



MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Tarik Rawlings, Associate Planner

DATE: June 15, 2023

SUBJECT: Public Hearing: Remand of LBNW LLC Plan Amendment and Zone Change application 247-21-000881-PA, 882-ZC (247-23-000398-A)

On June 28, 2023, the Board of Commissioners (Board) will hold a *limited de novo* public hearing held to consider a remanded decision of the Oregon Land Use Board of Appeals (LUBA) regarding a Plan Amendment and Zone Change application proposed by LBNW LLC (Applicant). The record associated with this remanded review is located on the project webpage¹.

I. HEARING PROCEDURE

Deschutes County Code 22.32.040 notes that the scope of the proceeding for an application on remand must be limited to review the issues that LUBA requires to be addressed, although the Board may use its discretion to reopen the record where it deems necessary. If the Board determines this hearing will be held *limited de novo* meaning that only testimony directed at the issue on remand, whether the new industrial zoning designation would allow uses on the subject property that were not allowed under the previous Exclusive Farm Use (EFU) Zoning and whether those uses could conflict with protected Goal 5 scenic resources associated with the Highway 97 corridor, will be considered. Testimony on other matters will not be accepted during the public hearing.

II. BACKGROUND

On September 30, 2021, an application was filed for a Plan Amendment and Zone change application for a 19.12-acre property located at 65301 N Hwy 97, Bend (Taxlot ID 1612230000305), 65315 Hwy 97, Bend (Taxlot ID 1612230000500), and 65305 Hwy 97, Bend (Taxlot ID 1612230000301) approximately 4.5 miles south of Redmond and approximately

¹ <https://www.deschutes.org/cd/page/247-23-000398-luba-remand-lbnw-llc-comprehensive-plan-amendment-and-zone-change>

4.25 miles north of Bend. The applicant is requesting to rezone and re-designate the property from Agriculture/Exclusive Farm Use - Tumalo/Redmond/Bend subzone (EFU-TRB) to Rural Industrial (RI).

The Deschutes County Hearings Officer issued a decision recommending approval of the application on July 12, 2022. The second hearing, as required by the County procedures ordinance, was held before the Board on September 7, 2022. The Board then adopted Ordinance 2022-011 on December 14, 2022 approving the application with conditions.

Central Oregon Landwatch appealed the county decision to LUBA. On April 24, 2023 LUBA issued its Final Opinion and Order remanding the decision to the County for further findings and conclusions of law. On May 17, 2023, the Applicant initiated remand proceedings under local file no. 247-23-000398-A. A work session was held before the Board on June 26, 2023. The final day on which the County must issue a final decision on this application is September 14, 2023.

III. LUBA REMAND AND APPLICANT RESPONSE

LUBA, in its Final Opinion and Order, remanded the county decision to address the following issue:

A. Findings to determine whether the new industrial zoning designation would allow uses on the subject property that were not allowed under the previous Exclusive Farm Use (EFU) zoning and whether those uses could conflict with protected Goal 5 resources.

The final opinion and order provides the following guidance:

(pg. 36) In *NWDA v. City of Portland*, the court explained that the local government is required to apply Goal 5 if the PAPA allows a new use that could conflict with Goal 5 resources.

(pg. 36-37) The questions presented here are whether the new RI zoning allows uses on the subject property that were not allowed under the previous EFU zoning and whether those uses could conflict with protected Goal 5 resources. That the county may have conducted an ESEE analysis in 1992 for other RI-zoned properties in other locations, even nearby locations, and concluded that the LM zone provided the impacted scenic resources sufficient protection does not change the requirement to apply Goal 5 to the PAPA for the subject property.

(pg. 37) [T]he challenged decision allows new uses that could conflict with inventoried Goal 5 resources, and, for that reason, the county is required to comply with OAR 660-023-0250(3).

Staff notes that the applicant, in their initiation of remand materials has not yet provided additional testimony to demonstrate the proposal's Goal 5 compliance and address the provisions under OAR 660-023-0250(3). Staff anticipates additional information may be submitted prior to or at the public hearing for Board consideration, or potentially during an open record period, should the Board choose to open the record. Any materials received by the applicant in response to the Board's June 26, 2023, work session will be timely incorporated into the official record.

IV. RESOLVED ISSUES AND PUBLIC COMMENT

The following are issues that have been resolved by LUBA or were not included in the remand and therefore cannot be considered by the Board in its decision:

- That the proposal fails to comply with Goals 3 and/or 14.
- Challenges to the validity of a site-specific Order 1 soil survey relied on by the applicant and Board of County Commissioners in determining whether Tax Lot 301 is agricultural land including the soil scientist's evaluation of the portions of the subject property labeled "canal" and "infrastructure" as containing Class 8 soils, as the proposal relates to Goal 3.
- Whether Tax Lot 301 is considered agricultural land under ORS 215.203(2)(a) and OAR 660-033-0020(1)(a)(B).
- Challenges to the County's reliance on the local Rural Industrial (RI) provisions under DCC Chapter 18.100 to conclude that the application is compliant with Goal 14.

V. NEXT STEPS

The Board will conduct a hearing on this item on June 28, 2023. Following the hearing the Board may choose to:

- Continue the hearing to a date and time certain;
- Close the oral portion of the hearing and leave the written record open to a date and time certain; or
- Close both the oral and written portions of the hearing.

The final day on which the County must issue a final decision on this application is September 14, 2023.