANCE AMENDING THE CITY OF GOLD BEACH COMPREHENSIVE
PLAN AND ZONING MAP REGARDING THE LOCATION OF THE BEACHES
AND DUNES (8-CN) CONSERVATION ZONE BOUNDARY**

WHEREAS: Significant ambiguity has existed regarding the precise location of the common boundary between the Commercial (4-C) and Beaches and Dunes Conservation (8-CN) zones; and

WHEREAS: The City Council desires to resolve the ambiguity and define the line between these zones in order to provide for a mechanism to accurately locate the Beaches and Dunes Conservation zone on individual properties; and

WHEREAS: The City Council desires to comply with the requirements of Statewide Planning Goal 18 in determining the common boundary line and still allow for reasonable economic development of the subject properties; and

WHEREAS: The City Council directed the Planning Commission to formulate a recommendation to the Council regarding positioning of the common boundary; and

WHEREAS: Following public hearings which involved examination of evidence in the form of: geologic hazard assessment reports; testimony from interested parties, both oral and written; direction from state agency officials; and review of existing zoning maps, the Planning Commission formulated a written recommendation which was forwarded to the City Council in June; and

WHEREAS: The City Council reviewed the entire Planning Commission record, held additional public hearings and accepted additional written and oral testimony regarding this matter; and

WHEREAS: Following discussion and deliberation, the City Council voted to accept and approve the Planning Commission recommendation regarding the surveyable location of the common boundary between the Commercial (4-C) and Beaches and Dunes (8-CN) zones;

THE CITY OF GOLD BEACH ORDAINS AS FOLLOWS:

Section 1. The City Council accepts and adopts the findings and recommendations of the Planning Commission contained in its June, 2009, "Recommendation to the Gold Beach City Council by the City of Gold Beach Planning Commission" as the basis for this decision in determining the location of the Conservation Zone boundary.

Section 2. Location of Boundary of the Conservation Zone.

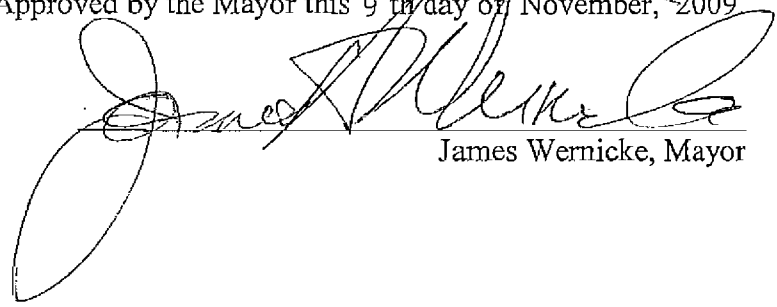
(1) Except as otherwise provided in subsection (2) of this section, the easterly edge of the boundary between the Commercial (4-C) and Conservation (8-CN) zones for properties south of the Curry County Fairgrounds and north of the Sebastian Shores development will be determined as being one hundred (100) feet directly east of the surveyed statutory Vegetation Line. A map of the amended line is attached as EXHIBIT A, which is incorporated herein by reference and adopted as an amendment of the Gold Beach Zoning Map as provided in sections 1.060 and 1.070 of the Gold Beach Zoning Ordinance.

(2) Notwithstanding the provisions of subsection (1) of this section, the following described properties shall retain, as the boundary between the Commercial and Conservation zones, the boundary as previously determined by the City of Gold Beach, Department of Land Conservation (DLCD) and Parks and Recreation Department (OPRD) staff, specifically:

- (a) tax lot 3715-01DC-00301, currently owned by Robert & David Snazuk;
- (b) tax lot 3715-01DC-00302, currently the South Beach Park and Visitor Center; and
- (c) tax lots 3715-01DB-01214, 01215, and 01217 currently owned by Gold Beach 15 LLC.

Passed by the City Council of the City of Gold Beach, County of Curry, State of Oregon, this 9th day of November, 2009.

Approved by the Mayor this 9th day of November, 2009



James Wernicke, Mayor

ATTEST:



Ellen Barnes, City Administrator

DATE: First Reading 10/12/09 ayes 3 nays 1 absent

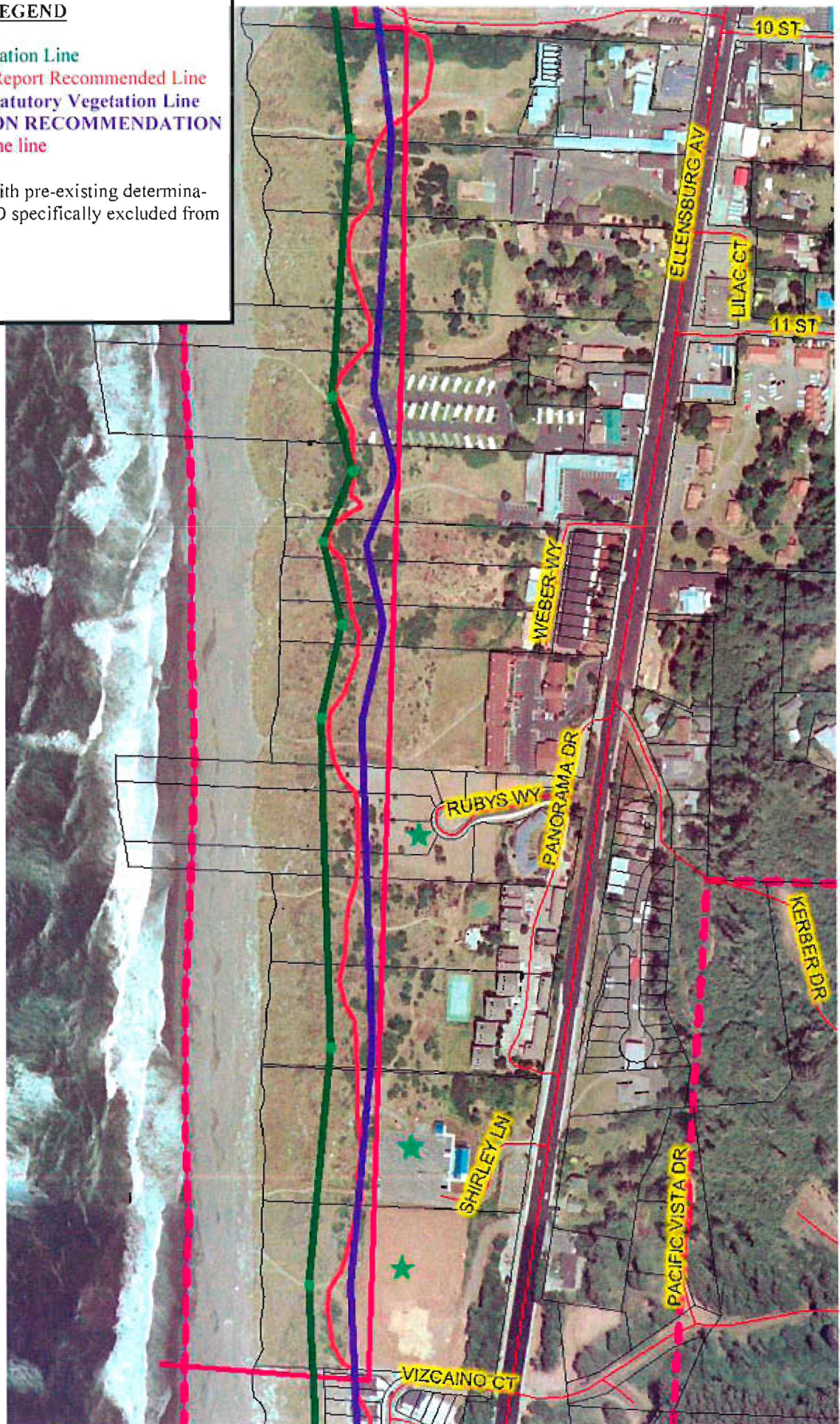
Second Reading 11/9/09 ayes 4 nays 1 absent

MAP LEGEND

- Green Line: Statutory Vegetation Line
- Red Line: 2003 Technical Report Recommended Line
- Purple: 100' offset from Statutory Vegetation Line
- PLANNING COMMISSION RECOMMENDATION**
- Hot Pink: Current scaled zone line

Green Stars *:** Parcels with pre-existing determinations from DLCD and OPRD specifically excluded from PC Recommendation

1" = 400' (+/-)



NOTICE OF ORDINANCE ADOPTION

Date of Notice: December 8, 2009

After almost a year of public input, the City Council adopted Ordinance 627 which amended the City of Gold Beach Comprehensive Plan and Zoning map regarding the location of the Beaches and Dunes (8-CN) Conservation Zone Boundary. The first reading of Ordinance 627 was on October 12, 2009, and the second and final reading was on November 9, 2009. The ordinance became effective upon the signing of the ordinance by the Mayor on November 9, 2009.

Pursuant to ORS 197.615, you are receiving a copy of this notice because you participated in the public hearing process regarding this ordinance. Attached to this notice is a list of all participating parties and a copy of the adopted ordinance. Since you participated in the hearing process you are entitled to appeal this matter to the Land Use Board of Appeals under the provisions of ORS 197.830 to 197.845 (attached). The appeal must be filed with LUBA within 21 days of the date of this notice. The final date to file an appeal with LUBA is:

Tuesday, December 29, 2009

If you have any questions regarding this notice or the Ordinance 627 please contact:

Jodi Fritts, Associate Planner
Curry County Public Services
Courthouse Annex
PO Box 746
Gold Beach, OR 97444
541-247-3263
frittsj@co.curry.or.us

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WHEREAS: The City Council directed the Planning Commission to formulate a recommendation to the Council regarding positioning of the common boundary; and

WHEREAS: Following public hearings which involved examination of evidence in the form of: geologic hazard assessment reports; testimony from interested parties, both oral and written; direction from state agency officials; and review of existing zoning maps, the Planning Commission formulated a written recommendation which was forwarded to the City Council in June; and

WHEREAS: The City Council reviewed the entire Planning Commission record, held additional public hearings and accepted additional written and oral testimony regarding this matter; and

WHEREAS: Following discussion and deliberation, the City Council voted to accept and approve the Planning Commission recommendation regarding the surveyable location of the common boundary between the Commercial (4-C) and Beaches and Dunes (8-CN) zones;

THE CITY OF GOLD BEACH ORDAINS AS FOLLOWS:

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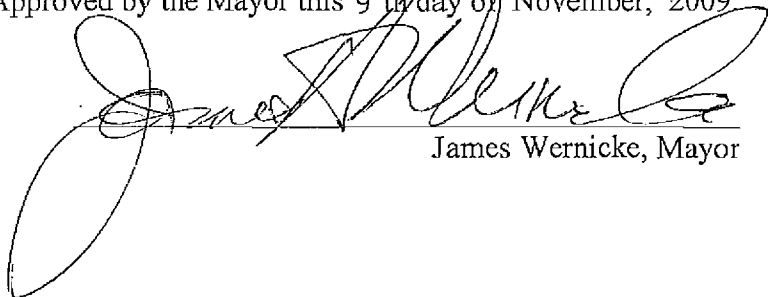
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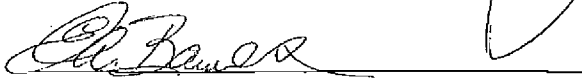
Passed by the City Council of the City of Gold Beach, County of Curry, State of Oregon, this 9th day of November, 2009.

Approved by the Mayor this 9th day of November, 2009



James Wernicke, Mayor

ATTEST:



Ellen Barnes, City Administrator

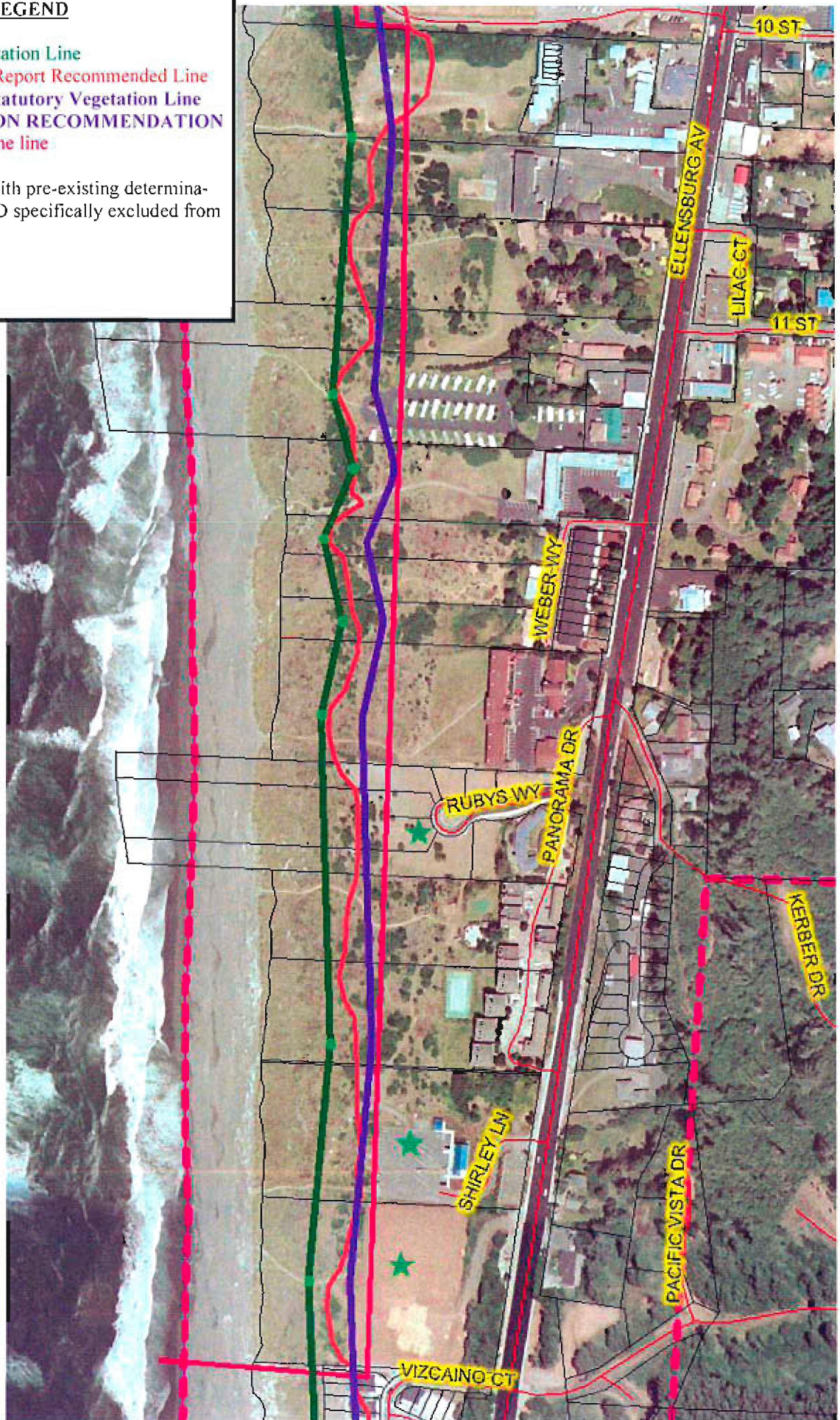
DATE: First Reading 10/12/09 ayes 3 nays 1 absent
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Gene & Laura Pranger
596 Cascade Ct
Alpine, UT 84004

Don & Cindy Swan
PO Box 615
Gold Beach, OR 97444

Ted & Keri Eady
18208 Hwy 126
Sisters, OR 97759

Stephen Deal for
Agatha Weber
PO Box 114
Gold Beach, OR 97444

Dauna Roberts
PO Box 1284
Gold Beach, OR 97444

Chinook River LLC
189 Littrell Dr
Medford, OR 97504

Baek & Sung Oh
29232 Ellensburg Ave
Gold Beach, OR 97444

Gold Beach 15 LLC
PO Box 2102
Sisters, OR 97759

Ocean Panorama Condos
Homeowners Association
29134 Ellensburg Ave
Gold Beach, OR 97444

David & Robert Snazuk
PO Box 1096
Gold Beach, OR 97444

Jim Freedman
PO Box 1732
Gold Beach, OR 97444

Jon Younce
Pacific Reef
29362 Ellensburg Ave
Gold Beach, OR 97444

James Gardner
PO Box 1286
Gold Beach, OR 97444

Rogue River Lodge
PO Box 189
Wedderburn, OR 97491

Zach Mittge
200 Forum Building
777 High St
Eugene, OR 97401

Carla Rose Toole-Jackson
29212 Ellensburg Avenue
Gold Beach, OR 97444

Paul R. Brousseau
32101 North Chantrelle Lane
Gold Beach, OR 97444

Miss Bernette
PO Box 974
Gold Beach, OR 97444

Daniel Oh
29232 S. Ellensburg Avenue
Gold Beach, OR 97444

Dann Hauser
2401 Pinebrook Circle
Medford, OR 97504

Larry Kammer
PO Box 88
Gold Beach, OR 97444

David Koch
PO Box 1006
North Bend, OR 97459

Lester Prokopezak
94445 Riley Lane
Gold Beach, OR 97444

Jim Gardner
PO Box 1286
Gold Beach, OR 97444

Angela Haralson
Po Box 1887
Gold Beach, OR 97444

Jim Sweeney
PO Box 482
Gold Beach, OR 97444

Barrett Edgar
PO Box 210
Wedderburn, OR 974

Bob Busch
97832 S. Bank Chetco Road
Brookings, OR 97415

Ron Crook
25536 Arch Rock Place
Pistol River, OR 97444

Mark Rasmussen
97137 North Bank Rogue
Gold Beach, OR 97444

Bill Matthey
PO Box 1287
Gold Beach, OR 97444

Tamie Kaufman
29317 Melody Lane
Gold Beach, OR 97444

Candace Perryman
PO Box 323
Gold Beach, OR 97444

Toni Foss
29693 Park Drive
Gold Beach, OR 97444

Stephen Deal
94090 Weber Way
Gold Beach, OR 97444

OPRD
Calum Stevenson
89814 Cape Arago Hwy
Coos Bay, OR 97420

DLCD
Dave Perry
810 SW Alder Street, Suite B
Newport, OR 97365

197.830 Review procedures; standing; fees; deadlines; rules; issues subject to review; attorney fees and costs; publication of orders; mediation. (1) Review of land use decisions or limited land use decisions under ORS 197.830 to 197.845 shall be commenced by filing a notice of intent to appeal with the Land Use Board of Appeals.

(2) Except as provided in ORS 197.620 (1) and (2), a person may petition the board for review of a land use decision or limited land use decision if the person:

(a) Filed a notice of intent to appeal the decision as provided in subsection (1) of this section; and

(b) Appeared before the local government, special district or state agency orally or in writing.

(3) If a local government makes a land use decision without providing a hearing, except as provided under ORS 215.416 (11) or 227.175 (10), or the local government makes a land use decision that is different from the proposal described in the notice of hearing to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(4) If a local government makes a land use decision without a hearing pursuant to ORS 215.416 (11) or 227.175 (10):

(a) A person who was not provided mailed notice of the decision as required under ORS 215.416 (11)(c) or 227.175 (10)(c) may appeal the decision to the board under this section within 21 days of receiving actual notice of the decision.

(b) A person who is not entitled to notice under ORS 215.416 (11)(c) or 227.175 (10)(c) but who is adversely affected or aggrieved by the decision may appeal the decision to the board under this section within 21 days after the expiration of the period for filing a local appeal of the decision established by the local government under ORS 215.416 (11)(a) or 227.175 (10)(a).

(c) A person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may appeal the decision to the board under this section within 21 days of receiving actual notice of the nature of the decision, if the mailed notice of the decision did not reasonably describe the nature of the decision.

(d) Except as provided in paragraph (c) of this subsection, a person who receives mailed notice of a decision made without a hearing under ORS 215.416 (11) or 227.175 (10) may not appeal the decision to the board under this section.

(5) If a local government makes a limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final actions, a person adversely affected by the decision may appeal the decision to the board under this section:

(a) Within 21 days of actual notice where notice is required; or

(b) Within 21 days of the date a person knew or should have known of the decision where no notice is required.

(6)(a) Except as provided in paragraph (b) of this subsection, the appeal periods described in subsections (3), (4) and (5) of this section shall not exceed three years after the date of the decision.

(b) If notice of a hearing or an administrative decision made pursuant to ORS 197.195 or 197.763 is required but has not been provided, the provisions of paragraph (a) of this subsection do not apply.

(7)(a) Within 21 days after a notice of intent to appeal has been filed with the board under subsection (1) of this section, any person may intervene in and be made a party to the review proceeding upon a showing of compliance with subsection (2) of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, persons who may intervene in and be made a party to the review proceedings, as set forth in subsection (1) of this section, are:

(A) The applicant who initiated the action before the local government, special district or state

agency; or

(B) Persons who appeared before the local government, special district or state agency, orally or in writing.

(c) Failure to comply with the deadline set forth in paragraph (a) of this subsection shall result in denial of a motion to intervene.

(8) If a state agency whose order, rule, ruling, policy or other action is at issue is not a party to the proceeding, it may file a brief with the board as if it were a party. The brief shall be due on the same date the respondent's brief is due.

(9) A notice of intent to appeal a land use decision or limited land use decision shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final. A notice of intent to appeal plan and land use regulation amendments processed pursuant to ORS 197.610 to 197.625 shall be filed not later than 21 days after notice of the decision sought to be reviewed is mailed or otherwise submitted to parties entitled to notice under ORS 197.615. Failure to include a certificate of mailing with the notice mailed under ORS 197.615 shall not render the notice defective. Copies of the notice of intent to appeal shall be served upon the local government, special district or state agency and the applicant of record, if any, in the local government, special district or state agency proceeding. The notice shall be served and filed in the form and manner prescribed by rule of the board and shall be accompanied by a filing fee of \$175 and a deposit for costs to be established by the board. If a petition for review is not filed with the board as required in subsections (10) and (11) of this section, the filing fee and deposit shall be awarded to the local government, special district or state agency as cost of preparation of the record.

(10)(a) Within 21 days after service of the notice of intent to appeal, the local government, special district or state agency shall transmit to the board the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding the record may be shortened. The board may require or permit subsequent corrections to the record; however, the board shall issue an order on a motion objecting to the record within 60 days of receiving the motion.

(b) Within 10 days after service of a notice of intent to appeal, the board shall provide notice to the petitioner and the respondent of their option to enter into mediation pursuant to ORS 197.860. Any person moving to intervene shall be provided such notice within seven days after a motion to intervene is filed. The notice required by this paragraph shall be accompanied by a statement that mediation information or assistance may be obtained from the Department of Land Conservation and Development.

(11) A petition for review of the land use decision or limited land use decision and supporting brief shall be filed with the board as required by the board under subsection (13) of this section.

(12) The petition shall include a copy of the decision sought to be reviewed and shall state:

(a) The facts that establish that the petitioner has standing.

(b) The date of the decision.

(c) The issues the petitioner seeks to have reviewed.

(13)(a) The board shall adopt rules establishing deadlines for filing petitions and briefs and for oral argument.

(b) At any time subsequent to the filing of a notice of intent and prior to the date set for filing the record, or, on appeal of a decision under ORS 197.610 to 197.625, prior to the filing of the respondent's brief, the local government or state agency may withdraw its decision for purposes of reconsideration. If a local government or state agency withdraws an order for purposes of reconsideration, it shall, within such time as the board may allow, affirm, modify or reverse its decision. If the petitioner is dissatisfied with the local government or agency action after withdrawal for purposes of reconsideration, the petitioner may refile the notice of intent and the review shall proceed upon the revised order. An amended notice of intent shall not be required if the local government or state agency, on reconsideration, affirms the order or modifies the order with only minor changes.

(14) The board shall issue a final order within 77 days after the date of transmittal of the record. If the order is not issued within 77 days the applicant may apply in Marion County or the circuit court of the

county where the application was filed for a writ of mandamus to compel the board to issue a final order.

(15)(a) Upon entry of its final order the board may, in its discretion, award costs to the prevailing party including the cost of preparation of the record if the prevailing party is the local government, special district or state agency whose decision is under review. The deposit required by subsection (9) of this section shall be applied to any costs charged against the petitioner.

(b) The board shall also award reasonable attorney fees and expenses to the prevailing party against any other party who the board finds presented a position without probable cause to believe the position was well-founded in law or on factually supported information.

(16) Orders issued under this section may be enforced in appropriate judicial proceedings.

(17)(a) The board shall provide for the publication of its orders that are of general public interest in the form it deems best adapted for public convenience. The publications shall constitute the official reports of the board.

(b) Any moneys collected or received from sales by the board shall be paid into the Board Publications Account established by ORS 197.832.

(18) Except for any sums collected for publication of board opinions, all fees collected by the board under this section that are not awarded as costs shall be paid over to the State Treasurer to be credited to the General Fund. [1983 c.827 §31; 1985 c.119 §3; 1987 c.278 §1; 1987 c.729 §16; 1989 c.761 §12; 1991 c.817 §7; 1993 c.143 §1; 1993 c.310 §1; 1995 c.160 §1; 1995 c.595 §3; 1997 c.187 §1; 1997 c.452 §1; 1999 c.255 §2; 1999 c.348 §17; 1999 c.621 §3; 2003 c.791 §28; 2003 c.793 §6]

197.831 Clear and objective approval standards; burden of proof. In a proceeding before the Land Use Board of Appeals or on judicial review from an order of the board that involves an ordinance required to contain clear and objective approval standards for a permit under ORS 197.307 and 227.175, the local government imposing the provisions of the ordinance shall demonstrate that the approval standards are capable of being imposed only in a clear and objective manner. [1999 c.357 §5]

197.832 Board Publications Account. The Board Publications Account is established in the General Fund. All moneys in the account are appropriated continuously to the Land Use Board of Appeals to be used for paying expenses incurred by the board under ORS 197.830 (17). Disbursements of moneys from the account shall be approved by a member of the board. [1985 c.119 §5; 1989 c.761 §24; 1995 c.595 §17; 1997 c.436 §3; 1999 c.257 §4; 1999 c.621 §6]

197.835 Scope of review; rules. (1) The Land Use Board of Appeals shall review the land use decision or limited land use decision and prepare a final order affirming, reversing or remanding the land use decision or limited land use decision. The board shall adopt rules defining the circumstances in which it will reverse rather than remand a land use decision or limited land use decision that is not affirmed.

(2)(a) Review of a decision under ORS 197.830 to 197.845 shall be confined to the record.

(b) In the case of disputed allegations of standing, unconstitutionality of the decision, ex parte contacts, actions described in subsection (10)(a)(B) of this section or other procedural irregularities not shown in the record that, if proved, would warrant reversal or remand, the board may take evidence and make findings of fact on those allegations. The board shall be bound by any finding of fact of the local government, special district or state agency for which there is substantial evidence in the whole record.

(3) Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable.

(4) A petitioner may raise new issues to the board if:

(a) The local government failed to list the applicable criteria for a decision under ORS 197.195 (3)(c) or 197.763 (3)(b), in which case a petitioner may raise new issues based upon applicable criteria that were omitted from the notice. However, the board may refuse to allow new issues to be raised if it finds that the issue could have been raised before the local government; or

(b) The local government made a land use decision or limited land use decision which is different from the proposal described in the notice to such a degree that the notice of the proposed action did not reasonably describe the local government's final action.

(5) The board shall reverse or remand a land use decision not subject to an acknowledged comprehensive plan and land use regulations if the decision does not comply with the goals. The board shall reverse or remand a land use decision or limited land use decision subject to an acknowledged comprehensive plan or land use regulation if the decision does not comply with the goals and the Land Conservation and Development Commission has issued an order under ORS 197.320 or adopted a new or amended goal under ORS 197.245 requiring the local government to apply the goals to the type of decision being challenged.

(6) The board shall reverse or remand an amendment to a comprehensive plan if the amendment is not in compliance with the goals.

(7) The board shall reverse or remand an amendment to a land use regulation or the adoption of a new land use regulation if:

(a) The regulation is not in compliance with the comprehensive plan; or

(b) The comprehensive plan does not contain specific policies or other provisions which provide the basis for the regulation, and the regulation is not in compliance with the statewide planning goals.

(8) The board shall reverse or remand a decision involving the application of a plan or land use regulation provision if the decision is not in compliance with applicable provisions of the comprehensive plan or land use regulations.

(9) In addition to the review under subsections (1) to (8) of this section, the board shall reverse or remand the land use decision under review if the board finds:

(a) The local government or special district:

(A) Exceeded its jurisdiction;

(B) Failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner;

(C) Made a decision not supported by substantial evidence in the whole record;

(D) Improperly construed the applicable law; or

(E) Made an unconstitutional decision; or

(b) The state agency made a decision that violated the goals.

(10)(a) The board shall reverse a local government decision and order the local government to grant approval of an application for development denied by the local government if the board finds:

(A) Based on the evidence in the record, that the local government decision is outside the range of discretion allowed the local government under its comprehensive plan and implementing ordinances; or

(B) That the local government's action was for the purpose of avoiding the requirements of ORS 215.427 or 227.178.

(b) If the board does reverse the decision and orders the local government to grant approval of the application, the board shall award attorney fees to the applicant and against the local government.

(11)(a) Whenever the findings, order and record are sufficient to allow review, and to the extent possible consistent with the time requirements of ORS 197.830 (14), the board shall decide all issues presented to it when reversing or remanding a land use decision described in subsections (2) to (9) of this section or limited land use decision described in ORS 197.828 and 197.195.

(b) Whenever the findings are defective because of failure to recite adequate facts or legal conclusions or failure to adequately identify the standards or their relation to the facts, but the parties identify relevant evidence in the record which clearly supports the decision or a part of the decision, the board shall affirm the decision or the part of the decision supported by the record and remand the remainder to the local government, with direction indicating appropriate remedial action.

(12) The board may reverse or remand a land use decision under review due to ex parte contacts or bias resulting from ex parte contacts with a member of the decision-making body, only if the member of

the decision-making body did not comply with ORS 215.422 (3) or 227.180 (3), whichever is applicable.

(13) Subsection (12) of this section does not apply to reverse or remand of a land use decision due to ex parte contact or bias resulting from ex parte contact with a hearings officer.

(14) The board shall reverse or remand a land use decision or limited land use decision which violates a commission order issued under ORS 197.328.

(15) In cases in which a local government provides a quasi-judicial land use hearing on a limited land use decision, the requirements of subsections (12) and (13) of this section apply.

(16) The board may decide cases before it by means of memorandum decisions and shall prepare full opinions only in such cases as it deems proper. [1983 c.827 §§32,32a; 1985 c.811 §15; 1987 c.729 §2; 1989 c.648 §57; 1989 c.761 §13; 1991 c.817 §13; 1995 c.595 §§3a,5; 1995 c.812 §5; 1997 c.844 §3; 1999 c.621 §7]

197.840 Exceptions to deadline for final decision. (1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830 (14):

(a) Any period of delay up to 120 days resulting from the board's deferring all or part of its consideration of a petition for review of a land use decision or limited land use decision that allegedly violates the goals if the decision has been:

(A) Submitted for acknowledgment under ORS 197.251; or

(B) Submitted to the Department of Land Conservation and Development as part of a periodic review work program task pursuant to ORS 197.628 to 197.650 and not yet acknowledged.

(b) Any period of delay resulting from a motion, including but not limited to, a motion disputing the constitutionality of the decision, standing, ex parte contacts or other procedural irregularities not shown in the record.

(c) Any reasonable period of delay resulting from a request for a stay under ORS 197.845.

(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member's own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

(2) No period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section shall be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall consider in determining whether to grant a continuance under subsection (1)(d) of this section in any case are as follows:

(a) Whether the failure to grant a continuance in the proceeding would be likely to make a continuation of the proceeding impossible or result in a miscarriage of justice; or

(b) Whether the case is so unusual or so complex, due to the number of parties or the existence of novel questions of fact or law, that it is unreasonable to expect adequate consideration of the issues within the 77-day time limit.

(3) No continuance under subsection (1)(d) of this section shall be granted because of general congestion of the board calendar or lack of diligent preparation or attention to the case by any member of the board or any party.

(4) The board may defer all or part of its consideration of a land use decision or limited land use decision described in subsection (1)(a) of this section until the Land Conservation and Development Commission has disposed of the acknowledgment proceeding described in subsection (1)(a) of this section. If the board deferred all or part of its consideration of a decision under this subsection, the board may grant a stay of the comprehensive plan provision, land use regulation, limited land use decision or land use decision under ORS 197.845. [1983 c.827 §33; 1989 c.761 §25; 1991 c.612 §19; 1991 c.817

§27; 1995 c.595 §18; 1999 c.348 §18; 1999 c.621 §8]

197.845 Stay of decision being reviewed; criteria; undertaking; conditions; limitations. (1) Upon application of the petitioner, the board may grant a stay of a land use decision or limited land use decision under review if the petitioner demonstrates:

(a) A colorable claim of error in the land use decision or limited land use decision under review; and

(b) That the petitioner will suffer irreparable injury if the stay is not granted.

(2) If the board grants a stay of a quasi-judicial land use decision or limited land use decision approving a specific development of land, it shall require the petitioner requesting the stay to give an undertaking in the amount of \$5,000. The undertaking shall be in addition to the filing fee and deposit for costs required under ORS 197.830 (9). The board may impose other reasonable conditions such as requiring the petitioner to file all documents necessary to bring the matter to issue within specified reasonable periods of time.

(3) If the board affirms a quasi-judicial land use decision or limited land use decision for which a stay was granted under subsections (1) and (2) of this section, the board shall award reasonable attorney fees and actual damages resulting from the stay to the person who requested the land use decision or limited land use decision from the local government, special district or state agency, against the person requesting the stay in an amount not to exceed the amount of the undertaking.

(4) The board shall limit the effect of a stay of a legislative land use decision to the geographic area or to particular provisions of the legislative decision for which the petitioner has demonstrated a colorable claim of error and irreparable injury under subsection (1) of this section. The board may impose reasonable conditions on a stay of a legislative decision, such as the giving of a bond or other undertaking or a requirement that the petitioner file all documents necessary to bring the matter to issue within a specified reasonable time period. [1983 c.827 §34; 1989 c.761 §22; 1991 c.817 §28; 1999 c.621 §9]

CURRY COUNTY PUBLIC SERVICES
P.O. BOX 746
GOLD BEACH, OR 97444

Larry Frenck
DUE
635 Capital St NE Suite 150
Salem OR 97301

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