

SUMMARY OF NORTH REACH COURT RULINGS

Background

The Portland City Council adopted the River Plan / North Reach in April 2010. The plan was the result of an extensive and collaborative process that sought to strengthen the industry sanctuary, enhance the environment, create better access to the river, and improve interagency coordination.

While the River Plan struck a delicate balance among its various objectives, three industrial entities were not satisfied. They wanted a plan that tipped the balance more in their favor, so Gunderson, Schnitzer and the Working Waterfront Coalition appealed City Council's decision.

Legal proceedings at the Land Use Board of Appeals, the Oregon Court of Appeals, and the Oregon Supreme Court took over two years. What follows is an update on the various rulings:

Land Use Board of Appeals—January 2011

LUBA's issued its decision on the appeal in January 2011, and supported the City on many counts, however LUBA ruled that the City's adopted economic opportunities analysis was out of date and could not be relied upon. For this reason, LUBA remanded the River Plan / North Reach to the City. Gunderson, et al. appealed several aspects of LUBA's decision to the Oregon Court of Appeals. The City Council adopted an updated EOA in fall 2012.

Court of Appeals—June 2011

The Court of Appeals issued its decision on June 22, 2011. The COA rejected most of the issues raised by the appellants, however the court concluded that LUBA overlooked industries' argument concerning the need for additional Goal 15 inventories, and sent that issue back to LUBA to address.

Significantly, the Court of Appeals rejected industries' argument that the River Plan / North Reach was inconsistent with Goal 15's requirement to protect lands committed to urban uses. The Court cited legislative intent and concluded that "the legislature's purpose in establishing the Greenway that is the subject of Goal 15 is to preserve the natural, scenic, and recreational qualities of land and

historical sites, rather than to preserve industrial and other urban uses of land, along the Willamette River. ORS 390.314(1)." The Court recognized that Goal 15 does not preclude the City from regulating urban uses within the Willamette River Greenway, as long as any changes or intensifications of uses are consistent with the goal. Gunderson et al. appealed the COA decision to the Oregon Supreme Court.

Oregon Supreme Court—November 2012

The Oregon Supreme Court issued its decision on November 8, 2012. The Supreme Court affirmed the Court of Appeals decision, and rejected industries' argument that Goal 15 limits the City's authority to regulate development in the Greenway. The Supreme Court agreed with LUBA and the Court of Appeals that "nothing in the text of Goal 15, its relevant context, or its adoption history supports the conclusion that the goal unambiguously expresses an intention to preclude local governments from regulating developments of industrial and other urban uses that do not constitute 'intensifications' or 'changes' to those uses." The Supreme Court remanded the case to LUBA for further proceedings on the Goal 15 inventories.

Land Use Board of Appeals—April 2013

The final court ruling for the North Reach / River Plan came in April 2013 when LUBA issued its decision on the Goal 15 inventories:

1. If the City expands the Greenway boundary, the City must amend the Goal 15 inventory to include the new land; and
2. The current River Plan / North Reach legislative record does not contain sufficient information to determine that the City satisfied the Goal 15 inventory requirement. LUBA explained that the City must update its Goal 15 inventory if portions of the inventory were used to develop the new code, or the City must adopt findings to explain why the Goal 15 inventory did not need to be updated.