



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: May 7, 2025

SUBJECT: Board Order 2025-016; Decision whether to hear an appeal of a Hearings Officer's remand decision associated with the zoning designation for the ODOT Lava Butte Trail

RECOMMENDED MOTIONS:

Move approval of Order 2025-016, an Order accepting review of the Hearings Officer's Decision in File No. 247-25-00093-A and establishing the review will be heard *de novo*.

OR

Move approval of Order 2025-016, an Order denying review of the Hearings Officer's Decision in File No. 247-25-000093-A.

BACKGROUND AND POLICY IMPLICATIONS:

In 2023, the Oregon Department of Transportation ("ODOT") initiated a Declaratory Ruling application requesting interpretations of the Deschutes County Code ("DCC") to determine the zoning requirements for a path starting at the Baker-Knott Road/Highway 97 intersection and terminating at the Lava Butte Visitor Center (see attached map).

As part of the original review, the Hearings Officer concluded the following:

1. The subject Highway 97 right-of-way is zoned RR10.
2. The proposal as described by the applicant is a "road and street project" and, more specifically, a Class III project.
3. As a Class III project, the proposal described by the applicant is a use permitted outright in the RR10 Zone and OS&C Zone.

This decision was appealed to the Land Use Board of Appeals ("LUBA") and the Oregon Court of Appeals and was remanded back to the County on one issue: The County is required "to adopt adequate findings addressing [the Windlinx Ranch Trust] argument that the application is a collateral attack on the final and unappealed Weigh Station Decision". The referenced Weigh Station Decision was a 1999 Board decision denying a conditional use request for an ODOT weigh station and, as part of this decision, the Board found the same segment of Highway 97 was zoned Forest Use ("F2").

On February 12, 2025, ODOT initiated a remand application, and on April 10, 2025, the Hearings Officer issued a decision with additional findings and concluded the Declaratory Ruling decision does not amount to a collateral attack on the Weigh Station Decision. The Windlinx Ranch Trust has filed an appeal of this decision and asks the Board of County Commissioners to review the appeal.

BUDGET IMPACTS:

None

ATTENDANCE:

Anthony Raguine, Principal Planner

William Groves, Planning Manager

Legal Counsel