



MEMORANDUM

DATE: April 16, 2025

TO: Board of County Commissioners

FROM: Jacob Ripper, AICP, Senior Planner
Will Groves, Planning Manager

RE: Thornburgh Destination Resort Remand Hearing Proceedings

On April 7, 2025, the Thornburgh Resort initiated a Land Use Board of Appeals (LUBA) remand, file no. 247-25-000229-A. Staff respectfully requests the Board of County Commissioners (Board) to issue Order 2025-014 to allow the Board to receive additional testimony and evidence related to the LUBA remand. There are three remand issues to be resolved and are noted below.

The subject application is a request for modification of the destination resort Final Master Plan (FMP). The requested modification involves a request to apply Thornburgh's 2022 Fish and Wildlife Management Plan (2022 FWMP).

Deschutes County Code (DCC) 22.34.040, Proceedings on Remand, grants the Board discretion to:

- Reopen the record in instances in which it deems to be appropriate;
- Enable a remanded application for a land use permit to be modified to address issues involved in the remand to the extent that such modifications would not substantially alter the proposal and would not have a significantly greater impact on surrounding neighbors; and,
- Allow parties to raise new, unresolved issues that relate to new evidence directed toward the issue on remand.

I. BACKGROUND

The Thornburgh Destination Resort has a long and complex history. The Conceptual Master Plan (CMP) was applied for in 2005. The Final Master Plan (FMP) was originally applied for in 2007. Years of litigation resulted in the FMP being affirmed by LUBA in 2018.

The subject application was received by the Planning Division on August 17, 2022. A public hearing was conducted by a Deschutes County Hearings Officer on October 24, 2022. On December 19, 2022, the Hearings Officer denied the Applicant's request. Two appeals of the Hearings Officer's decision were received. The Board conducted a hearing and voted 2-1 to approve the Applicant's request. That final County decision was appealed to LUBA.

On January 12, 2024, the Land Use Board of Appeals (LUBA) issued their Final Opinion and Order remanding the County's decision back to the County for further review (ref. LUBA Nos. 2023-038, 2023-039, 2023-041). The remand decisions was then appealed to the Court of Appeals. On May 1, 2024, the Oregon Court of Appeals reversed and remanded to LUBA for further review on petition of The Confederated Tribes of the Warm Springs Reservation of Oregon. On February 25, 2025, LUBA remanded to the County again, adding an additional remand topic for the County to address at the local level. On April 7, 2025, the Applicant requested that the County initiate remand proceedings.

II. REMAND

Together with the decision of the Court of Appeals, the remand from LUBA includes three issue areas to be addressed:

1. Additional findings to explain why the submittal of the 2022 Fish and Wildlife Management Plan (FWMP) to the Oregon Water Resources Department is sufficient to satisfy the "no net loss" standard with respect to groundwater sources for fish habitat mitigation.
2. That the FWMP was a substantial change with respect to the required economic analysis and LUBA required further findings addressing DCC 18.113.070(C)(3) and (4) and that the County will either need to consider those changes or explain why that consideration is not required.
3. Whether the 2022 Fish and Wildlife Management Plan violates the Treaty with the Tribes of Middle Oregon, dated June 25, 1855.

The appellants' other assignments of error were denied.

III. APPLICANT REQUEST

The procedures related to the remand process of DCC 22.34.040 instruct that on remand, the Board needs to review those issues that LUBA and the Court of Appeals required to be addressed and not any settled issues. New testimony and evidence needs to be directed toward the remand issues.

Staff received a request from the applicant to reopen the record, but limit that reopening only to the topic of the economic analysis requirement and addressing DCC 18.113.070(C)(3) and (4). The applicant believes the other two remand topics do not require new evidence in order to be addressed.

Limiting the record to a single issue may pose challenges to the Board and staff in terms of ensuring that new evidence and testimony is directed towards only one of the remand issues. It may also be a challenge to identify and separate what evidence may and may not be considered during the review process, including during deliberations, in addition to possibly leading to record challenges.

Regarding a record being reopened, typically remand proceedings, when containing more than one remand topic, are not limited to less than the full number of remand topics. However, this request was respectfully submitted to the County by the applicant at the time of initiation and therefore staff brings this request to the Board for consideration.

Two versions of the Order are attached. Staff respectfully requests that the Board select which version of the Order to move forward with.

Attachments:

- 1) Board Order 2025-014 (three remand topics)
- 2) Board Order 2025-014 (one remand topic)