

Caroline House

From: Carol Macbeth <carol@colw.org>
Sent: Wednesday, July 3, 2024 2:51 PM
To: Caroline House
Cc: William Groves; Peter Gutowsky
Subject: Re: LandWatch 247-22-000573-ZC, 247-22-000574-PA

Follow Up Flag: Follow up
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[EXTERNAL EMAIL]

Caroline,

LandWatch strongly objects to an extension of the written record period by even a single day and requests a swift rejection of the July 2, 2024 letter from the applicant that LandWatch was only informed of this morning in the email responding to our final record submission.

LandWatch relied in good faith on the Board of Commissioners' decision setting a 14-7-7 record period, a record period the Board of Commissioners extended beyond the normal 7-7-7 for the applicant's benefit. All participants have been aware of the schedule for *three weeks*, since June 12, 2024.

The request is dated July 2, 2024, yesterday, but LandWatch received no notice of the request. As a result LandWatch has been held to one schedule, while the applicant requests another schedule for its own benefit. LandWatch followed the schedule in good faith, relying on the Board of County Commissioners' decision and complying with it by meeting the deadline imposed on all parties of today, July 3, 2024, as the final day for rebuttal materials, and the last day LandWatch could place anything in the record.

Both parties have known for three weeks that as of yesterday, there was only a single day to put any new materials in the record, and only then in rebuttal.

It is too late for such a request to be granted in fairness. LandWatch would have had no objection to an extended schedule if it had been proposed at the outset. But the effect of such a request being submitted now, at the last minute for new material *in rebuttal*, means LandWatch was held to one schedule, while the applicant requests for itself an extended rebuttal period, an advantage denied to LandWatch. LandWatch has already been held to the schedule, and has complied with the deadline set for LandWatch's last submission. LandWatch met its obligations in deference to the Board of Commissioner's decision on June 12, 2024, and requires no more time for any purpose.

Unless the record closes for rebuttal today with final argument held to the July 10th deadline, then instead of the 21 days the applicant and LandWatch were equally granted to submit new or rebuttal materials into the record, and instead of the seven days the applicant was granted to prepare final argument according to the schedule all parties have been aware of *for three weeks*, this request would allow the applicant until *August 7th* for its rebuttal, *five weeks* beyond the time given for rebuttal to LandWatch, and would allow the applicant seven weeks, almost *two months*, to review and respond to LandWatch's final materials, instead of the one week set by the Board three weeks ago.

The Board of Commissioner's should not reward the applicant who did not request an extended schedule on June 12th, June 13th, June 14th, June 15th, or any earlier date, but waited until July 2d, when LandWatch, acting in good faith, had already finished preparing its materials for submission on July 3, 2024, and then did submit them.

LandWatch objects to the Board of Commissioners even entertaining this request. The letter request itself should be rejected as it is not rebuttal material, given that the Board of Commissioners already acted in open hearing, on the record, and declared that June 26, 2024, was the last day for new materials.

Pursuant to ORS 197.835(9)(a)(B), LUBA shall reverse or remand a land use decision if the local government "failed to follow the procedures applicable to the matter before it in a manner that prejudiced the substantial rights of the petitioner."

Even the entertainment of a request to change the schedule of submissions only for the applicant will mean one schedule was imposed on LandWatch and another on the applicant, *after* LandWatch had already complied with the schedule as set in open hearing, three weeks ago, on the record.

The record for new materials like the request letter closed on June 26, 2024. The request letter should have been rejected by the staff upon receipt. The staff was already instructed by the Board of Commissioners, three weeks ago, that it was the Board's decision that the record would be closed for new materials after 4 PM on June 26, 2024. The letter was not received until almost a later. The staff needs no further instruction from the Board about how to act when new materials are submitted, not in rebuttal, after June 26, 2024. The Board already told staff, and the parties, and the public, on the record, what materials the staff could accept at what time.

The request is significantly prejudicial to LandWatch's substantial rights to a fair process. Any decision the County reaches subsequent to this impairment of LandWatch's substantial rights is subject to remand or reversal pursuant to ORS 197.835(9)(a)(B).

Thank you for your attention to these views.

Best regards,
Carol Macbeth

Le mer. 3 juil. 2024 à 11:33, Caroline House <Caroline.House@deschutes.org> a écrit :

Hi Carol,

The attached materials have been received and will be uploaded to the record by the end of the day. Please note the Applicant has requested an extension of the written record period and the Board will make a decision at their regularly scheduled Wednesday meeting next week. You can review the Applicant's request for an extension of the written record period in the document section under the "BOCC Hearing - Rebuttal Testimony" heading [here](#).

Thanks,



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Lobby hours:

Monday – Thursday 9am to 12pm, 1pm to 4pm / Friday 9am to 12pm

From: Carol Macbeth <carol@colw.org>
Sent: Wednesday, July 3, 2024 9:12 AM
To: Caroline House <Caroline.House@deschutes.org>
Subject: LandWatch 247-22-000573-ZC, 247-22-000574-PA

[EXTERNAL EMAIL]

Hi Caroline,

Attached please find LandWatch's rebuttal comments on the above. Please place them in the record and confirm receipt.

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

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