

**FILED: July 27, 2011**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
by and through the  
Department of Land Conservation and Development,  
Plaintiff-Appellant,

v.

CROOK COUNTY,  
a political subdivision of the State of Oregon,  
Defendant-Respondent,

and

SHELLEY HUDSPETH,  
Intervenor-Respondent.

Crook County Circuit Court  
08CV0045

A142004

Gary Lee Williams, Judge.

On appellant's petition for reconsideration filed June 14, 2011, and intervenor-respondent's response to appellant's petition for reconsideration filed June 28, 2011. Opinion filed May 11, 2011. 242 Or App 580, \_\_\_ P3d \_\_\_ (2011).

John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Stephanie L. Striffler, Senior Assistant Attorney General, for petition.

Edward P. Fitch, Lisa DT Klemp, and Bryant, Emerson & Fitch, LLP, for response.

Before Haselton, Presiding Judge, and Armstrong, Judge, and Duncan, Judge.

PER CURIAM

Reconsideration allowed; former opinion modified and adhered to as modified.

1 PER CURIAM

2 Appellant, State of Oregon by and through the Department of Land  
3 Conservation and Development (DLCD), seeks reconsideration of our decision in [DLCD](#)  
4 [v. Crook County](#), 242 Or App 580, \_\_\_ P3d \_\_\_ (2011). We allow DLCD's petition for  
5 reconsideration and adhere to our opinion as modified.

6 Specifically, DLCD seeks reconsideration of the final two sentences of the  
7 second paragraph of footnote 5 of our opinion that state:

8 "On appeal, the parties make different assertions as to whether the  
9 numerator in the expenditure ratio is approximately \$500,000, as  
10 determined by the county, or approximately \$900,000, as noted by the  
11 circuit court. We need not resolve that issue because it was not assigned as  
12 error on appeal. *See* ORAP 5.45(1) (providing, in part, that '[n]o matter  
13 claimed as error will be considered on appeal unless the claim of error was  
14 preserved in the lower court and is assigned as error in the opening brief in  
15 accordance with this rule')."

16 242 Or App at 584 n 5.

17 On reconsideration we modify the second paragraph of footnote 5 to state  
18 as follows:

19 "On appeal, the parties make different assertions as to whether the  
20 numerator in the expenditure ratio is approximately \$500,000, as  
21 determined by the county, or approximately \$900,000, as noted by the  
22 circuit court. Given our analysis and disposition, we need not address and  
23 resolve any dispute in that regard."

24 Reconsideration allowed; former opinion modified and adhered to as  
25 modified.