

LUBA Case Summaries August 2024

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The full text of LUBA's Final Opinions can be found at <https://www.oregon.gov/luba/Pages/Final-Opinions.aspx>. LUBA generally posts copies of its decisions online weekly. LUBA generally posts case summaries online monthly.

● ***S&V Properties, LLC v. Wallowa County* (LUBA No 2023-082, Aug 13, 2024)**
(Opinion by Ryan, Board Chair)

Petitioner appealed a planning commission decision. Held: LUBA has jurisdiction to review final land use decisions. ORS 197.825(1); ORS 197.015(10)(a). LUBA's jurisdiction is also limited to cases in which the petitioner has exhausted all local remedies available by right before petitioning LUBA for review. ORS 197.825(2)(a). LUBA lacked jurisdiction because the county accepted petitioner's local appeal of the decision. Dismissed.

● ***Hale v. Washington County* (LUBA No 2024-028, Aug 19, 2024)**
(Opinion by Rudd, Board Member)

Petitioner appealed a hearings officer's decision approving a Special Use and Development Review for a fast-food drive-thru restaurant and property line adjustments on a parcel split-zoned Commercial Business District and Office Commercial. Held: Petitioner's argument that the proposed restaurant's operating hours violated restrictions applicable to uses in the Office Commercial zone was not preserved. The hearings officer's conclusions, that a nonconforming use right exists and that the drive-thru-related use will not encroach on the Office-Commercial-zoned portion of the site, were supported by substantial evidence. Affirmed.

● ***Hastings v. Malheur County* (LUBA No 2024-030, Aug 20, 2024)**
(Opinion by Zamudio, Board Member)

Petitioners appealed a post-acknowledgment plan amendment (PAPA) that added 80 acres to the county's Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) inventory of significant aggregate resources. Held: The decision's findings regarding the quantity and quality of aggregate on the site were adequate. The decision's findings regarding the depth, quantity, and quality of the aggregate deposit were supported by substantial evidence. The decision misconstrued OAR 660-023-0180 and made inadequate findings by failing to identify the impact area, conflicting uses, and minimization measures, and failing to complete an economic, social, environmental, and energy (ESEE) analysis. Remanded.

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- ***Central Oregon Landwatch v. Deschutes County* (LUBA No 2024-032, Aug 21, 2024)**
(Opinion by Ryan, Board Chair)

Petitioner appealed a hearings officer decision approving nonfarm dwellings on three parcels zoned for exclusive farm use. Held: The decision properly construed ORS 215.284(2) to not require the county to determine whether a parcel was “lawfully created on or before January 1, 1993” by looking at the county’s “official maps and records.” *Central Oregon Landwatch v. Deschutes County*, 320 Or App 650, 656, 514 P3d 1201 (2022). The decision that the parcels were lawfully created on or before January 1, 1993, was supported by substantial evidence. Where, in rejecting the applicant’s request for a different development pattern under a county-alternative siting standard, the decision interpreted the alternative siting standard, petitioner’s argument challenging the interpretation of the alternative standard provided no basis for reversal or remand. Affirmed.

- ***TKM Land, LLC v. Clackamas County* (LUBA No 2024-037, Aug 22, 2024)**
(Opinion by Rudd, Board Member)

Petitioner appealed a county decision approving with conditions a 19-lot subdivision in the R-10 zone. Held: Petitioner requested that this appeal be dismissed. Dismissed.

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