



## DESCHUTES COUNTY LEGAL COUNSEL

**DAVID DOYLE**  
Legal Counsel  
☎388-6625

**TO:** BOCC

**Date:** April 23, 2015

**RE:** Pilot Butte Canal – Historic Designation

**File No.** HS 14-1

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Attached please find the Notice of Intent to Appeal submitted to LUBA by legal counsel for the Pilot Butte Canal Preservation Alliance and Jeff Perreault. Also enclosed is a proposed Stipulated Motion to extend.

Staff seeks approval from the BOCC to sign the Stipulated Motion.

Recall that one of the primary issues in HS 14-1 was the meaning of the term “owner.” Very recently LUBA and the Court of Appeals each considered that term and have come to two different conclusions. The matter is now before the Oregon Supreme Court in the case of *Lake Oswego Preservation Society v. City of Lake Oswego*.

Staff expects that the decision in the *City of Lake Oswego* case will have direct applicability to HS 14-1 – and could, depending upon the outcome, be dispositive.

1                                   BEFORE THE LAND USE BOARD OF APPEALS  
2                                   OF THE STATE OF OREGON

3 PILOT BUTTE CANAL                    )  
4 PRESERVATION ALLIANCE and        )  
5 JEFF PERREAULT,                    )  
6                                    Petitioners,                    )  
7                                    v.                                    )  
8                                    DESCHUTES COUNTY,                )  
  Respondent.                    )

LUBA No. 2015-\_\_\_\_\_

9                                   **NOTICE OF INTENT TO APPEAL**

10                                   I.

11                   Notice is hereby given that petitioners intend to appeal a decision to deny  
12 made by the Respondent Deschutes County on April 6, 2015, in the matter of a  
13 comprehensive plan amendment to designate a segment of the Pilot Butte Canal  
14 as a Goal 5 historic resource, Deschutes County File Number 247-14-000373-HS.

15                                   II.

16                   Petitioners are represented by Carrie A. Richter and Jennifer Bragar,  
17 Garvey Schubert Barer, 121 SW Morrison Street, 11<sup>th</sup> Floor, Portland, Oregon  
18 97204, telephone: (503) 228-3939.

19                                   III.

20                   Respondent Deschutes County has as its mailing address and telephone  
21 number: P O Box 6005, Bend, Oregon 97708-6005; telephone (541) 388-6575.  
22 Deschutes County has as its legal counsel David Doyle, whose address is 1300  
23 NW Wall Street, Suite 205, Bend, Oregon 97701; telephone: (541) 388-6625.

IV.

Persons mailed written notice of the land use decision by respondent as indicated by the records are noted in Exhibit A attached hereto.

NOTICE:

Anyone designated in Paragraph IV of this Notice who desires to participate as a party in this case before the Land Use Board of Appeals must file with the Board a Motion to Intervene in this proceeding as required by OAR 661-010-0050.

DATED: April 23, 2015.

GARVEY SCHUBERT BARER

By: \_\_\_\_\_  
Carrie A. Richter, OSB #003703  
Attorney for Petitioners

