

January 24, 2011

INTEROFFICE MEMORANDUM

TO: Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman

FROM: Kathryn Beaumont
Linly Rees
City Attorney's Office

SUBJECT: LUBA decision on appeal of River Plan/North Reach

Late Friday we received the Land Use Board of Appeals' decision in the appeal of the River Plan/North Reach filed by Gunderson, LLC, the Working Waterfront Coalition and Schnitzer Steel Industries, Inc. LUBA rejected many of the petitioners' challenges, but ultimately remanded the River Plan to the City, agreeing with the petitioners that the City failed to show that key plan provisions would not negatively affect the City's industrial land supply.

LUBA disagreed with the petitioners' claims that the River Plan/violated the statewide planning goals addressing transportation (Goal 12) and the Willamette River Greenway (Goal 15). Similarly, LUBA upheld the adequacy of the natural resources inventory that supported application of environmental zones within the North Reach. Finally, LUBA rejected the petitioners' arguments that the Plan was inconsistent with a number of comprehensive plan policies concerning industrial lands and the City's industrial sanctuary zones.

The key flaw LUBA identified, and the basis for LUBA's remand, was inadequate evidence to refute the petitioners' claim that the River Plan diminishes the City's industrial land supply and violates Goal 9, the statewide planning goal addressing economic development. In particular, LUBA agreed with the petitioners that several elements of the River Plan apply to industrial land and remove at least some of it from industrial use, specifically: (1) the mitigation planting requirement, (2) the vegetation enhancement standard, (3) the environmental conservation (c) and protection (p) zones, and (4) the designated greenway trail. Additionally,

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LUBA held the City's findings that these requirements would not negatively affect the City's industrial land supply were not supported by substantial evidence in the record. The City relied on two economic opportunity analyses, one adopted in 1989 and an unadopted draft update prepared in 2009. LUBA found neither of these analyses adequately addressed the requirements of Goal 9 and its implementing rule.

LUBA's decision is appealable to the Oregon Court of Appeals. The appeal period is 21 days from the date of LUBA's decision and expires on February 11, 2010.

A copy of LUBA's decision is attached for your review. We are happy to answer any questions you may have about this decision and options for next steps available to the City.

KB:KSB

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