

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
1	<p>Does LUBA’s remand require the County to conduct an analysis beyond considering the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties?</p>	<ul style="list-style-type: none">The Applicant argues that the ESEE analysis should not consider issues beyond the enumerated economic, social, environmental, and energy consequences (<i>Applicant Final Legal Argument pg. 3</i>)	<ul style="list-style-type: none">The Opponent argues that applying Goal 5 pursuant to OAR 660-023-0250(3) requires a “broad inquiry” into impacts on inventoried Goal 5 resources of a decision to allow, limit, or prohibit various conflicting uses (<i>Opponent New Evidence and Testimony, pg. 2</i>)Staff notes that this identified issue really considers the scope of LUBA’s remand, asking whether a “broad inquiry” requires an ESEE to consider issues beyond economic, social, environmental and energy consequences	<p>Does the Board agree with the Applicant’s testimony suggesting that LUBA’s remand does not require more than an analysis considering the ESEE consequences of allowing uses under the RI Zone?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may find that the proposal <u>does not</u> require analysis beyond the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties and move onto the next matrix issue.</p> <p>If no, the Board may find that the proposal <u>does</u> require analysis beyond the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties and move onto the next matrix issue.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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2	<u>Is the County required to amend or modify its Goal 5 scenic view inventory under OAR 660-023-0030 or may the County rely on the existing inventory set forth in the Comprehensive Plan?</u>	<ul style="list-style-type: none">The Applicant argues that nothing in LUBA’s remand decision suggests or requires the County to amend or modify its long-standing Goal 5 scenic view inventory. The Applicant’s understanding is that LUBA’s decision relied on the County’s existing Goal 5 program to conclude that uses allowed under the RI Zone could be conflicting uses (<i>Applicant Final Legal Argument pg. 3-4</i>)The Applicant further provided draft findings responding to OAR 660-023-0030 consistent with the understanding that the County was continuing to relying on its existing Goal 5 scenic view inventory currently set forth in the Comprehensive Plan (<i>Applicant July 19, 2023 submittal</i>)	<ul style="list-style-type: none">The Opponent. argues that the County needs to address OAR 660-023-0030 (Inventory Process) to locate and evaluate resources and develop programs to protect such resources (<i>Opponent New Evidence and Testimony, pg. 2</i>)Staff notes there are four steps as part of a Goal 5 inventory process: (a) Collect information about Goal 5 resources; (b) Determine the adequacy of the information; (c) Determine the significance of resource sites; and (d) Adopt a list of significant resource sites.	<p>Does the Board agree with the Applicant’s testimony suggesting that the County should continue relying on the existing Goal 5 scenic view inventory set forth in the Comprehensive Plan?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings responding to OAR 660-023-0030 relying on the existing Goal 5 inventory of scenic view resources set forth in the Comprehensive Plan and move onto the next matrix issue.</p> <p>If no, the Board may direct staff to amend or modify the established Goal 5 scenic view inventory in the Comprehensive Plan and then proceed with conducting a new ESEE analysis if the amended or modified inventory determines that there are still significant Goal 5 scenic view resources on the subject properties.</p>

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3	<u>Are the conflicting uses identified pursuant to OAR 660-023-0040(2) those uses allowed under the RI Zone that are not allowed under the EFU Zone?</u>	<ul style="list-style-type: none">Applicant argues that LUBA has already identified the conflicting uses as those uses allowed under the RI Zone on the subject properties that are not otherwise allowed under the current EFU zoning such that no further identification of conflicting uses need be made pursuant to OAR 660-023-0040(2). (<i>Applicant Final Legal Argument pg. 5</i>)Staff notes that OAR 660-023-0040(2) states, "Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site."	<ul style="list-style-type: none">Opponent argues the County cannot make a decision pursuant to OAR 660-023-0040(5) and adopt comprehensive plan provisions and land use regulations to implement the decision pursuant to OAR 660-023-0050 without first properly analyzing conflicting uses pursuant to OAR 660-023-0040(2)-(4) (<i>Opponent New Evidence and Testimony pg. 3</i>)	<p>Does the Board agree with the Applicant's testimony that the County complied with OAR 660-023-0040, ESEE Decision Process, by considering as "conflicting uses," those uses allowed under the RI Zone that are not otherwise allowed under the current EFU zoning?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings identifying the conflicting uses as those uses allowed under the RI Zone on the subject properties that are not otherwise allowed under the current EFU zoning and move onto the next matrix issue.</p> <p>If no, the Board may either make alternative findings identifying additional conflicting uses on the subject properties, which are beyond the uses allowed under the RI Zone and not otherwise allowed under the current EFU zoning and move onto the next matrix issue, or the Board may find that the applicant's ESEE analysis regarding "conflicting uses" is insufficient under OAR 660-023-0040(2) and deny the application.</p>
4(a)	<u>What does the County identify as the "impact area" pursuant to OAR 660-023-0040(3)?</u>	<ul style="list-style-type: none">Applicant argues that the impact area includes all properties west of Hwy 97 in the LM Combining Zone between the 61st Street intersection and the Tumalo Road off-ramp (<i>Applicant Final Legal Argument pg. 5</i>)Applicant revised and broadened the "impact area" to include properties beyond the three subject properties in response to Opponent's arguments.Staff notes that OAR 660-023-0040(3) states, "Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site."The Applicant's final legal argument noted that the ESEE analysis includes consideration of "consequences," which may be documented outside of the "impact area"	<ul style="list-style-type: none">Opponent argues that the impact area must be larger than the three subject properties. It argues that minimizing the impacts of conflicting uses on the subject property's Goal 5 scenic view resources based on conditions outside of the identified impact area is contrary to OAR 660-023-0040(3), which requires that the "impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site" (<i>Opponent New Evidence and Testimony pg. 4</i>)	<p>Is the Applicant's proposed "impact area" consistent with OAR 660-023-0040(3)?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings identifying the impact area as including all properties west of Hwy 97 in the LM Combining Zone between the 61st Street intersection and the Tumalo Road off-ramp and move onto the next matrix issue, which includes two subparts of Issue 4.</p> <p>If no, the Board may make alternative findings as they see fit and move onto the next matrix issue, which includes two subparts of Issue 4.</p>

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4(b)	<p>Is there a distinction between “ESEE consequences” and the “impact area” such that consequences may be documented outside of the identified “impact area”?</p>	<ul style="list-style-type: none">The Applicant argues that ESEE consequences outside of the identified “impact area” are appropriately included because the applicable state definitions draw a distinction between such ESEE consequences (defined at OAR 660-023-0010(2)) and the impact area (defined at OAR 660-023-0010(3)) (<i>Applicant Final Legal Argument pg. 5</i>)	<ul style="list-style-type: none">The Opponent did not provide information responsive to this specific issue area.	<p>Does the Board agree with the Applicant’s testimony suggesting that there is a distinction in the definitions set forth in OAR 660-023-0010 such that ESEE consequences were appropriately documented by the applicant even if outside of the identified “impact area”?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that there is a distinction between “ESEE consequences” and the “impact area” such that consequences may be documented outside of the identified “impact area” and move onto the next matrix issue. Additionally, the Board may make findings confirming that any identified “ESEE consequences” outside of the “impact area” where nevertheless not dispositive to the Board’s ultimate decision under OAR 660-023-0040(5).</p> <p>If no, the Board may make alternative findings as they see fit and move onto the next matrix issue. Specifically, the Board may adopt findings enlarging the “impact area” to include a geographical area that includes all consequences described in the ESEE Analysis, or the Board may disregard such identified consequences in the ESEE Analysis that are outside of the specified impact area.</p>
4(c)	<p>Can the identified “impact area” be amended at a later proceeding to match the ESEE analysis?</p>	<ul style="list-style-type: none">The Applicant argues that it is acceptable to adjust the identified impact area because the ESEE process is supposed to be iterative under OAR 660-023-0040(1) (<i>Applicant Final Legal Argument pg. 5</i>)Staff notes that OAR 660-023-0040(1) states that local governments are not required to follow the four steps in conducting an ESEE analysis sequentially.	<ul style="list-style-type: none">The Opponent did not provide information responsive to this specific issue area or OAR 660-023-0040(1).	<p>Does the Board agree with the Applicant’s testimony suggesting that “impact area” may be amended in an iterative manner along with updating the ESEE Analysis pursuant to OAR 660-023-0040(1)?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the identified “impact area” <u>can</u> be amended at a later proceeding to match the ESEE analysis pursuant to OAR 660-023-0040(1) and move onto the next matrix issue.</p> <p>If no, the Board may make findings that the identified “impact area” <u>cannot</u> be amended at a later proceeding to match the ESEE analysis pursuant to OAR 660-023-0040(1) and move onto the next matrix issue.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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5(a)	<p><u>Does the County accept and adopt as its own the Applicant's Updated ESEE Analysis as appropriately documenting the economic, social, environmental, and energy consequences of allowing or prohibiting the conflicting uses on the subject properties?</u></p>	<ul style="list-style-type: none">The Applicant requests that the Board adopt as their own the updated ESEE analysis provided as Exhibit 6 to the Applicant's July 19 record submittal (<i>Applicant Final Legal Argument pg. 12</i>)The Applicant updated its initial ESEE Analysis to address the Opponent's argument that the initial ESEE Analysis inappropriately grouped uses together. This issue is set forth in Issue 5(b) below.	<ul style="list-style-type: none">The Opponent argues that many of the uses allowed in RI zoning are different from each other and that the Applicant's initial ESEE analysis fails to address such differences and fails to comply with OAR 660-023-0040(3) by not analyzing the ESEE consequences for each conflicting use the proposed RI zoning would allow (<i>Opponent New Evidence and Testimony, pg. 4</i>)The Opponent argued that the Applicant's initial ESEE Analysis inappropriately grouped uses together. This issue is set forth in Issue 5(b) below	<p>Does the Board accept and adopt as its own the Applicant's Updated ESEE Analysis on the basis that the ESEE consequences of allowing or prohibiting conflicting uses on the subject properties have been appropriately documented? Staff notes that the standard for an acceptable ESEE Analysis is set forth in OAR 660-023-0040(1) stating that "[t]he ESEE analysis need not be lengthy or complex but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected."</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings accepting and adopting as its own the Applicant's Updated ESEE Analysis as appropriately documenting the economic, social, environmental, and energy consequences of allowing or prohibiting the conflicting uses on the subject properties and move onto the next matrix issue.</p> <p>If no, the Board may make alternative findings as they see fit and move onto the Matrix Issue 6 or deny the subject application.</p>
5(b)	<p><u>Does the Applicant's Updated ESEE Analysis address Opponent's objection that conflicting uses were inappropriately grouped together?</u></p>	<ul style="list-style-type: none">The Applicant argues that it has addressed any concern around grouped uses through its Updated ESEE Analysis which analyzes most the uses allowed under the RI zone separately. (<i>Applicant Final Legal Argument pg. 6</i>)	<ul style="list-style-type: none">The Opponent argues that many of the uses allowed in RI zoning are different from each other and that the Applicant's initial ESEE analysis failed to address such differences and failed to comply with OAR 660-023-0040(3) by not analyzing the ESEE consequences for each conflicting use the proposed RI zoning would allow (<i>Opponent New Evidence and Testimony, pg. 4</i>) The Opponent did not provide information or argument responding to Applicant's Updated ESEE Analysis.	<p>Does the Board find that the Updated ESEE Analysis addresses concerns regarding grouping conflicting uses together in the Initial ESEE prepared by the Applicant?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the Applicant's Updated ESEE Analysis <u>does not</u> inappropriately group uses together and move onto the next matrix issue.</p> <p>If no, the Board may make findings that the Applicant's Updated ESEE Analysis <u>does</u> inappropriately group uses together and may make alternative findings as they see fit or deny the subject application.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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6(a)	Does the Board wish to allow fully, allow in a limited way or prohibit conflicting uses under OAR 660-023-0040(5)?	<ul style="list-style-type: none">The Applicant recommends the Board decide to <u>allow the conflicting uses fully</u> pursuant to OAR 660-023-0040(5)(c) (<i>Applicant Final Legal Argument pg. 10-11</i>)While the Applicant originally supported a limiting option as allowed by OAR 660-023-0040(5)(b) in addition to the allow fully option, the Opponent has urged that the Board not consider the limiting option in response to Opponent’s arguments. Therefore, the Applicant in its final legal argument submits the Board should proceed under the “allow fully” option.The Applicant’s final argument and recommendation is to allow the conflicting uses fully.	<ul style="list-style-type: none">The Opponent argues that the Board should decide to <u>prohibit</u> the conflicting uses pursuant to OAR 660-023-0040(5)(a) (<i>Opponent New Evidence and Testimony pg. 6</i>)The Opponent argues against the limiting option allowed by OAR 660-023-0040(5)(b) because, as asserted by the Opponent, the LM Zone was not developed to address visual impacts caused by rural industrial uses.The Opponent further argues that Deschutes County Comprehensive Plan Policy 2.7.3 and relevant open space and scenic view goals can only ensure protection of the scenic resources through a prohibition on the conflicting industrial uses. (<i>Opponent New Evidence and Testimony pg. 7</i>).	<p>Consistent with the Applicant’s testimony, does the Board find the conflicting uses should be allowed fully pursuant to OAR 660-023-0040(5)(c)?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the proposal’s conflicting uses should be allowed fully under the existing zoning provisions and move onto Matrix Issue 7 below.</p> <p>If no, the Board has two options:</p> <p>A. Prohibiting the conflicting uses and deny the subject application.</p> <p>B. Allow the conflicting uses in a limited way, against both the Applicant’s and Opponent’s recommendations, and proceed to Matrix Issues 6(b) and 6(c) below.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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6(b)	<p>If the Board decides to <u>allow the conflicting uses in a limited way, does the Board wish to continue applying the LM Combining Zone to the subject properties?</u></p>	<ul style="list-style-type: none">The Applicant recommends the Board decide to <u>allow the conflicting uses fully</u> pursuant to OAR 660-023-0040(5)(c) (<i>Applicant Final Legal Argument pg. 10-11</i>)The Applicant disagrees with the Opponent’s arguments that the LM Zone was not developed to address the visual impacts of industrial uses, and the Applicant provided evidence to the record demonstrating the LM Zone has always overlaid other RI Zoned properties along Highway 97. Accordingly, if the Board finds the conflicting uses may be allowed in a limited way, the Board may continue to apply the LM Combining Zone to the subject properties.	<ul style="list-style-type: none">The Opponent argues that the LM Zone was not originally crafted to address industrial development such as those uses allowed by the RI Zone. (<i>Opponent New Evidence and Testimony pg. 5</i>)	<p>If the Board answered “No” to Matrix Issue 6(a) above and does not find that the conflicting uses should be prohibited, does the Board find the conflicting uses may be allowed in a limited way pursuant to OAR 660-023-0040(5)(b) by application of the LM Combining Zone to the subject properties?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make alternative findings as they see fit and move onto Matrix Issue 7.</p> <p>If no, the Board has two options:</p> <p>A. Revisit Matrix Issue 6(a) and decide whether to allow the conflicting use fully or prohibit the conflicting uses, or</p> <p>B. Proceed to Matrix Issue 6(c) and decide whether to allow the conflicting uses in a limited way in accordance with an entirely new Goal 5 scenic view program applicable only to the three subject properties.</p> <p>Staff notes, however, that no alternative proposed zoning overlay and comprehensive plan amendment are presently before the Board for consideration, and such an alternative zoning overlay and comprehensive plan amendment would need to be subsequently developed and brought back to the Board for its further consideration.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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6(c)	<p><u>If the Board decides to allow the conflicting uses in a limited way, does the Board want to develop an entirely new Goal 5 scenic view program applicable to only the three subject properties?</u></p>	<ul style="list-style-type: none">The Applicant noted that it does not support the development of a new overlay zone that is only applicable to the subject properties because the RI Zone has always sufficiently overlaid RI Zoned properties along Highway 97, such a limited overlay zone covering only three properties could be considered “spot zoning,” and a new overlay zone only covering three properties would be an administrative burden on County staff. <i>(Applicant Final Legal Argument pg. 10-11)</i>	<ul style="list-style-type: none">The Opponent did not provide information responsive to this option.	<p>If the Board answered “No” to Matrix Issue 6(a) and 6(b) above and does not find that the conflicting uses should be prohibited, does the Board find the conflicting uses may be allowed in a limited way pursuant to OAR 660-023-0040(5)(b) by developing an entirely new Goal 5 scenic view program applicable only to the three subject properties?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that it will develop a new Goal 5 scenic view program applicable to only the three subject properties and make findings reflecting that choice. However, staff again notes that no alternative proposed zoning overlay and comprehensive plan amendment are presently before the Board for consideration, and such an alternative zoning overlay and comprehensive plan amendment would need to be subsequently developed and brought back to the Board for its further consideration.</p> <p>If no, the Board has two options:</p> <p>A. Revisit Matrix Issue 6(a) and decide whether to allow fully or prohibit the conflicting uses, or</p> <p>B. Revisit Matrix Issue 6(b) and decide whether to allow the conflicting uses in a limited way through application of the LM Overlay Zone to the subject properties. The Board may make findings that a new Goal 5 scenic view program for the three subject properties is not necessary for approval of the subject application.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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7(a)	<p><u>If the Board elects to allow the conflicting uses fully, additional findings are required pursuant to OAR 660-023-0040(5)(c). Does the ESEE analysis demonstrate that the conflicting use is of sufficient importance relative to the resource site?</u></p>	<ul style="list-style-type: none">The Applicant argues that the ESEE analysis documents that the impacts caused by the unique topography and existing development on the hillside to the west of the subject properties already diminishes the Goal 5 scenic view resources at this particular location compared to other locations within the impact area, thus indicating that allowing RI uses is now of “sufficient importance” to justify allowing the conflicting use outright pursuant to OAR 660-023-0040(5)(c) (<i>Applicant Final Legal Argument pg. 11</i>)	<ul style="list-style-type: none">The Opponent did not provide information responsive to this specific issue area.	<p>If the Board answers Matrix Issue 6(a) in the affirmative and elects to allow the conflicting uses fully, does the Board find, consistent with the Applicant’s testimony, that the ESEE analysis demonstrates that the conflicting uses is of sufficient importance relative to the resource site?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings consistent with the Applicant’s arguments or additional findings as the Board may see fit.</p> <p>If no, the Board should revisit Matrix Issues 6(a) and/or 6(b).</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

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7(b)	<u>Continuing to stem from OAR 660-023-0040(5)(c), does the ESEE Analysis demonstrate why measures to protect the Goal 5 scenic view on the subject properties should not be provided?</u>	<ul style="list-style-type: none">The Applicant argues that the ESEE analysis documents that the County’s existing Goal 5 scenic view program has not been successful in protecting the sought after scenic views in this particular location to containing to allow the conflicting use in a limited way. <i>(Applicant Final Legal Argument pg. 11)</i>	<ul style="list-style-type: none">The Opponent did not provide information responsive to this specific issue area.	<p>Does the Board find, consistent with the Applicant’s testimony, that the ESEE Analysis demonstrates why measures to protect the Goal 5 scenic view on the subject properties should not be provided?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings consistent with the Applicant’s arguments or additional findings as the Board may see fit.</p> <p>If no, the Board should revisit Matrix Issues 6(a) and/or 6(b).</p>
8(a)	<u>If the Board decides to fully allow the conflicting uses, OAR 660-023-0050(1) requires the County to adopt comprehensive plan provisions and land use regulations to implement the decision made pursuant to OAR 660-023-0040(5). is compliance with OAR 660-023-0050(1) demonstrated by the Applicant’s consent to the subject properties’ continuing to be subject to the LM Combining Zone land use regulations because there are no proposed amendments to the Comprehensive Plan and the LM Combining Zone land use regulations before the Board in the application?</u>	<ul style="list-style-type: none">The Applicant noted that it did not request any amendment to the LM Combining Zone and no such amendment was noticed as part of the subject application. There are no such applications that are before the Board in these proceedings.Significantly, the Applicant further consented to the subject properties remaining within the LM Combining Zone until such time as the County undertakes more comprehensive revisions to that zone in a manner directly affecting the subject properties <i>(Applicant Final Legal Argument, pg. 11-12)</i>Staff suggests that by the Applicant’s consenting to the subject properties’ continuing to be subject to the LM Combining Zone until such time that the County otherwise elects to amend or alter the LM Combining Zone, compliance with OAR 660-023-0050(1) is achieved because all required comprehensive plan provisions and land use regulations are already in place until such time that the County elects to amend the LM Combining Zone.	<ul style="list-style-type: none">The Opponent did not provide information responsive to this specific issue area.	<p>Consistent with the Applicant’s argument, does the Board find that compliance with OAR 660-023-0050(1) is already achieved because the Applicant consented to the subject properties remaining in the LM Combining Zone means that all required comprehensive plan provision and land use regulations are already in place?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the conflicting uses may be fully allowed without any corresponding amendments to the LM Combining Zone and Comprehensive Plan. The Board may make findings explaining that any amendment to the LM Combining Zone will be undertaken at a later date when the Board otherwise elects to amend or alter the LM Combining Zone</p> <p>If no, the Board may find that it cannot fully allow the conflicting uses without adoption of new Comprehensive Plan and land use regulations, requiring the Board to revisit Matrix Issues 6(a) and/or 6(b).</p>