

BOARD DELIBERATION MATRIX

LAST RANCH PLAN AMENDMENT (PA) / ZONE CHANGE (ZC) Land Use File Nos. 247-22-000573-ZC, 574-PA

Issue Area	Applicable Criteria	Objections	Support	Board Decision
1 Is the subject property agricultural land with respect to soils?	<p>Goal 3 and Oregon Administrative Rule ("OAR") 660-033-0020(1)(a)(A).</p> <p>In Eastern Oregon, agricultural lands are those lands classified by the U.S. Natural Resources Conservation Service as predominantly Class I-VI soils.</p>	<p>The record includes the following arguments and evidence:</p> <ul style="list-style-type: none"> • The NRCS designation of the property can be relied upon to determine whether the property qualifies as agricultural land. • The NRCS designation rates the property as having Class III-VI soils. • The property qualifies as agricultural land. • An exception to Goal 3 is required. 	<p><u>Hearings Officer</u></p> <ul style="list-style-type: none"> • The Land Use Board of Appeals ("LUBA") has consistently found that Oregon Revised Statute ("ORS") ORS 215.211 allows a site-specific analysis of soils where such information would assist a county in determining whether land qualifies as agricultural land. • The submitted soils study is consistent with OAR 660-033-0030(5), which implements ORS 215.211. • Based on the soils study, the property is predominantly composed of Class VII and VIII soils. • The property does not qualify as agricultural land. 	<p>Is the subject property agricultural land with respect to soils?</p> <ol style="list-style-type: none"> 1. If no, the Board of County Commissioners ("Board") can continue deliberations and move to approve the PA/ZC. 2. If yes, the Board can move to deny the PA/ZC.

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2 Is the property agricultural land with respect to applicable OAR factors?	<p>Goal 3 and OAR 660-033-0020(1)(a)(B).</p> <p>This OAR requires the decision-maker to determine whether the property is agricultural land by considering the following factors:</p> <ul style="list-style-type: none"> • Soil fertility. • Suitability for grazing. • Climatic conditions. • Existing and future availability of water for farm irrigation purposes. • Existing land use patterns, technological and energy inputs required, and accepted farming practices. • Accepted farm practices. 	<p>The record includes the following arguments and evidence:</p> <ul style="list-style-type: none"> • The property is in farm tax deferral. • The property has water rights. • The property includes farm structures – goat barn and farm implement garage. • The property could accommodate a number of farm uses. 	<p><u>Applicant</u></p> <ul style="list-style-type: none"> • Since 1941, property owners consisted mostly of retirees who did not engage in farming activities. • Prior to 1941, there were limited farming activities on the property. • The farm structures were associated with hobby scale farming not for-profit farming. • Recent use of the property consisted of the “Funny Farm.” • Climatic conditions include a limited growing season, cold temperatures and current drought conditions. • The land use pattern is not conducive to agriculture because the property is surrounded by nonfarm uses. • Per the soils study: <ul style="list-style-type: none"> ➢ The property does not have fertile soil; ➢ The soils on-site are not suitable for grazing; and ➢ Irrigating the soils on-site does not improve their quality for farm uses. • The technological and energy inputs required to conduct farm uses are too great. <p><u>Hearings Officer</u></p> <ul style="list-style-type: none"> • It is more likely than not that the property is not suitable for farm use. • While it may be possible to conduct some farm activities on the property, that is not the same as employing the land for the primary purpose of obtaining a profit in money from those activities. • The subject property is not agricultural land with respect to applicable OAR factors. 	<p>Is the property agricultural land with respect to applicable OAR factors?</p> <ol style="list-style-type: none"> 1. If no, the Board can continue deliberations and move to approve the PA/ZC. 2. If yes, the Board can move to deny the PA/ZC.

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3 Is the property agricultural land considering adjacent or nearby agricultural lands?	Goal 3 and OAR 660-033-0020(1)(a)(C). This OAR requires the decision-maker to consider whether the property is necessary to permit farm practices on adjacent or nearby agricultural lands.	<p>The record includes the following arguments and evidence:</p> <ul style="list-style-type: none"> The presence of the Central Oregon Irrigation District ("COID") canal, which conveys irrigation water to other farms, demonstrates the property qualifies as agricultural land. (Canal Argument). The property was once a part of Howard Ranch, which is still in active irrigated pasture and livestock production. The property can continue to be used in conjunction with Howard Ranch. Insufficient identification of nearby agricultural uses. The county does not have the authority to remove the Exclusive Farm Use ("EFU") designation from the property. The county must pursue the legislative process under ORS 215.788 and ORS 215.794 to re-designate agricultural land and not the quasi-judicial, case-by-case, process it has adopted. (Legislative Process Argument) An exception to Goal 3 is required. 	<p><u>Applicant</u></p> <ul style="list-style-type: none"> Very few farm practices occur on adjacent or nearby lands. Testimony from Jack Holt, owner of the eastern portion of Howard Ranch, stating the subject property is not suitable for farm use either alone or in conjunction with nearby farms. By its own terms, ORS 215.788 states that the county <u>may</u> redesignate agricultural land via a legislative process. This permissive language means that a legislative process is not the <u>only</u> process to redesignate agricultural land. Nothing in the ORS or OAR prohibits a quasi-judicial zone change. LUBA rejected the Legislative Process Argument in <i>Central Oregon Landwatch v. Deschutes County</i>, ___ Or LUBA ___ (LUBA No. 2023-009, July 28, 2023). <p><u>Hearings Officer</u></p> <ul style="list-style-type: none"> The Canal Argument is based on the idea that the canal is necessary to permit farm practices on adjacent or nearby properties. This OAR asks whether the property itself, not a canal owned by a third party, is necessary to permit farm practices on adjacent or nearby properties. There is no evidence to suggest that a nearby farm would benefit from the agricultural use of the property. The property does not qualify as agricultural land because the property is not necessary to permit farm practices on adjacent or nearby agricultural lands. 	<p>Is the property agricultural land considering adjacent or nearby agricultural lands?</p> <ol style="list-style-type: none"> If no, the Board can continue deliberations and move to approve the PA/ZC. If yes, the Board can move to deny the PA/ZC.

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4 Will the proposed change to Rural Industrial Zone result in new uses that would conflict with the scenic corridor associated with Highway 97?	<p>Goal 5 and OAR 660-023-0250(3).</p> <ul style="list-style-type: none"> Pursuant to OAR 660-023-0250(3), the county does not have to apply Goal 5 as part of a Post Acknowledgment Plan Amendment ("PAPA") unless the PAPA affects a Goal 5 resource. Pursuant to OAR 660-023-250(3)(b), a PAPA affects a Goal 5 resource if the PAPA would allow new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list. The Highway 97 scenic corridor is the Goal 5 resource. 	<p>Objections in the record include:</p> <ul style="list-style-type: none"> The county has never conducted an Economic, Social, Environmental and Energy ("ESEE") analysis to allow redesignation (rezoning) of properties within the Highway 97 scenic corridor. The 1992 ESEE for Highway 97 protected existing views, which included farmland and open space. The Landscape Management ("LM") Combining Zone will not protect the scenic corridor from views of factories and other industrial uses. Conversion to the RI Zone introduces new conflicting uses that have never been found to comply with Goal 5. <p><u>Hearings Officer</u></p> <ul style="list-style-type: none"> Recommended denial because the applicant did not adequately address Goal 5. It may be possible for the applicant to: <ul style="list-style-type: none"> Show that the County's prior Goal 5 analysis considered industrial development on the subject property; or Demonstrate that the new uses allowed on the subject property do not significantly affect a Goal 5 resource. 	<p><u>Applicant</u></p> <ul style="list-style-type: none"> At the time of the 1992 ESEE, lands within ¼-mile of Highway 97 were designated a number of different zones including EFU, Multiple Use Agricultural ("MUA10"), Open Space and Conservation ("OS&C"), Rural Service Center ("RSC") and RI. In 1991, the properties at Deschutes Junction were developed with a variety of uses including lumber business, firewood sales, Cascade Pumice, United Pipe, antique store, mini-storage, roadside amusement park, bookstore and heavy equipment rental. At the time of the 1992 ESEE, the EFU zone allowed utility facilities, schools and churches as outright permitted uses, with landfills, mineral processing and forest product processing allowed as conditional uses. Although today's RI Zone would not allow schools or churches, the EFU Zone in 1992 would allow those uses with buildings that could be larger, taller, and cover more of the property than would be allowed for RI uses. In 1992, the RSC Zone allowed retail stores, office or service uses, automobile service stations and restaurants as outright permitted uses, with kennels/animal hospitals allowed as a conditional use. A kennel/veterinary office is allowed in today's RI Zone. In 1992, the RSC Zone would allow 13,000 square feet of building coverage for a one-acre property (30 percent coverage) with a 25-foot height limit or 30-foot height limit for split-level buildings. By comparison, today's RI Zone allows a maximum floor area of 7,500 square feet with a 30-foot height limit. Today's RI Zone requires greater setbacks than the 1992 RSC Zone. Allowable uses in 1992 overlap with uses allowed in today's RI Zone. The 1992 ESEE did not focus on specific conflicting uses but rather on the aesthetic impact of development, which acknowledges a wide variety of allowed uses. In 1992, the existing zones allowed for a wider variety of uses and a more intensive level of development than would be allowed under today's RI Zone. The RI Zone on this property will not introduce new uses that would conflict with the Highway 97 scenic corridor. <p><u>Adam Smith</u></p> <ul style="list-style-type: none"> At the time of the 1992 ESEE, there were RI-zoned properties in the scenic corridor. Consequently, the County considered the impact of RI uses on the scenic corridor in addition to all other development allowed in the various zones along the corridor, as part of the 1992 ESEE. Changing the base zone does not introduce a new use, therefore a site-specific ESEE is not required. 	<p>Will the proposed change to Rural Industrial Zone result in new uses on the subject property that would conflict with the scenic corridor associated with Highway 97?</p> <ol style="list-style-type: none"> If no, the Board can find that a site-specific ESEE is not required and can continue deliberations and move to approve the PA/ZC. If yes, an ESEE analysis is required, and the Board must determine if the ESEE submitted by the applicant is sufficient. The Board can move to Issue Area #5.

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<p>5</p> <p>An ESEE analysis is required if the Board decides that the PAPA would introduce new conflicting uses. Even if the Board decides that a site-specific ESEE is not required, the Board can include an ESEE as part of its decision in support of alternative findings.</p> <p>Does the Board adopt the applicant's ESEE analysis as their own?</p>	<p>Goal 5 and OAR 660-023-0040. Pursuant to OAR 660-023-0040(1), the steps in the ESEE process are:</p> <ul style="list-style-type: none"> • Identify conflicting uses; • Determine the impact area; • Analyze the ESEE consequences; and • Develop a program to achieve Goal 5. <ul style="list-style-type: none"> ➢ Allow the conflicting uses without limitation; ➢ Allow the conflicting uses with limitations; or ➢ Prohibit the conflicting uses. 	<p>Objections in the record include:</p> <ul style="list-style-type: none"> • Structures associated with industrial uses will adversely affect the scenic views along the corridor. • Replacing agricultural land and open space with industrial uses will destroy the scenic resource. 	<p><u>Applicant</u></p> <ul style="list-style-type: none"> • A site-specific ESEE analysis is not required because the PAPA will not result in new conflicting uses. • In the alternative, the applicant submitted a revised ESEE analysis dated August 13, 2024. • The August 2024 ESEE addresses the 4-step process outlined under OAR 660-023-0040(1). 	<p>Does the Board adopt the applicant's August 2024 ESEE analysis as their own?</p> <ol style="list-style-type: none"> 1. If yes, the Board can continue deliberations and move to approve the PA/ZC. 2. If no: <ol style="list-style-type: none"> A. Staff can return to the Board with a matrix tailored to the ESEE analysis; or B. The Board can deny the PA/ZC.

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6	Has the applicant demonstrated compliance with Goal 6 and is an exception to Goal 6 required?	<p>Goal 6, which requires local governments to consider protection of air, water and land resources from pollution and pollutants when developing comprehensive plans. No associated OARs.</p>	<p>The following are the objections and arguments related to this issue area:</p> <ul style="list-style-type: none"> • The applicant cannot satisfy Goal 6 without identifying the specific uses that will be developed on the property. (Specific Uses Objection) • Goal 6 exception required. 	<p><u>Hearings Officer</u></p> <ul style="list-style-type: none"> • The Specific Uses Objection does not address the application materials. • No other argument or evidence refuting the applicant's position that Goal 6 is satisfied was submitted. • Goal 6 exception not required. 	<p>Has the applicant demonstrated compliance with Goal 6 and is an exception to Goal 6 required?</p> <ol style="list-style-type: none"> 1. If yes, the Board can continue deliberations and move to approve the PA/ZC. 2. If no, the Board can move to deny the PA/ZC.

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7 Has the applicant demonstrated compliance with Goal 11?	Goal 11 and OAR 660-011. Goal 11 requires jurisdictions to develop and adopt a public facilities plan.	The record includes the following argument: <ul style="list-style-type: none"> • A Goal 11 exception is required. 	<u>Hearings Officer</u> <ul style="list-style-type: none"> • The record only includes the statement that a Goal 11 exception is required. • No other argument or evidence is presented. • The objection is not developed with enough specificity for the Hearings Officer to address it. • No exception to Goal 11 is required. 	Has the applicant demonstrated compliance with Goal 11? <ol style="list-style-type: none"> 1. If yes, the Board can continue deliberations and move to approve the PA/ZC. 2. If no, the Board can move to deny the PA/ZC.

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7 Will the PA/ZC result in urbanization such that an exception to Goal 14 is required?	Goal 14 and its implementing rules “provide for an orderly and efficient transition from rural to urban land use.” OAR 660-015-0000(14).	<p>Objections in the record include:</p> <ul style="list-style-type: none"> • The property is several miles from the nearest Urban Growth Boundary (“UGB”). • The PA/ZC would result in “leap frogging development” that undermines the Bend and Redmond UGBs. • The PA/ZC would allow urban-like or intensive uses in violation of Goal 14. • The county must apply the <i>Shaffer</i> analysis to determine whether the proposed Rural Industrial (“RI”) Zone would allow urban uses. <i>Shaffer v Jackson County</i>, 17 Or LUBA 922 (1989). • Expansion of urban uses into rural areas will increase the cost of community services; introduce conflicts with neighboring farms; and result in the loss of open space and natural beauty. • A Goal 14 exception is required. 	<p><u>Hearings Officer</u></p> <ul style="list-style-type: none"> • The county has previously determined that all uses in the RI Zone are rural in nature. • LUBA and the Court of Appeals upheld this determination in <i>Central Oregon Landwatch v Deschutes County</i>, __ Or LUBA __ (LUBA No. 2022-075, Dec. 6, 2002); aff’d 324 Or App 655 (2023). • LUBA addressed the same issue in LUBA No. 2023-008 and reiterated its conclusion “that the county was entitled to rely on its acknowledged RI zone to ensure compliance with Goal 14. • Consequently, the <i>Shaffer</i> analysis is not required. • Goal 14 is satisfied. • A Goal 14 exception is not required. 	<p>Will the PA/ZC result in urbanization such that an exception to Goal 14 is required?</p> <ol style="list-style-type: none"> 1. If no, the Board can continue deliberations and move to approve the PA/ZC. 2. If yes, the Board can move to deny the PA/ZC.

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8	Adequacy of the Hearings Officer's findings on remaining approval criteria.	All applicable criteria as detailed in the Hearings Officer's decision.	None.	None.	<p>Does the Board adopt the Hearings Officer's findings as their own, except as modified by the deliberations?</p> <ol style="list-style-type: none"> 1. If yes, the Board can move to approve the PA/ZC. 2. If no, the Board can identify specific approval criteria for continued deliberations.