

BOCC Decision Matrix

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Cascades Academy Plan Amendment/ Zone Change Request Land Use File Nos. 247-24-000392-PA, 393-ZC					
Issue Area 1 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Should the evidence submitted by Central Oregon Landwatch (COLW) during the <i>Rebuttal</i> open record period be considered in the Board's decision-making process?</p> <p><u>Applicable Criteria</u> DCC 22.24.140(D) ORS 197.197</p>	<p>Not considered; raised during the BOCC open record period.</p>	<p>Central Oregon LandWatch ("COLW") submitted materials during the <i>Rebuttal</i> phase of the open record period and acknowledged the respective open record period phase in the materials.</p> <p>The arguments in the <i>Rebuttal</i> submittal were focused on:</p> <ul style="list-style-type: none">• Raise it or waive it – pre-emptive objection under ORS 197.797(6) related to exhibits submitted in <i>New Evidence</i> period without arguments.• Individual agricultural use analysis - findings must be shown to show that individual farm uses are not possible, including: poultry, honey, raising of cattle, horses, llamas, goats, donkeys, and sheep.• DCCP 3.3.1 requires a 10-acre minimum lot size; rezoning allows PUDs/Clusters below that. Rezoning may violate the DCCP.	<p>The applicant asserts the July 9, 2025, <i>Rebuttal</i> submittal by COLW constitutes <u>new</u> evidence. The applicant submitted evidence related to Goal 5 during the <i>New Evidence</i> period; no submittals were received by COLW at that time. The applicant argues that COLW's <i>Rebuttal</i> testimony introduced new exhibits and information unrelated to Goal 5 without the opportunity for the applicant to submit corresponding evidence, thereby violating the conditions of the <i>Rebuttal</i> testimony period and depriving the applicant of the right to rebut the evidence.</p> <p>The applicant is requesting that the Board reject this testimony from the record and the Board's decision-making process.</p> <p>Alternatively, if the Board were to accept the evidence into the record, the applicant has requested that the record be reopened to allow time for new evidence to be submitted by the applicant to rebut the new evidence submitted by COLW during the <i>Rebuttal</i> period.</p>	<p>County legal counsel has reviewed the COLW <i>Rebuttal</i> submittal and agrees that it constitutes new evidence. Legal recommends that the Board not consider this submittal in its decision-making process on the application.</p> <p>As an alternative path, the Board may accept the evidence into the record for consideration. In this instance, legal counsel supports the applicant's request to reopen the record to allow new evidence to be submitted by the applicant.</p>	<p>Yes: Halt deliberations and consider order to reopen the written record.</p>
					<p>No: COLW's <i>Rebuttal</i> testimony will be excluded from consideration in the Board's decision-making process. Proceed to the next item.</p>

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Issue Area 2 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Can the Surface Mine Zone be changed for the subject properties?</p> <p><u>Applicable Criteria</u> DCC 18.52.200(A)</p>	<p>The Hearings Officer agrees that rezoning is available to the applicant as long as all other criteria are satisfied.</p> <p>The Hearings Officer disagreed with COLW's argument, noting the criteria only apply to currently zoned SM parcels and are silent on subsequent rezoning applications once a property is no longer zoned SM.</p> <p>(Hearings Officer Recommendation, pgs. 8-9).</p>	<p>COLW asserts that the rezoning request for tax lots 300, 301, and 302 violates DCC 18.52.200(A) because the tax lots were previously zoned SM, but were rezoned to EFU in 2001. COLW interprets the code to prohibit further rezoning of these tax lots.</p>	<p>The applicant states this criterion is not applicable. Tax lots 4200, 4300, and 4400 are currently zoned SM. The parcels are part of Site No. 370, which is listed in the County's Goal 5 inventory of mineral and aggregate sites for "storage" uses. The tax lots were never intended to be mined and have never been mined.</p>	<p>Staff agrees with the Hearings Officer's findings. DLCD submitted evidence into the record from DOGAMI confirming no history of mining on the tax lots.</p>	Yes: May be approved.
					No: May be denied.
Issue Area 3 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Is the property in violation of previous land use approval and subject to DCC 22.20.015(A)(2)?</p>	<p>The Hearings Officer finds DCC 22.20.015 does not apply, as no violation has been determined to exist, and no violation was considered in the 2001 rezoning decision. Following the rezoning of the property, conditions of approval from past decisions related to surface mining are no longer applicable.</p> <p>(Hearings Officer Recommendation, pgs. 10-11).</p>	<p>COLW asserts conditions of approval of SP-93-59, associated with a previous reclamation plan on tax lots 300, 301, and 302, are unmet; the reclamation plan is incomplete; and the County cannot make any further land use decisions concerning the property until those are met.</p>	<p>The applicant asserts the County previously determined reclamation requirements from SP-93-59 have been completed. The 2001 rezoning decision of the property establishes that all previous requirements were met. No code violation has been found on the subject property.</p>	<p>Staff agrees with the Hearings Officer on this interpretation of DCC 22.20.015, utilizing information from the record.</p>	Yes: May be denied.
					No: May be approved.

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Issue Area 4 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Does the property qualify as "Agricultural Land", being predominantly Class I-VI soils?</p> <p><u>Applicable Criteria</u> ORS 215.11 OAR 660-033-0020(1)(a)(A) OAR 660-033-0030(8) OAR 660-033-0020(1)(a)(C)</p>	<p>The Hearings Officer found that the subject property is not Goal 3" Agricultural Land" under the statewide planning goals.</p> <p>The Hearings Officer found that OAR 660-033-0090 and 120 are not applicable because they apply to the analysis of particular uses. The applicant must provide confirmation from DLCD that the soil meets the requirements of OAR 660-033-0030(5)</p> <p>(Hearings Officer Recommendation pg. 12-13, 15).</p>	<p>COLW asserts that the applicant cannot rely on the soil study to change the zoning designation, as the applicant must rely on the U.S. Natural Resources Conservation Service (NRCS) classifications per OAR 660-033-0030(8), 0090, and 120.</p> <p>COLW also asserts that the former surface mine has been reclaimed in accordance with the applicable DOGAMI reclamation plan, including replacement of topsoil with high-value soils. COLW states that the time to raise concerns regarding the soil quality on the property should have been raised during the 2001 process to rezone the property from SM to EFU. As the applicant did not raise those issues at that time, the property constitutes high-value farmland.</p>	<p>The applicant provided an Order 1 site-specific soil study for the property with its application materials. The study was prepared by a certified soil classifier and correctly classified the soils, which are not predominantly Class I-VI. This information is a credible source to disqualify the property as "Agricultural Land". ORS 215.11 allows property owners to rely on more detailed information in lieu of NRCS classifications.</p>	<p>Staff agrees with the Hearings Officer's findings based upon the submitted soils study analysis and the classification of unproductive soil types on the property.</p> <p>Prior to the Board's hearing, staff received confirmation from DLCD that the soil study complies with the requirements of OAR 660-033-0030(5).</p>	Yes: May be denied.
					No: May be approved.
Issue Area 5 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Is the subject property suitable for Farm Use?</p> <p><u>Applicable Criteria</u> Statewide Planning Goal 3. ORS 215.203(2)(a) OAR 660-033-0020(1)(a)(B)</p>	<p>The subject property does not qualify as agricultural land.</p> <p>The Hearings Officer agrees with the Applicant's quantitative and more detailed analysis that the property is not suitable for farm use.</p> <p>(Hearings Officer Recommendation pg. 14-15).</p>	<p>COLW asserts that the property can be used for livestock grazing on its own or in conjunction with other land and that the property has historically had an irrigated pasture.</p> <p>In its <i>Rebuttal</i> testimony, COLW asserts that individual analysis of specific farm uses is required to demonstrate suitability.</p>	<p>The Applicant asserts that the subject property does not qualify as agricultural land concerning ORS 215.203, with emphasis on the definition of "Farm Use" and the required element of profitability. The applicant explains the limitations on farm use, even if considered in conjunction with other parcels. Evidence includes analysis of grazing and testimony from farmers with experience engaging in farm uses.</p> <p>The Applicant has addressed the "suitability factors" associated with OAR 660-033-0020(1)(a)(B).</p>	<p>Staff concurs with the Hearings Officer's Recommendation and analysis from the Applicant.</p>	Yes: May be denied.
					No: May be approved.

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Issue Area 6 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
Is the subject property's EFU zoning necessary to permit farm practices on Tax Lot 300 <u>Applicable Criteria</u> OAR 660-033-0020(1)(a)(C)	The Hearings Officer agrees with the Applicant's analysis, considerations, and application of relevant laws specific to OAR 660-033-0020(1)(a)(C) (Hearings Officer Recommendation pg. 30).	COLW asserts that agricultural production on Tax Lot 300 will end if the rezoning of the subject property is approved. The current EFU zoning is therefore "necessary."	The applicant asserts there is no farm use on the subject property. The property has been in storage use related to mining, or post mining use (reclamation), since the early 1990s.	Staff agrees with the Hearings Officer's finding on this issue area. As stated in the Staff Report, staff also concurs with the Applicant's analysis and finds it is not feasible to determine that the subject property is <i>necessary</i> for the purposes of permitting farm practices on any nearby parcels.	Yes: May be denied.
					No: May be approved.
Issue Area 7 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
Will the PA/ZC result in urbanization such that an exception to Goal 14 is required? <u>Applicable Criteria</u> Oregon Statewide Planning Goal 14	The Hearings Officer agreed with the applicant's analysis and found it to be unnecessary to apply the "Curry factors". The Hearings Officer found that rezoning the property to MUA-10 does not result in urbanization of the subject property.	COLW asserts that the level of density authorized by the MUA-10 zone, through cluster and planned developments, is urban. The property is close in proximity to the City of Bend UGB and will attract residents to the subject property who would otherwise reside in the UGB, and will attract people residing on the subject property to the UGB for urban services. The rezoning would make residents and users of the subject property reliant on urban public services and infrastructure. The increase in density, proximity to UGB, and reliance on urban services all point to a violation of Goal 14 in the absence of a Goal 14 exception.	The applicant notes the respective question has been asked and answered by the County in LUBA No. 2023-049. In 2016, the County specifically amended its Comprehensive Plan to provide that the Rural Residential Exception Area plan designation and its related MUA-10 and RR-10 zones should be applied to non-resource land. This amendment (including MUA-10 uses on non-resource land) has been determined to be compliant with Goal 14. While not conceding an analysis of Goal 14 is required, the applicant also provided a site-specific analysis for the subject property, the <i>Curry</i> factors. The applicant states the MUA-10 zoning allows a density of one dwelling per 10 acres – a rural density. DLCD has placed limitations on "magnet uses" that could draw UGB residents to rural properties if they are within 3 miles of a UGB. The MUA-10 also includes these limitations, addressing the proximity issue. Urban services are not of concern – sewer service is prohibited by Goal 11. An increase in the density of development is not allowed if a public water system is developed. In totality, these factors demonstrate the use is not urban in nature.	The applicant provided sufficient analysis of this issue in the record. Although the Hearings Officer found it unnecessary to apply the " <i>Curry factors</i> ", the applicant has provided sufficient analysis to demonstrate the use is rural in nature and does not require a Goal 14 exception, nor violate Goal 14.	Yes: May be denied.
					No: May be approved.

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Issue Area 8 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Will the proposed change to MUA-10 result in new uses that would conflict with the Goal 5 resources on the property or associated scenic corridors?</p> <p><u>Applicable Criteria</u> Statewide Planning Goal 5 OAR 660-023-0250(3)</p>	<p>A portion of the property contains mapped wetlands and is within the County's Landscape Management Overlay zones associated with the Deschutes River and Highway 20. The Deschutes River is also a state scenic waterway.</p>	<p>Central Oregon LandWatch asserts the applicant is required to apply Goal 5 provisions because the proposal to rezone and redesignate the property could add new uses (those permitted in the MUA-10 zone) on the subject property. Analysis under OAR 660-023-0250(3)(b) is required when a new use may conflict with the Goal 5 resources on the property.</p>	<p>The applicant asserts there is no need to apply Goal 5 because the County's Comprehensive Plan and zoning code have been acknowledged as compliant with Goal 5 and provide adequate protection for Goal 5 resources.</p> <p>To respond to concerns from the Hearings Officer's recommendation, the applicant provided an Economic, Social, Environmental, and Energy analysis (ESEE) to demonstrate compliance with Goal 5.</p> <p>The revised ESEE notes that the 1992 ESEE considered the aesthetic impacts of development in the corridor and did not analyze specific properties or uses. Therefore, the ESEE may be broad enough to contemplate conflicting uses in the MUA-10 zone, and no further analysis is necessary. The applicant has provided an ESEE to supplement the 1992 work, in the abundance of caution.</p>	<p>Pursuant to OAR 660-023-0250(3), the County is required to apply Goal 5 for any Post Acknowledgement Plan Amendment (PAPA) if the PAPA would allow a new conflicting use with a significant Goal 5 resource on an acknowledged resource list. Staff recommends the Board review the ESEE as part of its decision.</p>	Yes: Evaluate Issue Area 9.
	<p>The Hearings Officer finds that LUBA No 2023-008 rejects the applicant's initial position that Goal 5 analysis is not required. LUBA explained, in a similar case, that the County cannot rely on the previous Goal 5 analysis unless the analysis specifically considered impacts from the uses in the new zone (in this case, MUA-10) on all properties.</p> <p>The Hearings Officer noted the applicant did not provide information into the record of previous analysis for MUA-10 uses or whether wetland resources on the property would be impacted. The Hearings Officer found the application could not be approved without further analysis on this issue.</p>				No: May be approved.

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Issue Area 9 and Approval Criteria	Hearings Officer's Recommendation	Opponent's Position	Applicant's Position	Staff Comment	Board Determination
<p>Is the ESEE analysis sufficient to demonstrate compliance with Statewide Planning Goal 5?</p> <p><u>Applicable Criteria</u> Statewide Planning Goal 5 OAR 660-023-0250</p>	<p>The ESEE was submitted following the Hearings Officer's Recommendation.</p>	<p>Following submittal of the ESEE analysis, COLW asserts the analysis is deficient and the application continues to fail to comply with Goal 5. Specifically:</p> <ul style="list-style-type: none">• The ESEE analysis errs in only considering uses allowed on non-high-value farmland.• The ESEE incorrectly analyzes impacts of the new conflicting use on the subject property and should instead analyze impacts to the entire scenic resource corridor associated with Highway 20 and the Deschutes River.• The ESEE does not accurately analyze the consequences of a decision to allow, limit, or prohibit the use.	<p>Following the Board hearing, the applicant provided an updated ESEE responding to comments from DLCD. The revised ESEE notes that the 1992 ESEE considered the aesthetic impacts of development in the corridor and did not analyze specific properties or uses.</p>	<p>Staff concurs with the applicant and finds the information in the revised ESEE sufficient to demonstrate compliance with Statewide Planning Goal 5 and OAR 660-023-0250.</p>	Yes: May be approved.
		<p>The ESEE proposes to allow the new conflicting uses, rather than limit the use through the Landscape Management Zone, which mitigates impacts to the County's significant view corridors elsewhere throughout the County.</p>	<p>The applicant also clarified that high-value farmland uses are not analyzed, as the Order 1 Soils Assessment demonstrated the property does not constitute high-value farmland. The applicant did provide a more extensive analysis of the consequences of allowing, limiting, and prohibiting the conflicting use.</p> <p>The revised ESEE proposes to limit the use through existing provisions of the Deschutes County Code – namely, through the Landscape Management Combining Zone and Wetland provisions.</p>		No: May be denied.