Northwest Real Estate Forum

Goal 17: Destination Unknown

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The Land Use Board of Appeals (LUBA) issued its opinion in the Oregon Shores Conservation Coalition’s appeal on remand of Curry County’s approval of a destination resort and related subdivision approval in Oregon Shores Conservation Coalition v. Curry County, LUBA No. 2013-034 (Crook Point II). The proposed destination resort is located on a 378-acre tract zoned Forest-Grazing bounded on the west by the Pacific Ocean, on the north by Crook Point (a National Wildlife Refuge) and on the south by Boardman State Park. The application proposed an 18-hole golf course, a nine-hole golf course, golf shop, lodge, spa, interpretive center, equestrian center, 175 overnight lodging units, resort owner and employee housing, and a land division into 11 lots (10 residential and one large remainder lot).

Petitioners, Oregon Shores Conservation Coalition and Oregon Coast Alliance, appealed the decision because the County did not comply with the requirements of Goal 17 when it applied its comprehensive plan provisions. The major dispute in this second round continued to be the exact location of the “coastal shorelands” boundary, as defined by Goal 17, on the subject property. Under Goal 17, “coastal shorelands” is defined as those areas immediately adjacent to the ocean, all estuaries and associated wetlands and coastal lakes. Goal 17 requires that coastal shoreland include, at a minimum, areas subject to ocean flooding and lands within 100 feet of the ocean shore, as well as adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body.

Petitioners claimed that the County misapplied Goal 17 because the County’s decision was not supported by the applicant’s geologic report. Petitioners contended the report failed to correctly analyze the geologic hazard from cliff erosion on the property by limiting its analysis to erosion of cliff faces that occurs from ocean waves hitting the cliff faces. Petitioners successfully argued that the geologic report failed to analyze cliff erosion geologic hazards that are not the result of waves but that could still impact the ocean due to erosion from increased storm water runoff, or diversion or alteration of water courses, or wind or rain. LUBA agreed and remanded for further consideration of other geologic hazards that could impact the ocean. LUBA directed that if erosion of sea cliffs or other “adjacent areas of instability” from any source “will impact a coastal water body,” those sea cliff areas or other areas must be included in the coastal shoreland. LUBA faulted the applicant’s geologic report for excluding areas that contain sandy soils and groundwater flow that reportedly eroded the area and deposited slide materials in the ocean, as well as areas that the report characterized as “in a state of rapid erosion.”
In addition, the Petitioners challenged the County’s failure to apply the Goal 17 requirement to include the 100 foot setback area from the ocean shore as coastal shoreland. With respect to the 100 feet of ocean shore setback area included in the coastal shoreland definition, LUBA concluded the County misinterpreted the boundary. Although Goal 17 does not contain a definition of “ocean shore,” LUBA determined that the definition of the term under ORS 390.605(2) (as it applies for scenic and recreational purposes) is equally applicable to Goal 17. Therefore, Goal 17’s use of ocean shore is defined as “the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is further inland.”

The County claimed it was not required to directly apply Goal 17’s setback area because it could rely on the requirements of its acknowledged comprehensive plan. However, LUBA disagreed because the County is not permitted to adopt an interpretation of its comprehensive plan that is inconsistent with Goal 17. Because the County’s comprehensive plan provision does not exempt or take exception to the Goal 17 minimum requirement that the coastal shorelands “at least” must include “lands within 100 feet of the ocean shore” when locating the coastal shoreland boundary, LUBA held that the coastal shoreland boundary, at a minimum, must include those lands. In review of the applicant’s geologic report, LUBA concluded the report does not include any evaluation of or conclusion whether the shoreland boundary is located at least 100 feet from the ocean shore.

It is easy to imagine that the technical criticisms will continue in round three of Crook Point. Although Goal 17 is not an oft-litigated topic, any consideration of coastal development should closely consider the technical guidance of this opinion.

**Tags:** Goal 17, Golf Course, Oregon Coast Alliance, Oregon Shores Conservation