



**MEMORANDUM**

**DATE:** February 25, 2026  
**TO:** Board of County Commissioners  
**FROM:** Caroline House, Senior Planner  
**RE:** BOCC Deliberations on Destiny Court PA/ZC Remand

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On December 23, 2025, Destiny Court Properties, LLC (the “Applicant”) initiated a Land Use Board of Appeals (“LUBA”) remand application (ref. File No. 247-25-000759-A), and the Board of County Commissioners (“Board”) held a remand hearing on January 28, 2026. The Board will conduct deliberations to reach a decision on the Applicant’s request on March 4, 2026.

**I. BACKGROUND**

The subject property is assigned address 19975 Destiny Court, Bend, OR 97703, and is located in Deschutes County’s jurisdiction between the City of Bend and the Unincorporated Community of Tumalo. In 2022, the Applicant initiated several land use applications. These included the subject Comprehensive Plan Amendment to change the designation of this property from Agricultural (“AG”) to Rural Residential Exception Area (“RREA”) and Zone Change to rezone this property from Exclusive Farm Use (“EFU”) to Multiple Use Agricultural (“MUA-10”)<sup>1</sup>. In January 2025, the Board voted 2-1 to approve the Comprehensive Plan Amendment and Zone Change request, which aligned with the Hearings Officer’s Recommendation.

**II. REMAND**

The County’s decision was appealed to LUBA by Central Oregon LandWatch (“COLW”) and LUBA remanded<sup>2</sup> the County’s decision back for further review (ref. LUBA No. 2025-015). As described by the Applicant, LUBA affirmed the County’s approval on multiple grounds but remanded on two discrete issues:

1. Alleged Inconsistency with Comprehensive Plan Policy. Specifically, LUBA found remand was necessary to address an apparent inconsistency regarding the County’s Comprehensive Plan

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<sup>1</sup> Ref. File Nos. 247-22-000436-ZC & 247-22-000443-PA.

<sup>2</sup> LUBA’s Final Opinion and Order was not appealed to the Court of Appeals.

and the MUA-10 zone, in particular the minimum new lot size for rural residential lots in that zone. LUBA stated:

“...the response does not explain why the equivalent densities of one dwelling per 7.5 acres or 5 acres allowed in the MUA-10 zone, which apparently would allow creation of parcels as small as 1.7 acres in size, are consistent with the 10-acre minimum parcel size specified in DCCP [Deschutes County Comprehensive Plan] Policy 3.3.1.

...

Accordingly, we deem it appropriate under this first assignment of error to remand so that the county may address the alleged conflict between DCCP Policy 3.3.1 and DCC 18.32.040(A) in the first instance.”<sup>3</sup>

2. Complete Analysis Regarding Proposed Farm Uses on the Property. While LUBA rejected the Petitioner’s claims that an applicant must disprove that any and all farm uses could occur on the property, LUBA did find that “we agree with petitioner that remand is necessary for the county to evaluate whether the subject property is suitable for the farm uses petitioner identified in the record, including various types of animal husbandry and equine facilities listed in ORS 215.203(2)(a).”<sup>4</sup>

Notably, LUBA found that the issue of conjoined use was settled (id., slip op 32-33), and therefore the inquiry before the BOCC relates only to use on the subject property alone.

### III. RECORD OBJECTION

Following the remand hearing, the Board established the following post-hearing open record period deadlines:

- New Evidence & Testimony – Wednesday, February 4th at 4 p.m.
- Rebuttal Evidence & Testimony – Wednesday, February 11th at 4 p.m.
- Applicant Final Argument – Wednesday, February 18th at 4 p.m.

On February 19, 2026, COLW submitted a record objection arguing that four exhibits included in the Applicant’s Final Argument constitute new evidence and do not comply with the deadlines above. As detailed in the attached memorandum from Stephane Marshall, Deschutes County Senior Assistant Legal Counsel, in her legal opinion the submitted exhibits do comply with the Board’s post-hearing open record period deadlines. Nevertheless, the Board has the authority to decide what it will and will not consider in its decision-making. For this reason, staff will be asking the Board on March 4, 2026, to confirm whether these exhibits will be considered as part of the Board’s decision before deliberations are conducted.

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<sup>3</sup> Central Oregon LandWatch v. Deschutes County, \_\_ Or LUBA \_\_ (LUBA Nos. 2025-015) (slip op at 9-10, Jun 26, 2025) (hereinafter “Destiny Court”).

<sup>4</sup> *Destiny Court*, slip op 23.

#### **IV. NEXT STEPS**

The Board will conduct deliberations on the two remand issues on March 4, 2026. Please see the attached Deliberation Matrix for the details on the remand issues and related summaries. Following deliberations, staff will draft the Board's decision document and related ordinance, which will be presented to the Board for final approval in late March or early April.

#### **V. 120-DAY REVIEW CLOCK**

Remand applications have a 120-day review clock<sup>5</sup>, and this review clock cannot be extended in most circumstances<sup>6</sup>. Therefore, the 120<sup>th</sup> day on which the County must take final action on this application is April 22, 2026.

#### **VI. RECORD**

The record for this remand application is as presented at the following Deschutes County Community Development Department website:

<https://www.deschutes.org/cd/page/247-25-000759-remand-destiny-court-properties-llc-comprehensive-plan-amendment-zone-change>

Attachments:

- 1) COLW's Record Objection
- 2) Deschutes County Legal Counsel Response Memorandum to COLW's Record Objection
- 3) Applicant's Response to COLW's Record Objection
- 4) Deliberation Matrix

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<sup>5</sup> Most land use applications have a 150-day review clock, and the Applicant can extend the clock for up to 215 days or waive the review clock entirely.

<sup>6</sup> Ref. ORS 215.435(2)(b).

## Caroline House

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**From:** Carol Macbeth <carol@colw.org>  
**Sent:** Thursday, February 19, 2026 5:51 PM  
**To:** Caroline House  
**Subject:** Final argument 247-25-000759A

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**!** **Caution:** External email - If unexpected, verify with known contacts. If suspicious, use **Report > Report Phishing**. If you clicked/opened/replied/entered credentials, contact **Service Desk** immediately.

Hi Caroline,

In the January 28th hearing in this matter, the Board of Commissioners voted on a 7-7-7 period with seven days till Feb. 4th for new evidence and testimony, seven additional days till Feb. 11th for rebuttal evidence and testimony, and seven days for the applicant until Feb. 18th for final argument.

The applicant failed to comply with the Board's constraints by submitting new evidence in addition to its final argument, new exhibits UU, VV, WW, and XX.

The new evidence should be rejected and not placed before the Board of Commissioners, as the submission of new evidence in the final period does not comply with the Board's clearly stated terms, as shown in the video of the January 28th hearing at 3:43.

Either the parties are required to comply with instructions given by the Deschutes County Board of Commissioners in a 7-7-7 period, or they are not. As long as the Board of Commissioners' instructions are to be complied with, these exhibits should not be placed before the Board.

Best regards,  
Carol Macbeth

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Carol Macbeth  
Staff Attorney  
Central Oregon LandWatch  
*On the ceded homelands of the Wasq'u (Wasco)  
and Tana'nma (Warm Springs) people*



**MEMORANDUM**

**TO:** Deschutes County Board of County Commissioners

**CC:** Caroline House, Senior Planner

**FROM:** Stephanie Marshall, Sr. Assistant Legal Counsel

**DATE:** February 25, 2026

**RE:** **Destiny Court PA/ZC Remand Application File No. 247-25-000759-A**  
Central Oregon LandWatch's Objection to Attachments to Applicant's Final Legal Argument

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On February 18, 2026, Applicant Destiny Court submitted its final legal argument in support of its remand application in accordance with the 7-7-7 open record period established by the Board of County Commissioners following the public hearing on the remand application on January 28, 2026. The final legal argument included four (4) attachments as follows:

- UU Ordinance 2019-001
- VV Ordinance 2025-009
- WW [Proposed] Conditions of Approval Agreement
- XX Destiny Court Farm Crop Analysis Table Raised by COLW

On February 19, 2026, Central Oregon LandWatch (COLW) filed an objection to inclusion of the attachments with the Applicant's final legal argument, alleging that the attachments constitute "new evidence" submitted outside of the Board's 7-7-7 schedule. COLW requests that the attachments be excluded from the record.

This memorandum is prepared to inform the Board's consideration of LandWatch's objections prior to commencing deliberations. The Board has the authority to decide what it will and will not consider in its decision-making. Nonetheless, for the reasons set forth below, County Legal does not agree with LandWatch's argument that the four attachments constitute new evidence.

First, attachments UU and VV are ordinances and excerpts from the Comprehensive Plan; they constitute legal authority, just as citations to code provisions, statutes and regulations. Attaching the ordinances is no different than if the Applicant had attached copies of other legal authorities, including case law. The Applicant is relying on this law in support of its legal arguments. The Board may take judicial notice of its own ordinances. ORS 40.030 Rule 202.

The fact that the Applicant highlighted certain language and included excerpts of legal authority also is not objectionable. Attorneys often quote statutes, regulatory provisions, ordinances or code in legal briefing and add bold, italicized or underlining for emphasis. That practice does not convert the manner of presentation of argument into new evidence. Attorneys also may determine, for purposes of legal argument, which sections or subsections of such sources to focus on and to bring to the attention of the decision-making body. Neither of these practices converts the legal authority into new evidence. It is simply the manner in which the attorney decides to present their arguments.

Attachment WW is the proposed Conditions of Approval Agreement. This is not evidence, either, but is offered in support of the Applicant's statement at the public hearing during which it stated they would agree to such an agreement. The proposed Agreement is offered by the Applicant for the Board to consider as a condition of approval, if the Board approves the remand application, not as evidence.

Attachment XX does not contain any new evidence, but is a table presenting the Applicant's arguments addressing evidence that exists (or does not exist) in the record. The Applicant could have made the same arguments in text but elected to present its commentary on evidence in the record (or lack thereof) in a table format.

I will be present at the Board's meeting on this topic and available to answer any questions.



February 24, 2026

**Kenneth Katzaroff**

Admitted in Washington and Oregon  
D: 206-405-1985  
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KKatzaroff@SCHWABE.com

VIA E-MAIL

Phil Chang, Chair  
Deschutes County Commissioners  
c/o Caroline House, Senior Planner  
Deschutes County Community Development  
117 NW Lafayette Avenue  
Bend, OR 97703

RE: Response to Email Objection to Applicant's Final Written Argument  
Deschutes County CaseFile No. 247-25-000759A  
Our File No.: 137893-262943

Dear Chair Chang and County Commissioners:

This letter responds to the record objection filed by COLW on Tuesday, February 19<sup>th</sup>, which objects to the attachments to Applicant's final legal argument. COLW's objection should be denied.

COLW argues that four exhibits constitute new evidence, Exhibits UU, VV, WW and XX. COLW is wrong.

Exhibit UU and VV are portions of adopted Ordinances of Deschutes County. Both exhibits are the official law of the county – they are not new evidence. It would be the same as Applicant submitting portions of the Title 18, the Comprehensive Plan, or any other portion of the County's Code. Moreover, ORS 40.090(7) specifically recognizes that county ordinances may be judicially noticed, which is the exact same status as any other “decisional, constitutional and public statutory law of Oregon, the United States” or any other jurisdiction. ORS 40.090(1). Applicant submitted its *legal argument* which included *legal sources*, not new evidence.

Similarly, Exhibit WW presents no new evidence – it is a proposed Conditions of Approval template agreement, which Applicant stated at the remand hearing it would agree to and the condition to which it would agree to. It is not evidence.

Lastly, Exhibit XX is the tabular formation of information submitted by COLW – it is not new evidence. And, to the extent COLW claims that the parties should comply with instructions of the Board, COLW seemingly excuses itself from complying with the remand instructions of LUBA – which was to limit its arguments and the County's analysis to those farm uses that

Caroline House  
February 24, 2026

COLW had *previously raised* in the record – not the dozens of newly argued laundry list of activities that have no evidentiary support and were not previously raised.

Applicant respectfully requests that COLW's objection is denied and that the Board approve the Applicant's request for a plan amendment and zone change to MUA-10.

Best regards,

SCHWABE, WILLIAMSON & WYATT, P.C.



Kenneth Katzaroff

JKKA:jmhi

cc: Carol Macbeth (via email)  
Stephanie Marshall (via email)

# Destiny Court, LLC PA/ZC Remand Deliberation Matrix

(File Nos. 247-22-000436-ZC, 247-22-000443-PA, & 247-25-000759-A)

## REMAND ISSUE 1

### How does Deschutes County Comprehensive Plan (“DCCP”) Policy 3.3.1 impact the subdivision allowances in the MUA10 Zone?

**BOCC Decision Options:**

1. Agree with Applicant’s response
2. Agree with Central Oregon LandWatch’s response
3. Other Board Interpretation

The Board’s decision on this issue does not directly affect the subject Plan Amendment and Zone Change request on remand.

<i>Remand Issue 1 Description</i>	<i>Applicant Response</i>	<i>Central Oregon LandWatch (“COLW”) Response</i>	<i>Staff Comments</i>
<p><u>Alleged conflict between DCCP Policy 3.3.1 and DCC 18.32.040(A)</u></p> <p><i>DCCP 3.3.1</i> states:</p> <p>“Except for parcels in the Westside Transect Zone, the minimum parcel size for new rural residential parcels shall be 10 acres”.</p> <p><i>DCC 18.32.040(A)</i> provides that in the Multiple Use Agricultural (“MUA10” zone):</p> <p>“The minimum lot area shall be 10 acres, except planned and cluster developments shall be allowed an equivalent density of one unit per seven and one-half acres and planned and cluster developments within one mile of an acknowledged urban growth boundary shall be allowed a five-acre minimum lot area or equivalent density”.</p>	<p>DCCP 3.3.1 relates to the minimum <i>equivalent density</i> in the MUA10 and Rural Residential (“RR10”) Zones:</p> <ul style="list-style-type: none"> <li>- This policy allows for planned unit developments (“PUD”) and cluster developments with reduced lot sizes below 10-acres, but with a <i>minimum equivalent density</i> of 10 acres when combined with the required open space.</li> <li>- The use of the “density bonus” was recently re-acknowledged as being compliant with the Statewide Planning Goals and the comprehensive plan.</li> <li>- Applicant has agreed to a Conditions of Approval Agreement which requires an equivalent density of 1:10 acres with lots permitted at a minimum of 2-acres in size through the use of a cluster or PUD subdivision.</li> </ul>	<p>DCCP is the controlling land use planning instrument and DCCP 3.3.1 only allows for reduced lots sizes in the Westside Transect Zone (“WTZ”).</p> <ul style="list-style-type: none"> <li>- The subject property is outside the WTZ.</li> <li>- Compliance with this policy cannot be met through Conditions of Approval.</li> </ul>	<p>This Board’s decision on how to interpret DCCP Policy 3.3.1 will determine whether future PUDs and cluster developments with an equivalent density of 10 acres are allowed subdivision types in the MUA10 and RR10 Zones.</p>

## REMAND ISSUE 2

**Is the subject property suitable for the farm use(s) identified by COLW based on the factors outlined in OAR 660-033-0020(1)(a)(B)?**

**BOCC Decision Options:**

**Yes** = The Applicant's request is *denied*.

**No** = The Applicant's request is *approved*.

<i>Remand Issue 2 Description</i>	<i>Applicant Response</i>	<i>COLW Response</i>	<i>Staff Comment</i>
<p><u>Evaluate whether the subject property is suitable for the farm uses COLW identified in the record, including various types of animal husbandry and equine facilities</u></p> <p>The OAR 660-033-0020(1)(a)(B) factors for determining suitability include:</p> <ul style="list-style-type: none"> <li>- Soil fertility</li> <li>- Suitability for grazing</li> <li>- Climatic conditions</li> <li>- Existing and future availability of water for farm irrigation purposes</li> <li>- Existing land use patterns</li> <li>- Technological and energy inputs required</li> <li>- Accepted farm practices</li> </ul> <p>The Board must assume the property retains the +/- 29 acres of irrigation rights that were transferred.</p>	<p>Only the farm uses identified by COLW in the record for LUBA No. 2025-015 must be evaluated and as summarized below, the property is not suitable for these farm uses.</p> <ul style="list-style-type: none"> <li>- <i>Soil Fertility:</i> The subject property has terrible soils and never had any agricultural activity except two short-lived attempts. Rock removal and/or soil enrichments are not economically viable. Applicant's expert testimony demonstrates the property is not suitable for the identified farm uses based on this factor.</li> <li>- <i>Suitability for Grazing:</i> Expert testimony demonstrates the property is not suitable for the identified farm uses based on this factor.</li> <li>- <i>Climatic Conditions:</i> Applicant's expert testimony demonstrates there are significant variations in climatic conditions in Central Oregon. In addition, COLW waived arguments under this factor as it was not previously raised.</li> <li>- <i>Existing/Future Farm Irrigation:</i> Applicant's expert testimony demonstrates no reasonable farmer would attempt to establish an irrigation system for the identified farm due to the extreme rockiness of the soils.</li> <li>- <i>Existing Land Use Patterns:</i> The surrounding or adjacent areas are in residential use.</li> <li>- <i>Technological/Energy Inputs Req:</i> The subject property has almost no improvements and would require substantial work (i.e. fencing, irrigation equipment, etc.) for any farm use. For example, horse facilities would require separate pastures for boarding, barns, storage, and areas.</li> <li>- <i>Accepted Farm Practices:</i> COLW misunderstands the term "accepted farming practice". OSU Extension Service has a list of what these are in Deschutes County. Given the poor soil quality, none of the accepted farming practices would be appropriate.</li> </ul> <p>None of the "farm" operations or properties cited by COLW make a meaningful comparison to the subject property.</p>	<p>COLW's submittals show the subject property shares the same relevant characteristics (i.e. ecoregion, climate, hardness zone, native soils, etc.) as other successful operating farms and ranches in Deschutes County.</p> <p>The subject property has cleared/cultivated irrigated land, irrigation equipment, an irrigation pond, fencing, and livestock sheds. Additionally, the property has a history of livestock grazing and production of hay. Therefore, the subject property is suitable for the identified farm uses.</p> <p>Profitability can be achieved on a small portion of the irrigated acreage as shown by the COLW's submittals.</p> <p>The Applicant cannot demonstrate relevant differences between the subject property and the working farms COLW has identified in the record.</p>	<p>None</p>