

Deliberation: Remand of a Thornburgh Destination Resort Modification 247-25-000229-A				
	<u>Opponent Responses</u>	<u>Applicant Responses</u>	<u>Staff Notes</u>	<u>Board Determination</u>
FWMP and "No Net Loss" Standard (LUBA Remand Topic 1)				
	Opponents argue that simply providing the FWMP to OWRD, even if procedurally correct, is insufficient to meet the substantive “no net loss” standard required by County and State policy. Detailed critiques from technical consultants question whether groundwater withdrawal limits, as stated in the FWMP, are backed by enforceable and measured outcomes. Opponents argue the plan’s groundwater modeling, mitigation measures, and management have not adequately accounted for fluctuations in aquifer health and stream flows, especially under long-term climate variability or drought.	<p>Thornburgh maintains that mitigation strategies, outlined within the FWMP, clearly demonstrate compliance with "no net loss" objectives, pursued through a plan to reduce groundwater utilization, and enhanced by commitments and regulatory alignment with ecological standards. The applicant, supported by technical experts, asserts the FWMP is scientifically credible and operationally robust, featuring annual withdrawal caps and adaptive management well beyond the regulatory baseline.</p> <p>The applicant places emphasis on coordination with ODFW and OWRD, highlighting water rights cancellation, aquifer recharge, and juniper thinning as mitigation strategies. They argue that a unified program, including these activities, produces net habitat benefits meeting or exceeding “no net loss.”</p>	None	Yes/No: Does the Board find the 2022 Fish and Wildlife Management Plan (FWMP) is sufficient to satisfy the “no net loss” standard with respect to groundwater sources for fish habitat mitigation?
Substantial Change and Economic Analysis (LUBA Remand Topic 2)				
	Appellants and LUBA frame the reduction in golf courses as a “substantial change” per local code, requiring new economic analysis. Opponents argue that economic justification for project benefits relied on outdated assumptions about amenity demand and overlooks post-pandemic trends. They critique job and housing projections as inadequate, and question whether lost amenity value is offset, or whether selective accounting hides negative net impacts.	The applicant responds that the amenity modification is operational, not fundamental to the resort; and that fiscal impact analyses support continued job creation, business benefit, and tax revenue. New investments in trails and other upgraded spaces are offered as offsets. Updated economic assessments indicate ongoing viability with these changes.	None	Yes/No: Does the updated economic record address and meet all impacts per DCC 18.113.070(C)(3), (4)?

Treaty Compliance (LUBA Remand Topic 3)				
	The Tribe and some public commentors argue the 2022 FWMP, especially its groundwater scheme, may infringe on rights reserved in the 1855 Treaty, which they assert are legally paramount. They highlight fish habitat stress as an ongoing concern, question whether any mitigation offered can truly avoid “measurable harm,” and assert a lack of authentic consultation with tribal governments.	The applicant asserts that the FWMP’s process has exceeded standard treaty compliance, citing communication with tribal representatives, incorporation of feedback, and mitigation that either leaves fish habitat unchanged or improved. They argue monitoring and dispute resolution processes will ensure enforceability throughout operations.	None	Yes/No: Do findings and process adequately address the Tribe’s treaty rights?
Procedural				
A. Remand Participation	Some members of the public and community groups argue that Deschutes County has applied DCC 22.34.030(A) too strictly, effectively “denying” participation to those who did not testify or submit evidence in the original proceedings. Concerns were also expressed over the tone or content of County communications, which participants felt chastised engagement. Commenters also cited the <i>Siporen v. Medford</i> cases, arguing remand proceedings should be more open or flexibly interpreted to allow the broadest possible participation.	None	<p>The County’s application of participation limits is rooted in the statutory and code requirements, both state law and DCC 22.34.030(A).</p> <p>Staff reviewed eligibility on a case-by-case basis, contacted individuals to confirm standing, and included all comments in the record out of transparency—even those ineligible for consideration as “substantial evidence.” However, staff emphasizes that inclusion in the record does not alter the legal requirement: only evidence and testimony from prior parties may be considered by the Board in its final decision and findings on remand.</p>	Yes/No: Did the Board properly apply and communicate participation requirements, maintaining both transparency and procedural integrity?
B. New Evidence and Rebuttal	Objecting parties contended that the applicant’s rebuttal submissions included not just responsive arguments but also extensive new facts and material that should have been introduced earlier. They assert that this practice both prejudiced their ability to respond and violated the procedural expectation that rebuttal is not a second opportunity for new evidence. They request that such materials be excluded from the	The applicant’s counsel responds that their rebuttal fits squarely within the definitions of “argument” and “evidence” accepted under state law and implementing rules. They argue state law does not ban the introduction of clarifying or responsive evidence during rebuttal as long as it is directly linked to prior testimony or public record submissions. They also cite LUBA and statutory precedent supporting a flexible approach and urge the Board to exercise its	Staff notes the 120-day statutory deadline for remand limits capacity for further rebuttal rounds. Staff recommends the Board consider whether material in rebuttal in fact constitutes new, non-responsive evidence, and, if so, whether parties were materially prejudiced. LUBA precedent affords the Board discretion and expects substantial fairness and record clarity. If reopening the record is considered, staff recommends strong caution,	Yes/No: Should the Board accept the rebuttal evidence into the record, or disregard/exclude it from consideration on remand?

	record, or at minimum, disregarded in deliberations.	discretion in weighing all such evidence.	given statutory and process constraints	
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