

Land Use Board of Appeals

Budget Presentation

February 15, 2021

Michelle Gates Rudd, Board Chair

Agency Mission

240 Cities

36 Counties

Special Districts

State Agencies

LUBA's mission is to provide a simplified appeal process, a speedy resolution of land use disputes and a consistent and correct interpretation of state and local land use laws.

Agency calls "balls and strikes." Agency does not make policy.

Guiding Principles

Two critical principles:

Land use decisions should be **consistent** with the state and local **land use planning legislation** that they were adopted to implement.

Where there is a dispute concerning whether a land use decision complies with applicable land use planning legislation, that dispute should be **resolved efficiently** and **according to sound principles of judicial review**.

This allows land use proposals that comply with the law to go forward without unreasonable delay and allows land use proposals that do not comply with applicable law to be amended or terminated in a timely and efficient manner.

Historical Perspective: 1979 Senate Bill 435

- Created LUBA
- Replaced writ of review in circuit court
- Exclusive jurisdiction to review “land use decisions”
- Defined “land use decision”
- 3 Board Members
- Required to be attorneys/members of the Oregon State Bar

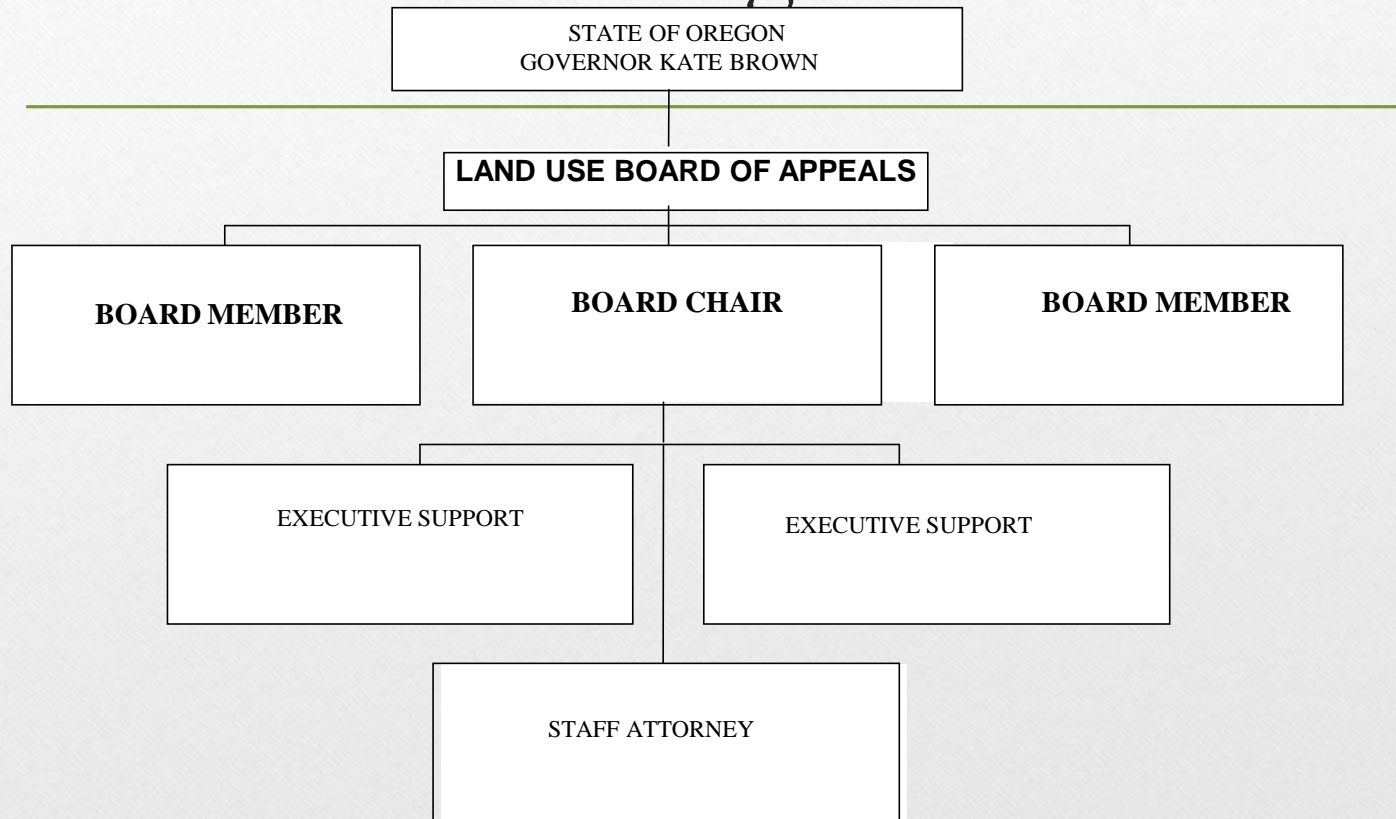
Changes Over Time

- Since LUBA was created, shift in basic structure of economy to proposals at urban fringe
 - Increased conflicts between urban uses and resource uses
 - More complex regulations in urban areas
- De-emphasis on Periodic Review by DLCD (Reviewed by LCDC)
- Concurrent shift to complex Post-Acknowledgement Plan Amendments (Reviewed by LUBA)
- Board Member turnover 2018-19/Two Board Member retirements

Budget Supports Mission and Consistent with Principles

- Maintains current staffing and adds an additional staff attorney
- Supports achieving Performance Measures (PMs)

LUBA's Organization

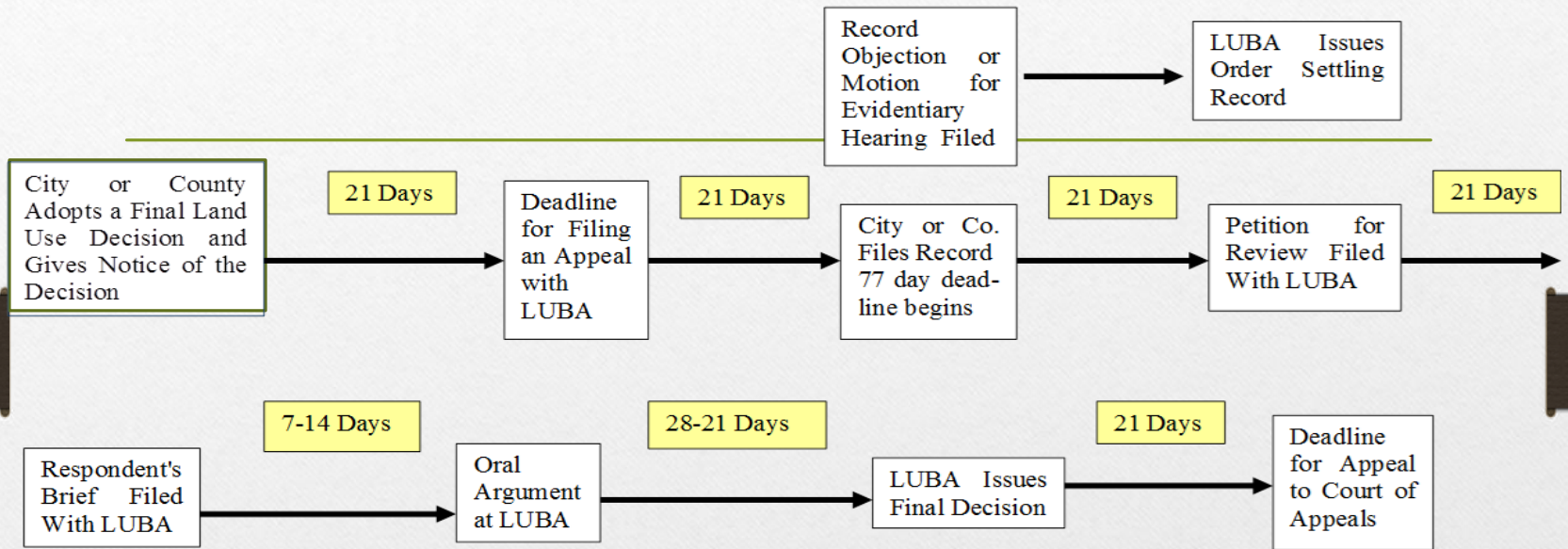


LUBA Process

LUBA review is designed to require approximately 98 days from the time the appeal is filed:

- “Notice of Intent to Appeal” filed with LUBA
- Local Government files record – **Day 21**
- Petition for Review filed – **Day 42**
- Respondent’s Brief filed – **Day 63**
- Oral argument at LUBA – **Day 77**
- LUBA issues Final Opinion – **Day 98**

LUBA REVIEW OF LAND USE DECISIONS



Performance Measure 1

Timely Resolve Appeals

- Issue 90% of final opinions within statutory deadlines or with no more than a 7-day stipulated delay.

PM #1 (cont'd)

- Factors affecting performance
 - Caseload fluctuations
 - Staffing (COVID related absences and turnover)
 - Complexity of appeals

PM1	2017	2018	2019	2020
Target 90%	82	89	73	64

Performance Measure 2

Timely Settle the Record

- Objections resolved within 60 days of receipt
- Target is 95% of record objections resolved within 60 days

PM2	2017	2018	2019	2020
Target 95%	85	96	85	56

Performance Measure 3

Resolve All Issues

- Decide all legal issues that are presented in appeals.
- This legislative directive increases the chances that the local government will be able to adopt a decision on remand that finally resolves all legal issues.
- Target is 100%.

PM3	2017	2018	2019	2020
Target 100%	100	100	100	100

Performance Measure 4

Decide Appeals Correctly

- LUBA opinions should be sustained on appeal to the Court of Appeals and the Supreme Court.
- The central goal of speedy resolution of land use disputes is furthered when very few LUBA decisions are appealed to the appellate courts and most of the decisions that are appealed are affirmed by the appellate courts.

PM #4 (cont'd)

- Factors affecting performance
 - Caseload
 - Staffing
 - New statutory and administrative enactments

- | PM 4 | 2017 | 2018 | 2019 | 2020 |
|----------------|------|------|------|------|
| Target
100% | 83 | 93 | 94 | 91 |

Performance Measure #5

Customer Service

- The nature of appellate review means that in almost all cases some parties will prevail, and some parties will not.
- This means that in almost all cases some parties to the appeal will not be satisfied with the outcome of that appeal.
- LUBA strives to conduct LUBA's review in a manner that leaves participants satisfied with the review process, for example: the assistance LUBA's staff provide to parties; making information on LUBA's procedures and case law available, timely response to questions, etc.

PM # 5 (cont'd)

- Six Measurement Variables
 - Accuracy of information given
 - Availability of information
 - Expertise
 - Helpfulness
 - Timeliness
 - Overall

PM # 5 (cont'd)

- LUBA met 90% target for all variables during the 2020 except “helpful,” which was 88% and “availability of information, which was 83%.
- The Staff Attorney positions are a factor in this PM because the Staff Attorney is able to provide responses that LUBA Administrative Staff cannot and Board Members could not provide without raising ex parte contact concerns. Currently closed to public one day a week.

Other Agency Goals

- Provide quick and easy access to LUBA final opinions.
- Speak at attorney focused continuing legal education programs and other land use seminars; Invite law school classes to attend oral argument and after argument concluded, ask questions.
- Support land use fellowship by hosting law student interns
- Make LUBA's headnote digest available on LUBA's web page.

Other Agency Goals (cont'd)

- Cost-Containment Strategies
 - Westlaw/Lexis Contracts
 - Website improvements – Digitized early LUBA opinions
 - Local records returned, not stored
 - Electronic records accepted by LUBA from local governments
 - Electronic records for LUBA decisions appealed to the Court of Appeals
 - Archiving streamlined
 - Publications savings
 - Conference calls

Budget Drivers and Environmental Factors

- State economy
- State population growth
- Resulting impacts on number of development proposals and disputes over development
- New legislation that unsettles the existing legal framework:
Examples
 - 1993 HB 3661; Measures 37/49; Marijuana Legislation; M49 Transfer of Development Rights
 - Proposed Amendments to Housing statutes
 - Proposed Amendments to EFU statutes

COVID impacts

- COVID reimbursement requested in 2020: approx. \$25,000
- Majority of reimbursement dollars were for staff leave

COVID impacts (cont'd)

Potential impacts of COVID and variants in 2021 and beyond

- Additional staff leave
- Decreased staff efficiency due to remote work
- Decreased public access due to remote work
- Increased Board Member time addressing deficient filings
- Increased delay in receipt of record and resolution of record disputes

Proposed Legislation That May Affect LUBA

- Bills that modify allowed uses on farm and forest land
- Bills that affect housing
- Bills affecting LUBA's procedures

LUBA Fee Bill HB 2110

- Increases appeal filing fee from \$200 to \$300
- Eliminates deposit for costs of preparing the record in amount of \$200
- Last fee increase was from \$175 to \$200 in 2009
- (For comparison, filing fee for state courts is \$263 and Court of Appeals is \$391)
- Local governments often do not request an award of costs and the \$200 is returned to the petitioner.
- Current process results in administrative costs to LUBA. Under new approach, unsuccessful party would directly pay a prevailing local government that seeks reimbursement up to \$200 in costs of record preparation. LUBA would no longer be in the middle of that transaction.

Questions?

- Thank you.