

LAND USE BOARD of APPEALS

Annual Performance Progress Report (APPR) for Fiscal Year (2013-2014)

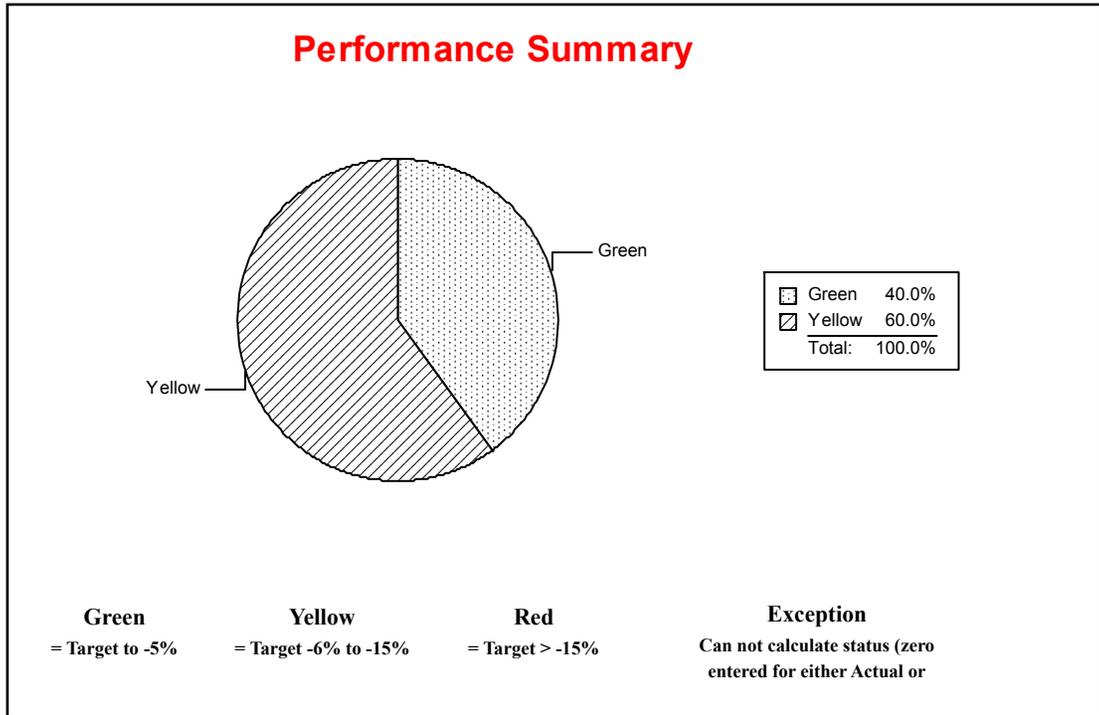
Original Submission Date: 2014

Finalize Date: 7/23/2014

2013-2014 KPM #	2013-2014 Approved Key Performance Measures (KPMs)
1	TIMELY RESOLVE APPEALS - Percentage of appeals of land use decisions that are resolved within statutory deadlines or, if all parties agree, with no more than a 7 day extension of the statutory deadline.
2	TIMELY SETTLE RECORD - Percentage of record objections that are resolved within 60 days after the record objection is received by LUBA.
3	RESOLVE ALL ISSUES - Percentage of decisions where all issues are resolved when reversing or remanding a land use decision.
4	SUSTAINED ON APPEAL - Percentage of final opinions that are sustained on appeal.
5	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall, timeliness, accuracy, helpfulness, expertise, availability of information.

New Delete	Proposed Key Performance Measures (KPM's) for Biennium 2015-2017
	Title: Rationale:

LAND USE BOARD of APPEALS		I. EXECUTIVE SUMMARY	
Agency Mission: To provide an accessible forum for resolving land use disputes quickly and efficiently and make LUBA decisions available as a decision making resource to state and local legislators, land use decision makers, property owners and the citizens of Oregon.			
Contact: Melissa M. Ryan, Board Chair		Contact Phone: 503-373-1265	
Alternate: Kelly Burgess, Paralegal		Alternate Phone: 503-373-1265	



1. SCOPE OF REPORT

KPMs address the key functions of LUBA: to quickly resolve land use disputes, and make LUBA decisions available to the public and decision makers. All key agency programs/services are addressed by key performance measures.

2. THE OREGON CONTEXT

LUBA plays a key but indirect role in the land use planning and land development processes that to a significant extent dictate the states performance in meeting targets for the preservation of agricultural and forest lands (OBM 80 and 81), targets for hours of travel delay or vehicle miles traveled (OBM 68 and 71), or low income housing (OBM 74). Many LUBA appeals concern development projects that are subject to time-limited financing. The speed and efficiency with which LUBA resolves those appeals can have a large bearing on whether those projects are ultimately successful. A significant number of LUBA appeals concern local or state transportation projects directly or land use decisions that will significantly affect the operation of transportation facilities . LUBA's ability to efficiently resolve those appeals in a timely manner can have a significant bearing on whether those projects and land development actions occur in a way that assists the state in meeting targets for these OBMs. Finally, LUBA was created to be a speedier and more accessible forum for finally resolving land use disputes. In performing that function over the years, LUBA contributes indirectly to the sense of community that comes when Oregonians feel they have had an opportunity to have their view fairly considered and addressed in an impartial and objective way.

3. PERFORMANCE SUMMARY

Between 1995 and 2000 LUBA struggled with a heavy caseload and significant personnel turnover. At its worst, LUBA was missing the 77-day statutory deadline by several months in many of its appeals. With personnel stability and some additional resources, and reduction in the number of appeals as the state economy cooled in 2000, LUBA began meeting its target for its most important performance measure , KPM #1 (Timely Resolve Appeals) in 2001. The loss of LUBA's staff attorney in the first half of 2003 contributed to a period of several months during 2003 when LUBA was unable to meet target for this performance measure. With the return of the staff attorney in June 2003, LUBA was able to begin meeting its target for the performance measure again. As the state economy began to recover in 2003, the number of appeals rose again to levels last seen in the 1990s. The increasing number and complexity of appeals made it more challenging to meet the KPM #1 target of 90 percent. Compliance with KPM#1 fell sharply in 2008, due to a near-record number of appeals filed that year, causing a minor backlog. With the decline in the state economy starting in 2009, appeal numbers dropped significantly, and LUBA was able to work through the backlog and again achieve compliance with KPM #1. In November 2010, the staff attorney position was vacated for budget reasons, and that position was eventually eliminated in the 2011/13 budget. However, appeal numbers remained low during 2010 and 2011 as the state economy began a slow recovery, and LUBA was able to maintain compliance with KPM#1 with existing resources. With respect to KPM#2 (Timely Settle Record) , LUBA maintained compliance with that performance measure in the 2009/11 biennium. In the first four quarters of the 2011/13 biennium, LUBA fell slightly below the target of 95 percent, due to requests by parties in several cases to delay settlement of the record. With respect to KMP#3 (Resolve All Issues), LUBA met its target of resolving all issues 100 percent of the time in the 2011/13 biennium and anticipates that it will continue to do so in the 2013/15 biennium. With respect to KPM#4 (Sustained on Appeal), LUBA's actual performance during the 2009/11 biennium was 89 percent, slightly below the target of 90 percent. Through the first four quarters of the 2011/13 biennium, LUBA's actual performance has been 85 percent. With respect to KPM#5 (Customer Service), LUBA exceeded its target for all customer service categories with the exception of "availability of information ," which LUBA believes reflects the loss of the staff attorney position, one of whose tasks was to field questions from the public about LUBA's review process.

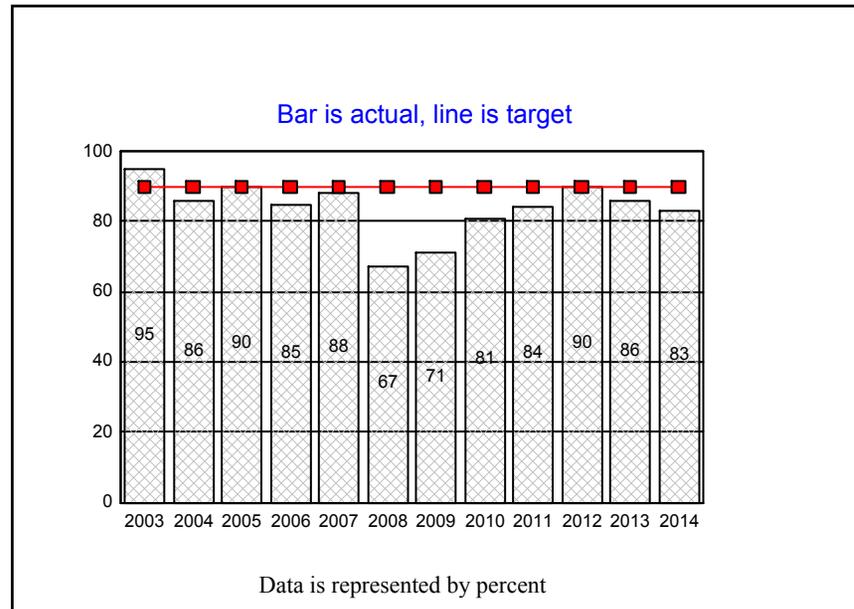
4. CHALLENGES

Both long-term and recent experience has shown that when appeal numbers go beyond approximately 220 per year, it becomes much more challenging to meet the 77-day deadline and perform all of the other related functions that LUBA must perform. When appeal numbers reach 250 to 260 per year for a sustained period, LUBA will fall behind and can recover only when appeal numbers drop for an extended period of time, or additional staffing is made available. With the economic recession that began in 2009, the annual number of LUBA appeals has declined significantly. Notwithstanding the elimination of the staff attorney position, LUBA has managed to achieve compliance with nearly all of its performance measures. As the state economy recovers, LUBA anticipates that appeal numbers will again approach historical averages in the 2013/15 biennium. When that happens, LUBA will be challenged to maintain compliance with its performance measures without additional resources, such as restoration of the staff attorney position.

5. RESOURCES AND EFFICIENCY

LUBA's 2013/15 legislatively approved biennial budget is \$1,551,697 General Fund and \$84,328 Other Funds.

KPM #1	TIMELY RESOLVE APPEALS - Percentage of appeals of land use decisions that are resolved within statutory deadlines or, if all parties agree, with no more than a 7 day extension of the statutory deadline.	1992
Goal	Resolve land use appeals quickly.	
Oregon Context	BM 68 (Traffic Congestion), 71 (Vehicle Miles Traveled), 74 (Affordable Housing), 80 (Agricultural Lands), 81 (Forest Lands).	
Data Source	LUBA's Access Database, reports generated from that database, and supporting central files.	
Owner	LUBA Board Chair. Contact: Melissa M. Ryan (Board Chair) 503-373-1265; Alternate Contact: Kelly Burgess (Paralegal) 503-373-1265.	



1. OUR STRATEGY

Shift resources and attempt to maintain full staffing to focus on issuing opinions within the statutory or stipulated deadline .

2. ABOUT THE TARGETS

This performance measure directly and objectively measures LUBA's compliance with the 77-day statutory deadline for issuing final opinions in appeals of land use decisions.

3. HOW WE ARE DOING

In the fiscal year 2007-2008, with a significant increase in appeals, LUBA's average fell below target to 67% percent. In the 2009/ 11 biennium, the economic downturn caused a significant decline in the number of LUBA appeals, and despite the loss of the staff attorney position LUBA regained compliance with KPM #1 and has maintained compliance through the first four quarters of the 2011/13 biennium.

4. HOW WE COMPARE

There are no comparable private industry standards. LUBA was created in large part to create an appellate review body that would resolve land use disputes much more quickly than circuit courts.

5. FACTORS AFFECTING RESULTS

The most significant factor that drives the number of appeals is the economy, since the number of LUBA appeals closely follows the level of development activity, which in turn is significantly affected by the economy. Until the economy recovers, LUBA should be able to meet KPM with the current level of staffing. LUBA anticipates that in the 2013/15 biennium the number of appeals will again approach the historic average as the state economy continues to recover. In that circumstance, it is unlikely that LUBA will be able to maintain compliance with KPM#1 with the current staffing level.

6. WHAT NEEDS TO BE DONE

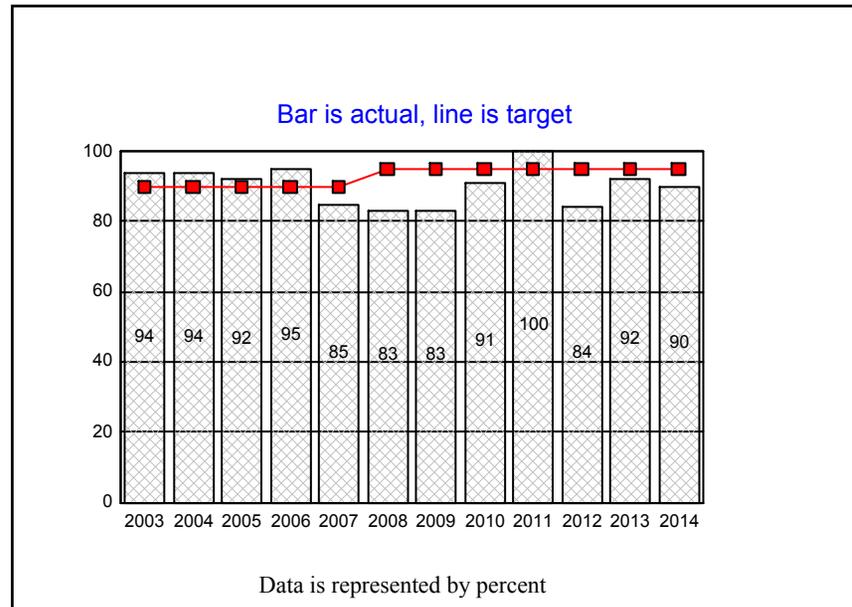
No action is required. Under LUBA's current level of staffing, it has sufficient resources to meet its performance measure targets.

7. ABOUT THE DATA

LUBA's Access Database is programmed to automatically generate a report on this performance measure based on a query. Once the

time period for the report is entered in the query, Access generates the report by automatically comparing the statutory due date with the date the decision was actually issued. LUBA staff manually enter the date the record is filed, and the number of days the 77-day deadline is suspended for record objections and other motions. The central file for each appeal is available to confirm the accuracy of the manual entries. LUBA's reports are based on the Oregon fiscal year.

KPM #2	TIMELY SETTLE RECORD - Percentage of record objections that are resolved within 60 days after the record objection is received by LUBA.	2001
Goal	Resolve land use appeals quickly.	
Oregon Context	BM 68 (Traffic Congestion), 71 (Vehicle Miles Traveled), 74 (Affordable Housing), 80 (Agricultural Lands), 81 (Forest Lands).	
Data Source	LUBA's Access Database, reports generated from that database, and supporting central files.	
Owner	LUBA Board Chair. Contact: Melissa M. Ryan (Board Chair) 503-373-1265; Alternate Contact: Kelly Burgess (Paralegal) 503-373-1265.	



1. OUR STRATEGY

LUBA staff generate a weekly needs list alerting Board Members to the status of record objections .

2. ABOUT THE TARGETS

The performance measure directly and objectively measures LUBA's compliance with the 60-day statutory deadline for resolving record objections.

3. HOW WE ARE DOING

In the 2009/11 biennium, LUBA failed to meet the target of 95 percent in this KPM, achieving 92 percent. In the first four quarters of the 2011/13 biennium, LUBA's performance so far is 84 percent. In part this reflects delays attributable to party requests to delay settlement of the record.

4. HOW WE COMPARE

There is no relevant public or industry comparable standard.

5. FACTORS AFFECTING RESULTS

Caseload and staffing are the main factors affecting LUBA's ability to meet this performance measure . Occasionally the parties will request or delay settlement of the record more than 60 days from the date the record objection is filed, in order to explore a mediated resolution of the appeal or for other purposes.

6. WHAT NEEDS TO BE DONE

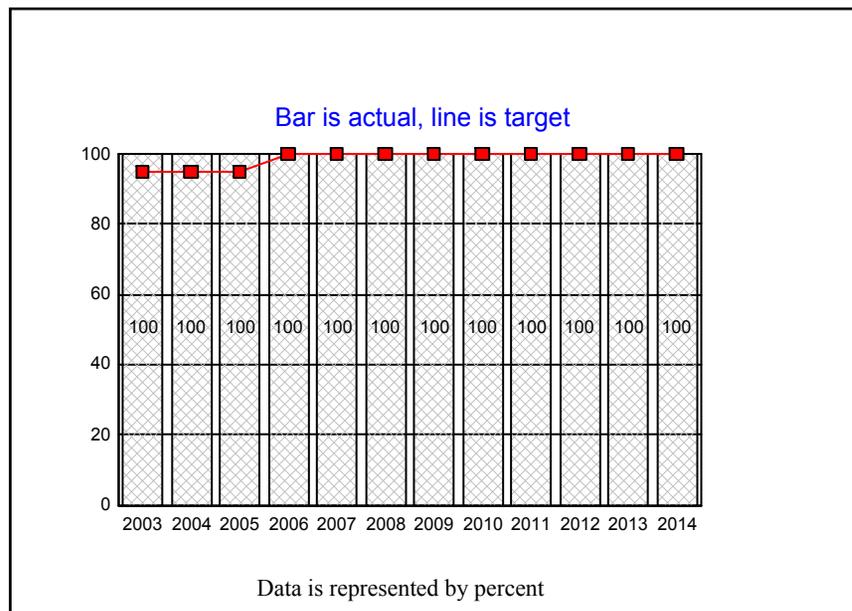
No action is required.

7. ABOUT THE DATA

LUBA's Access Database is programmed to automatically generate a report on this performance measure based on a query . Once the time period for the report is entered in the query, Access generates the report by automatically comparing the date the record objection was filed with LUBA with the date the order resolving the record objection was issued . The date the record objection is filed and the date the order resolving the record objection is issued are entered manually by LUBA staff . The central file for each appeal is available to

confirm the accuracy of the manual entries. LUBA's reports are based on the Oregon fiscal year.

KPM #3	RESOLVE ALL ISSUES - Percentage of decisions where all issues are resolved when reversing or remanding a land use decision.	1992
Goal	Decide all legal issues that are presented in appeals.	
Oregon Context	BM 68 (Traffic Congestion), 71 (Vehicle Miles Traveled), 74 (Affordable Housing), 80 (Agricultural Lands), 81 (Forest Lands).	
Data Source	LUBA's Access Database, reports generated from that database, and supporting central files.	
Owner	LUBA Board Chair. Contact: Melissa M. Ryan (Board Chair) 503-373-1265; Alternate Contact: Kelly Burgess (Paralegal) 503-373-1265.	



1. OUR STRATEGY

This KPM responds directly to a statutory requirement that the Board decide all issues presented to it when reversing or remanding

decisions, which is an attempt to limit most land use decisions to a single trip up and down the appellate ladder.

2. ABOUT THE TARGETS

This performance measure directly and objectively measures LUBA's compliance with the statutory requirement that LUBA resolve all legal questions when it remands a land use decision.

3. HOW WE ARE DOING

LUBA has consistently met its target for this performance measure.

4. HOW WE COMPARE

There are no relevant public or private industry standards.

5. FACTORS AFFECTING RESULTS

Caseload and staffing are the main factors affecting LUBA's ability to meet this performance measure.

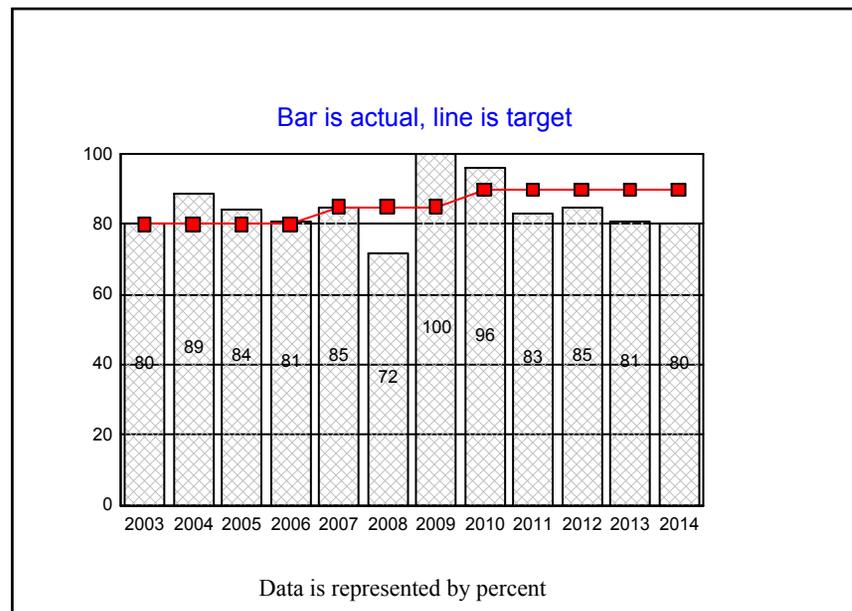
6. WHAT NEEDS TO BE DONE

No action is required.

7. ABOUT THE DATA

LUBA's Access Database is programmed to automatically generate a report on this performance measure based on a query. The Board Member who issues a final opinion advises LUBA's administrative staff if one or more issues that could have been resolved were left unresolved in an opinion that reversed or remanded a decision. A field is available to note such cases and the query totals those entries to generate the report. The central file for each appeal is available to confirm the accuracy of the manual entries. LUBA's reports are based on the Oregon fiscal year.

KPM #4	SUSTAINED ON APPEAL - Percentage of final opinions that are sustained on appeal.	2001
Goal	Resolve land use appeals quickly.	
Oregon Context	BM 68 (Traffic Congestion), 71 (Vehicle Miles Traveled), 74 (Affordable Housing), 80 (Agricultural Lands), 81 (Forest Lands).	
Data Source	LUBA's Access Database, reports generated from that database, and supporting central files.	
Owner	LUBA Board Chair. Contact: Melissa M. Ryan (Board Chair) 503-373-1265; Alternate Contact: Kelly Burgess (Paralegal) 503-373-1265.	



1. OUR STRATEGY

Board Members regularly research appellate court decisions and discuss their implications to ensure that LUBA opinions adhere to

established court precedent or, where there is no precedent, that LUBA decisions are likely to be consistent with how appellate courts will resolve novel issues.

2. ABOUT THE TARGETS

This performance measure directly and objectively measures the rate at which LUBA opinions are affirmed on appeal to the appellate courts.

3. HOW WE ARE DOING

In the 2009/11 biennium, LUBA opinions were affirmed on appeal 89 percent of the time, slightly below the 90 percent target. In the first four quarters of the 2011/13 biennium, 22 of 26 appeals were affirmed, or 85 percent.

4. HOW WE COMPARE

There are no known comparable public or private industry standards.

5. FACTORS AFFECTING RESULTS

Caseload and staffing are the main factors affecting LUBA's ability to meet this performance measure . In 2007 a record number of appeals were filed. As caseloads grow, Board Members have less time to conduct necessary research, keep abreast of recent appellate decisions, and ensure that appeals are resolved free of reversible legal error. As case loads decrease there is more time for these activities and performance tends to increase.

6. WHAT NEEDS TO BE DONE

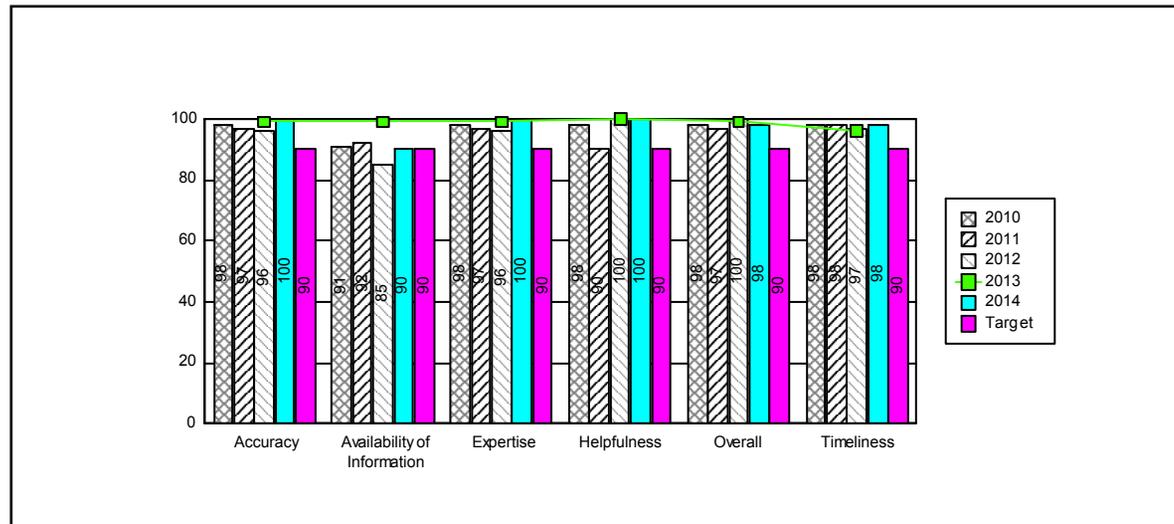
No action is required.

7. ABOUT THE DATA

LUBA's Access Database is programmed to automatically generate a report on this performance measure based on a query . The appellate court's disposition is manually entered into a field . Once the time period for the report is entered in the query, Access generates

the report based on the entries in that field. The central file for each appeal is available to confirm the accuracy of the manual entries of the appellate court disposition. LUBA's reports are based on the Oregon fiscal year.

KPM #5	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall, timeliness, accuracy, helpfulness, expertise, availability of information.	2005
Goal	Resolve land use appeals quickly.	
Oregon Context	BM 68 (Traffic Congestion), 71 (Vehicle Miles Traveled), 74 (Affordable Housing), 80 (Agricultural Lands), 81 (Forest Lands).	
Data Source	LUBA staff manually maintain data, which can be verified by consulting LUBA's central files.	
Owner	LUBA Board Chair. Contact: Melissa M. Ryan (Board Chair) 503-373-1265; Alternate Contact: Kelly Burgess (Paralegal) 503-373-1265.	



1. OUR STRATEGY

LUBA conducts daily and weekly meetings among Board Members and staff to ensure that administrative procedures and the Board’s review are conducted promptly and efficiently, and that staff provide appropriate help and information to the public.

2. ABOUT THE TARGETS

The nature of appellate review means some parties will prevail and some will not, which means that not all parties to an appeal will necessarily be satisfied with the outcome of that appeal. Nonetheless, the LUBA Board Members and LUBA staff strive to conduct LUBA's review in a manner that leaves participants satisfied with the review process, for example, the timeliness of LUBA's resolution of issues, the assistance LUBA's staff provide to parties, the availability of information on LUBA's procedures and case law, etc. The 90 percent target represents a realistic initial measurement of how an efficient LUBA should be expected to provide customer service in these areas. As more data is developed on LUBA's current performance, the Board may revise the target upwards.

3. HOW WE ARE DOING

In the 2009/11 biennium, LUBA exceeded the 90 percent target for all categories of customer service. In the first four quarters of the 2011/13 biennium, LUBA exceeded the 90 percent target for all categories, with the exception of "Availability of Information," which fell to 85 percent. The Board believes this reflects the loss of the staff attorney position, one of whose functions was to interact with the public and answer, if appropriate, questions about the LUBA review process.

4. HOW WE COMPARE

There are no known public or private industry comparisons. As this KPM is implemented by state agencies, LUBA will attempt to determine how other, similar agencies or courts provide and measure customer service.

5. FACTORS AFFECTING RESULTS

Caseload and staffing are the main factors affecting results.

6. WHAT NEEDS TO BE DONE

LUBA is in the process of determining how other similar agencies are performing under this new performance measurement and reviewing targets to confirm whether the existing target is appropriate. LUBA will continue with on-going reviews to assure quality of customer service.

7. ABOUT THE DATA

Report generated by LUBA staff, based on returned survey cards sent to all parties to appeals before LUBA. LUBA's reports are based on the Oregon fiscal year.

LAND USE BOARD of APPEALS	III. USING PERFORMANCE DATA
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Agency Mission: To provide an accessible forum for resolving land use disputes quickly and efficiently and make LUBA decisions available as a decision making resource to state and local legislators, land use decision makers, property owners and the citizens of Oregon.

Contact: Melissa M. Ryan, Board Chair	Contact Phone: 503-373-1265
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Alternate: Kelly Burgess, Paralegal	Alternate Phone: 503-373-1265
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The following questions indicate how performance measures and data are used for management and accountability purposes.

1. INCLUSIVITY	<p>* Staff: The Board Members drafted and finalized proposed performance measures, consulting staff as appropriate. Staff reviewed final performance measures and developed means to implement them. The Board does not have an ongoing stakeholder group and did not form such a group in developing performance measures. The legislature reviewed LUBA's KPMs during budget review following the last major development cycle in 2004. The Board did not solicit citizen input in developing KPMs.</p> <p>* Elected Officials:</p> <p>* Stakeholders:</p> <p>* Citizens:</p>
2 MANAGING FOR RESULTS	<p>The Board reviews performance measures on a monthly and quarterly basis. Based on that review, the Board may reallocate resources or make other adjustments to ensure that performance measures are met. The central focus of weekly Board Member workflow meetings and weekly workflow meeting between the Board Chair and administrative staff is making any adjustments necessary to meet performance measure targets. Because LUBA has largely complied with its performance measures over the past year, no major changes have been made in the management of the agency in the last year.</p>
3 STAFF TRAINING	<p>LUBA staff has been trained in database management, and those skills are used in implementing and gathering data for performance measures. Staff follow performance measure data closely to aid the Board in managing performance.</p>
4 COMMUNICATING RESULTS	<p>* Staff: Performance measure data is supplied to the Department of Administrative Services every quarter, and is incorporated into the agency budget presentations to the legislature at every biennial session. Beginning in January 2004, performance measure data has been available on LUBA's website. (http://www.oregon.gov/luba/Pages/index.aspx).</p>

	<p>* Elected Officials:</p>
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	<p>* Stakeholders:</p>
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	<p>* Citizens:</p>
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