

**BOCC DECISION MATRIX**

**LBNW LLC PLAN AMENDMENT / ZONE CHANGE  
Land Use File Nos. 247-21-000881-PA, 882-ZC**

	Issue Area	Applicable Approval Criterion	Applicant and Oppositional Responses	Hearings Officer	Staff Comment
1	Is the applicant required to address the factors raised in <i>Shaffer v. Jackson County (LUBA 922, 1989)</i> in order to demonstrate compliance with Oregon Statewide Planning Goal 14 (Urbanization)?	The opposition does not point to specific approval criteria but instead notes Oregon Statewide Planning Goal 14 (Urbanization) as being relevant to this issue area.	<p><u>The Applicant</u> asserts, based on case law from <i>Central Oregon LandWatch v. Deschutes County (LUBA 2021-028)</i>, that the proposed Rural Industrial (RI) Zone does not permit urban uses on rural lands and, therefore, the factors outlined in <i>Shaffer</i> do not apply to the subject application and no Goal 14 exception is needed for approval.</p> <p><u>Oppositional comments</u> assert that the Applicant has failed to adequately address Goal 14 through a review of the relevant <i>Shaffer</i> factors and that a Goal 14 Exception is required for the subject proposal.</p>	The Hearings Officer found that, because no specific use has been proposed in connection with the subject plan amendment and zone change review process, the <i>Shaffer</i> factors do not apply to the subject application (HO Decision p. 39).	<p>Staff agrees with the Hearings Officer and believes the Applicant's position provides the clearest interpretation on this issue. The Board must determine whether the applicant must address the factors raised in <i>Shaffer</i> to demonstrate compliance with Goal 14.</p> <p>If the Board agrees with Hearings Officer's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation.</p> <p>If the Board agrees with the Applicant's response, they may make findings that the Rural Industrial (RI) Zone does not permit urban uses on rural lands and, therefore, the <i>Shaffer</i> factors do not apply to the proposal.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the <i>Shaffer</i> factors are required.</p> <p>If the Board finds the <i>Shaffer</i> factors do apply, the Board must then determine if those factors have been met by the Applicant.</p> <p>If the Board determines the <i>Shaffer</i> factors have been met, they may make findings to such effect and continue reviewing other issue areas.</p> <p>If the Board determines the <i>Shaffer</i> factors have <u>not</u> been met, they may deny the application for lack of Goal 14 compliance.</p>

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2	<p>Goal 14: Does proposed Rural Industrial (RI) Zoning Designation allow urban uses on rural County property, requiring and a Goal 14 Exception?</p>	<p>The opposition does not point to specific approval criteria but instead notes Oregon Statewide Planning Goal 14 (Urbanization) as being relevant to this issue area.</p>	<p><u>The Applicant</u> asserts the Rural Industrial (RI) Zone proposed in the subject application is a rural zone that only permits rural uses as allowable or conditional and does not permit urban uses on rural County property. The Applicant cites <i>Aceti</i> case law (<i>Central Oregon LandWatch v. Deschutes County LUBA 2021-028</i>) in support of their position.</p> <p><u>Oppositional comments</u> assert the Rural Industrial (RI) Zone will result in urban uses being allowed on the subject rural County properties and, as a result, an exception to Oregon Statewide Planning Goal 14 (Urbanization) is required in order for the subject application to be approved. Based on <i>Shaffer v. Jackson County (LUBA 922, 1989)</i>, oppositional comments also assert that the Shaffer factors, reviewed in Issue Area #1, must be satisfied in order to demonstrate Goal 14 compliance.</p>	<p>The Hearings Officer cites case law at <i>Central Oregon LandWatch v. Deschutes County (LUBA 2021-028)</i> and found the <i>Shaffer</i> factors outlined in <i>Shaffer v. Jackson County (LUBA 922, 1989)</i> do not apply to the subject proposal as the eventual use of the subject property is uncertain (HO Decision p. 39). Further, the Hearings Officer reinforces Board findings in Ordinance 2021-002 (related to LUBA 922) that the RI Zone does not permit urban uses on rural lands (HO Decision p. 42-43) and ultimately concludes that no Goal 14 Exception is required for approval of the subject proposal.</p>	<p>Staff agrees with the Hearings Officer and believes the Applicant's position provides the clearest interpretation on this issue. The Board must determine whether the Rural Industrial (RI) Zone allows urban uses on rural land and, as a result, whether the application complies with Goal 14.</p> <p>If the Board agrees with Hearings Officer's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation.</p> <p>If the Board agrees with the Applicant's response, they may make findings that the Rural Industrial (RI) Zone does not permit urban uses on rural lands and, therefore, no Goal 14 Exception is required for the proposal.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the proposal allows urban uses on rural lands and, as a result, the proposal does not comply with Goal 14. They may then deny the application on these grounds.</p>

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3	Goal 5 Compliance: The subject property is within a scenic resource associated with the Highway 97 corridor. Are additional findings, beyond those provided by the Hearing Officer, needed at this time?	The opposition cites OAR 660-023-0250(3) as relevant to this issue area. Deschutes County Comprehensive Plan Section 2.7 applies to Open Spaces, Scenic View, and Sites.	<p><u>The Applicant</u> asserts the provisions of the Landscape Management (LM) Combining Zone associated with the Highway 97 corridor are reviewed and addressed during the County's site plan review of specific development proposals and that the presence of the LM Combining Zone on the subject property is not grounds for denial of the subject applications.</p> <p><u>Oppositional comments</u> assert that Goal 5 compliance has not been addressed and that an exception to Goal 5 is required for approval of the subject proposal.</p>	The Hearings Officer found the subject properties do not constitute significant open spaces subject to Goals and Policies of Deschutes County Comprehensive Plan Chapter 2, Section 2.7 and are not inventoried in Chapter 5, Section 5.5 of the Comprehensive Plan as an "area of special concern" and that review of compliance with the LM Combining Zone is not required within the scope of the subject Plan Amendment and Zone Change applications (HO Decision p. 59).	<p>Staff agrees with the Applicant and Hearings Officer on this issue area. The Board must determine whether additional findings are required related to Goal 5 compliance.</p> <p>If the Board agrees with Hearings Officer and Applicant's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation and move on to other issue areas.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the proposal does not comply with Goal 5 and the underlying LM Combining Zone. They may then deny the application on these grounds.</p>
4	Transportation Impacts, Public Safety, Goal 12: Will the proposal, as conditioned by the Hearings Officer have significant adverse effects on the identified function, capacity, and performance standards of the transportation facilities in the impact area?	The opposition references OAR 660-012-0060(1) and DCC 18.136.020 as specific approval criteria relevant to the identified issue area.	<p><u>The Applicant's</u> traffic study indicates the project will create transportation facility impacts which may not be appropriate based on the County Transportation System Plan. To mitigate such impacts, the Applicant proposes a trip cap as a condition of approval, limiting the number of vehicle trips allowed to and from the subject property, which was reviewed and approved by ODOT, Deschutes County representatives, and the Applicant.</p> <p><u>Oppositional comments</u> assert that Goal 12 has not been addressed sufficiently by the Applicant (including the trip cap condition of approval) and an exception to Goal 12 is required for an approval of the proposal. The opposition further asserts that the proposed access to the property would not serve public safety, in violation of DCC 18.136.020.</p>	The Hearings Officer found the Applicant has studied all facilities identified by the County as potentially impacted by the proposal through the traffic study and associated trip cap condition of approval. The Hearings Officer concludes that, with the imposition of the trip cap condition of approval, the proposal will have no significant adverse effect on the identified function, capacity, and performance standards of the transportation facilities in the impact area and the proposal complies with OAR 660-012-0060 (HO Decision p. 78).	<p>Staff agrees with the Applicant and Hearings Officer on this issue area. The Board must determine whether the proposal, as conditioned by the Hearings Officer, will have significant adverse effects on the function, capacity, and performance standards of the transportation facilities in the impact area.</p> <p>If the Board agrees with Hearings Officer and Applicant's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation, including the "trip cap" condition of approval, and move on to other issue areas.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that the proposal <u>will</u> have significant adverse effects and either: 1) make additional findings addressing these effects; or 2) deny the application for lack of compliance with Goal 12.</p>

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5	<p>Goal 3 Compliance and Order 1 Soil Survey Validity: The Applicant's provided a supplemental soil study to refine agricultural designations for the subject properties based on the National Resources Conservation Service (NRCS) soil classification system. Can DLCD certified soil studies be used to update NRCS soil designations?</p>	<p>The opposition states the property meets the legal definition of "agricultural land" based on OAR 660-033-0020(1)(a).</p>	<p><u>The Applicant</u> argues that DLCD rules supplement Goal 3, providing property owners with the right to challenge NRCS soil study results by hiring a certified soil scientist to conduct a more detailed soils study and obtaining DLCD approval to use the study in a plan amendment/rezone application. The Applicant notes that the right to challenge NRCS mapping is allowed both by the text of Goal 3 itself and by ORS 215.211 and in the event of conflict, ORS 215.211 controls over the conflicting provisions of the Goal 3 rules adopted by LCDC. The Applicant notes that OAR 660-033-0030(5)(a) requires soil scientists to study and report on the soils based on the SCS soil classification.</p> <p><u>Oppositional comments</u> state that the Applicant's soil survey is inadequate, and that the subject property is considered agricultural lands and cannot be rezoned or reclassified without a Goal 3 exception.</p>	<p>The Hearings Officer found that NRCS soil survey maps are not definitive or "binding" with respect to a determination of whether the subject properties are, or are not, agricultural land. The Hearings Officer cited LUBA findings in the <i>Aceti</i> case, OAR 660-033-0030(5)(a) and (5)(b) which allow the County to rely on more detailed data on soil capability than provided by NRCS soil maps to define agricultural land, provided the soils survey has been certified by DLCD. (HO Decision p. 25). The Hearings Officer further found that, because no information challenging the Applicant's Order 1 Soil Survey is included in record, the subject property is not considered agricultural lands as defined in OAR 660-033-0020(1)(a) (HO Decision p. 37-38). Therefore, the applications are consistent with Policy 2.2.3 of the County Comprehensive Plan and no exception to Oregon Statewide Planning Goal 3 is required for approval (HO Decision p. 56).</p>	<p>Staff agrees with the Applicant and Hearings Officer on this issue area. Additionally, staff points to specific findings highlighted by County Legal Counsel from the LUBA <i>Aceti</i> case highlighting the allowance of DLCD certified soil studies when making determinations of properties proper agricultural designation. The Board must determine if DLCD-certified soil studies (such as the one provided by the Applicant) can be used to update NRCS soil designations.</p> <p>If the Board agrees with Hearings Officer and Applicant's interpretation on this issue, they may uphold the findings in the Hearings Officer's Recommendation and move on to other issue areas.</p> <p>If the Board disagrees with the Hearings Officer and Applicant, they may find that DLCD-certified soil studies <u>cannot</u> be used to update NRCS soil designations.</p> <p>The Board may then make additional findings related to the proposal's compliance with OAR 660-033-0020(1)(a) or other relevant criteria related to Goal 3 compliance; or</p> <p>The Board may find that the proposal does not comply with Goal 3 and deny the application.</p>

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6	DCC 22.20.015 Code Enforcement and Land Use: Do potential land use violations on the subject property prevent the County from approving applications for land use development?	The opposition cites DCC 22.20.015(A)(1-3) as relevant to this particular issue area.	<p><u>The Applicant</u> did not specifically address this issue.</p> <p><u>Oppositional comments</u> focus on a perceived violation of land use regulations in the form of “current farm use or farm equipment maintenance and storage occurring on the subject property” (May 31, 2022, open record submittal).</p>	The Hearings Officer found DCC 22.20.015 is irrelevant because no violation has been established under DCC 22.20.015(C), and the record does not support a finding that the subject property is not in compliance with applicable land use regulations and/or conditions of approval of prior land use decisions or building permits. The Hearings Officer further concludes DCC 22.20.015 does not preclude the County’s consideration of the applications or its approval thereof (HO Decision p. 43).	<p>Staff agrees with the Hearings Officer on this issue area and cites past Board interpretation of DCC 22.20.015 in file no. 247-17-000775-PA, 776-ZC. The Board must determine if potential land use violations on the subject property prevent the County from approving the subject application.</p> <p>If the Board agrees with the Hearings Officer on this issue, they may uphold the findings in the Hearings Officer’s Recommendation and conclude deliberations on this issue area.</p> <p>If the Board disagrees with the Hearings Officer on this issue, they may then take steps to adjudicate the perceived violation to determine if a violation exists on the subject property.</p> <p>If the Board determines, pursuant to DCC 22.20.015(C), that a violation is associated with the subject property, the Board must then decide whether the violation may be resolved through DCC 22.20.015(D)(1).</p> <p>If the Board determines that the violation cannot be resolved through DCC 22.20.015(D)(1), they may then deny the application or make alternate findings related to the violation.</p>