

BCL LLC PLAN AMENDMENT / ZONE CHANGE Land Use File Nos. 247-24-000097-PA, 098-ZC, 247-25-000021-MA				
Issue Area #1	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
<u>Soils Report</u> Is the applicant's Soils Report a "soils assessment" pursuant to applicable Oregon Administrative Rules (OAR)?	<p>OAR 660-033-0030 (5)(a) allows a property owner to provide a more detailed soils assessment.</p> <p>OAR 660-033-0045 outlines the procedure for a qualified professional to conduct a soils assessment.</p>	<p><u>Applicant comments</u> state the soil scientist did not conduct an onsite investigation and relied on information available through NCRS. Therefore, the Soils Report is not a 'soil assessment' as described in OAR 660-033-0030 (5)(a) and is not subject to those requirements.</p> <p>The applicant's soil scientist submitted a letter dated May 15, 2025, stating that the report was not an Order 1 soil assessment.</p> <p><u>Oppositional comments</u> assert that the applicant's Soils Report contains more detailed information than what is contained in the NRCS Web Soil Survey. The applicant was required to submit their Soils Report to DLCD to confirm it followed the correct methodology and was scientifically sound.</p> <p>In a May 30, 2025, letter Central Oregon LandWatch (COLW) asserts the applicant's soil scientist used discretion in applying and calculating the acreage of each soil capability within the subject property. They claim the resulting information is not contained in the NRCS map or tables and is therefore "more detailed information."</p>	<p>The Hearings Officer determined the Soils Report did not generate, produce, or otherwise utilize more detailed data on soil capability than what is contained in the NRCS soil maps. The Hearings Officer agreed with the applicant's argument that a "soils assessment" is an assessment that relies on data other than the NRCS maps and soil surveys.</p> <p>The Hearings Officer concluded the Soils Report is not a "soil assessment" that requires DLCD certification (HOff Recommendation p 16).</p>	<p>Is the applicant's Soils Report a "soils assessment" as described in OAR 660-033-0030 (5)(a)?</p> <ol style="list-style-type: none">1. If no, the Board can continue reviewing the applications.2. If yes, the Board must deny the Plan Amendment (PA)/Zone Change (ZC) for failure to follow the procedures in OAR 660-033-0045.

Issue Area #2	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
<p><u>Soils Report</u></p> <p>Does the submitted Soils Report demonstrate the property is predominantly Class 7 and Class 8 soils, and therefore not “agricultural land”?</p>	<p>OAR 660-33-0020(1)(a) defines agricultural land in Eastern Oregon as predominantly Class 1-6 soils.</p>	<p><u>Applicant comments</u> state the Soils Report was prepared by a professional soil scientist and utilized information available through the NRCS soil maps and soil surveys. Applicant asserts they utilized information provided by NRCS and do not dispute the published soil maps. Applicant also cites a previous Board decision (file nos. PA-11-7, ZC-11-2) that allowed a weighted average methodology when determining the capability of land that is mapped as a complex soil unit.</p> <p><u>Oppositional comments</u> take issue with the weighted average approach that the applicant uses for the 58C soil unit, which is a complex that contains Class 6, Class 7, and Class 8 soils. COLW claims the NRCS map simply provides broad mapping units, and does not specify the percentage of Class 6, Class 7, and Class 8 soils within the subject property.</p>	<p>The Hearings Officer found that the Soils Report was prepared by a qualified professional soil scientist, and is credible and persuasive evidence that the property is predominantly Class 7 and Class 8 soils.</p>	<p>Does the applicant’s Soils Report demonstrate the property is predominantly made up of Class 7 and Class 8 soils, and therefore not “agricultural land”?</p> <ol style="list-style-type: none">1. If yes, the Board can continue reviewing the applications.2. If no, the Board must deny the PA/ZC.

Issue Area #3	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
<p><u>Goal 3</u></p> <p>Is the property agricultural land with respect to applicable OAR factors?</p>	<p>Goal 3 and OAR 660-033-0020(1)(a)(B).</p> <p>This OAR requires the decision-maker to determine whether the property is agricultural land by considering the following factors:</p> <ul style="list-style-type: none">• Soil fertility.• Suitability for grazing.• Climatic conditions.• Existing and future availability of water for farm irrigation purposes.• Existing land use patterns, technological and energy inputs required.• Accepted farming practices.	<p><u>Applicant comments</u> assert the property has no known history of agricultural use. The applicant cites the costs to fertilize poor soil, deal with lack of water, and the limited crops that would grow on the property to demonstrate it is not feasible to generate a profit from farming on the subject property. The applicant’s soil scientist concluded that the infertile soils on the property made it impracticable to engage in farm uses.</p> <p>The applicant provided detail on the uses on surrounding properties to demonstrate that the subject property is not necessary to permit farming practices on them.</p> <p><u>Oppositional comments</u> claim certain farm uses are feasible on the subject property, and steps such as applying fertilizer can be taken to allow farm uses. These comments state livestock breeding, horse boarding, cattle grazing, and raising poultry may be possible. COLW also asserts that portions of the subject property were previously irrigated. In a letter dated August 20, 2025, COLW states the soil and topography of the property is similar to that of other ranches within Central Oregon.</p>	<p>The Hearings Officer found the subject property does not meet the definition of “agricultural land” and that the applicant’s Soils Report contained persuasive evidence regarding the inability of the property to support profitable livestock grazing.</p> <p>Staff notes that both the applicant and COLW submitted additional arguments regarding this issue area after the Hearings Officer’s recommendation was issued. Arguments responding to the recent LUBA decision <i>Central Oregon LandWatch v. Deschutes County (Destiny Court)</i> LUBA No. 2025-015 were submitted after the recommendation was issued and were not addressed by the Hearings Officer.</p>	<p>Does the subject property constitute agricultural land with respect to the factors under OAR 660-033-0020(1)(a)(B)?</p> <ol style="list-style-type: none">1. If no, the Board can continue reviewing the applications.2. If yes, the Board must deny the PA/ZC because the property meets the definition of Goal 3 ‘agricultural land.’

Issue Area #4	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
<p><u>Goal 5</u></p> <p>The Landscape Management corridor along Highway 20 is an inventoried Goal 5 resource.</p> <p>Would the proposed Multiple Use Agricultural (MUA10) zoning allow for new uses that conflict with the adopted Economic, Social, Environmental, and Energy (ESEE) analysis for this resource?</p>	<p>Goal 5 and OAR 660-023-0250(3).</p> <ul style="list-style-type: none">Pursuant to OAR 660-023-0250(3), the county does not have to apply Goal 5 as part of a Post Acknowledgment Plan Amendment (“PAPA”) unless the PAPA affects a Goal 5 resource.Pursuant to OAR 660-023-250(3)(b), a PAPA affects a Goal 5 resource if the PAPA would allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list.The Highway 20 scenic corridor is the Goal 5 resource.	<p><u>Applicant comments</u> assert the County is not required to apply Goal 5 to this PA/ZC because uses allowed under the proposed MUA10 zoning would not conflict with the Goal 5 resource. Any future development would also be subject to Landscape Management review to ensure development is consistent with the scenic corridor. In addition, the applicant describes existing development within the Highway 20 corridor to show that the PA/ZC will not have an appreciable impact.</p> <p>If it is determined that a Goal 5 analysis is required, the applicant has provided an ESEE analysis. This May 9, 2025, submittal identifies potential conflicting uses and concludes that they should be allowed in a limited manner that protects the resource.</p> <p><u>Oppositional comments</u> assert that Goal 5 must be applied because the subject Zone Change would allow new uses that could conflict with an inventoried Goal 5 resource. In a May 23, 2025, letter, COLW argues that the applicant used an incorrect impact area in their ESEE analysis. They claim the applicant must evaluate the entire inventoried resource, including land in the Highway 20 corridor that is outside of the subject property.</p> <p>COLW states that existing degradation of the scenic corridor cannot be used to support an argument to allow new potentially conflicting uses. Their letter also identifies uses in DCC 18.32.030 which are not evaluated in the applicant’s ESEE analysis.</p>	<p>The Hearings Officer agreed with the applicant’s summary of applicable regulations and found that the submitted ESEE analysis adequately addresses issues relevant to Goal 5. The Hearings Officer did not provide additional analysis in response to the recent LUBA and Hearings Officer decisions that the applicant cited.</p> <p>Staff notes the LUBA decision in <i>Central Oregon LandWatch v. Deschutes County (LBNW)</i> LUBA No. 2023-008 does not appear to support the argument that applying the Landscape Management Combining Zone is sufficient to ensure compliance with Goal 5. Staff therefore recommends the Board address the applicant’s ESEE analysis in their findings.</p>	<p>Does the MUA10 Zone introduce new conflicting uses to the Highway 20 scenic corridor?</p> <ol style="list-style-type: none">If yes, does the applicant’s ESEE analysis adequately address Goal 5?<ol style="list-style-type: none">If yes, the Board can continue reviewing the applications.If no, the Board must deny the PA/ZC.If no, an ESEE analysis is not required and the Board can continue reviewing the applications.

Issue Area #5	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
<p><u>Compliance with Rezoning Standards</u></p> <p>Does the proposed change to MUA10 zoning best serve the public interest?</p>	<p>DCC 18.136.020 Rezoning Standards:</p> <p>“The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:...”</p>	<p><u>Applicant comments</u> assert that the factors listed in DCC 18.136.020(A-D) provide a methodology for determining whether the Zone Change would best serve the public interest, and that each of those factors have been met. The applicant claims the language of DCC 18.136.020 must be read as a whole, and that the Hearings Officer has correctly interpreted this Code section. At an extreme, the applicant claims that COLW’s interpretation of this Code section would require an evaluation of every potential rural zoning designation and creates a standard that is impossible to meet.</p> <p><u>Oppositional comments</u> state that demonstrating compliance with DCC 18.136.020 requires demonstrating the public interest is best served by the proposed Zone Change <i>and</i> that the factors in DCC 18.136.020(A-D) are met. In an August 20, 2025, letter COLW asserts the Hearings Officer incorrectly applied DCC 1.04.030 and DCC 1.04.060, and that a common usage definition of “best served” must be applied.</p>	<p>The Hearings Officer finds the term “best” used in the introductory statement to DCC 18.136.020 can be reasonably interpreted to mean that the public interest is “best served” if the proposal meets the factors set forth in DCC 18.136.020 (A-D) (HOff Recommendation p 23). Based on this interpretation, the Hearings Officer agrees with the applicant that DCC 18.136.020 will be met.</p> <p>Staff notes that additional arguments regarding this issue were submitted after the Hearings Officer Recommendation was issued. Staff therefore recommends the Board include findings regarding whether demonstrating compliance with the factors listed in DCC 18.136.020(A-D) is sufficient to show that DCC 18.136.020 has been met.</p>	<p>Has the applicant demonstrated that the public interest is best served by the proposed rezoning in compliance with DCC 18.136.020?</p> <ol style="list-style-type: none">1. If yes, the Board can continue reviewing the applications.2. If no, the Board must deny the PA/ZC.

Issue Area #6	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
<p><u>Existing Solar Facility</u></p> <p>The subject property is developed with a photovoltaic solar facility, which was permitted as a conditional use under the current EFU zoning. A solar facility is not a permitted use under the proposed MUA10 zoning.</p>	<p>DCC 18.136.020(B).</p> <p>That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.</p>	<p><u>Applicant comments</u> state that both Deschutes County Code and Oregon Revised Statute allow for the continued use of a lawfully-established nonconforming use. The applicant asserts that cities and counties regularly create nonconforming uses when rezoning properties. In a letter dated September 10, 2025, the applicant referred to the purpose statement of the MUA10 Zone and described how the subject property would meet that intent under new MUA10 zoning.</p> <p><u>Oppositional comments</u> assert the continued existence of the solar facility would not be consistent with the purpose and intent of the MUA10 Zone, since it is not a permitted use in the new zone. COLW states that while there is a path for nonconforming uses to continue to operate, creating a new nonconforming use is not consistent with DCC 18.136.020(B).</p>	<p>The Hearings Officer determined that a lawful nonconforming use (the solar facility) would be consistent with the purpose of the MUA10 Zone (HOff Recommendation p 22).</p> <p>Staff and the Hearings Officer both note that the subject application only reviews the request for a Plan Amendment and Zone Change. This application is not a status determination on the existing solar facility.</p>	<p>Is the proposed Zone Change consistent with the purpose and intent of the proposed MUA10 zoning?</p> <p>1. If yes, the Board can continue reviewing the applications.</p> <p>If no, the Board must deny the PA/ZC for failure to comply with DCC 18.136.020(B).</p>

Issue Area #7	Applicable Approval Criteria	Applicant and Oppositional Responses	Hearings Officer and Staff	Board Decisions
Will the PA/ZC result in urban uses such that an exception to Goal 14 is required?	OAR 660-015-0000(14). Goal 14 and its implementing rules “provide for an orderly and efficient transition from rural to urban land use.”	<p><u>Applicant comments</u> state the Board has consistently approved similar Zone Change requests and found that the County’s adopted Comprehensive Plan is sufficient to ensure the uses in the MUA10 Zone are rural in nature. As an alternate finding, the applicant also submitted an analysis of the “Curry factors.”</p> <p>In response to COLW’s argument regarding Comprehensive Plan Policy 3.3.1, the applicant states this issue will be resolved through a separate process.</p> <p><u>Oppositional comments</u> claim the proposed Zone Change is inconsistent with Goal 14 because it would allow urban densities outside of an urban growth boundary (UGB), and future residents would rely on urban services. COLW also states that the proposed MUA10 zoning would allow for a density bonus if the applicant pursued a cluster development or planned development, and this density would be inconsistent with Goal 14 and Comprehensive Plan Policy 3.3.1.</p>	The Hearings Officer agreed with the applicant’s argument that Goal 14 was not applicable because no urban uses were proposed, and found that an exception to Goal 14 was not required.	<p>Would the proposed Zone Change allow for urban uses on the subject property?</p> <ol style="list-style-type: none">1. If no, the Board can continue reviewing the applications.2. If no, the Board must deny the PA/ZC for failure to comply with Goal 14.