

## LUBA Case Summaries July 2024

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● ***Landwatch Lane County v. Lane County (LUBA No 2024-017, July 2, 2024)***  
(Opinion by Rudd, Board Member)

Petitioner appealed a 2012 county planning director decision approving a final legal lot verification pursuant to House Bill (HB) 3362 (2023). Held: HB 3362 section 4(1)(a) allows appeal of “a legal lot verification under ORS 92.176” to LUBA on or before April 1, 2024, notwithstanding that the appeal would otherwise be untimely under ORS 197.830(9). The challenged decision was not made “under ORS 92.176,” which provides a procedure for validation of an unlawfully created unit of land under certain circumstances; rather, the decision determined that the subject parcels were created in compliance with the applicable law (*i.e.*, the parcels were lawfully created). Accordingly, the appeal is untimely under ORS 197.830(9). Dismissed.

● ***1000 Friends of Oregon v. City of North Plains (LUBA No 2023-055, July 9, 2024)***  
(Opinion by Ryan, Board Chair)

Petitioner appealed a city decision adopting an updated housing needs analysis. Held: Petitioner requested that this appeal be dismissed. Dismissed.

● ***Landwatch Lane County v. Lane County (LUBA No 2024-019, July 10, 2024)***  
(Opinion by Rudd, Board Member)

Petitioner appealed a 2015 county planning director decision approving a forest template dwelling on property zoned Impacted Forest Lands pursuant to House Bill (HB) 3362 (2023). Held: HB 3362 section 4(1) allows appeal to LUBA on or before April 1, 2024, of a template dwelling approval pursuant to ORS 215.750, if the approval was “based on deeds or documents that were forged,” notwithstanding that the appeal would otherwise be untimely. The challenged decision was not “based on deeds or documents that were forged;” rather, the decision was based on a prior 2012 decision that verified the lawful creation of the subject parcel. Accordingly, the appeal is untimely under ORS 197.830(9). Dismissed.

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● ***Conte v. City of Eugene* (LUBA No 2024-023, July 10, 2024)**  
(Opinion by Zamudio, Board Member)

Petitioner appealed legislative amendments to the Eugene-Springfield Metropolitan Area General Plan and Eugene Code that allow for the development of middle housing types on residentially zoned properties where development of detached single-family housing is allowed. Held: In *Coopman v. City of Eugene*, 327 Or App 6, 534 P3d 1105 (2023), the Court of Appeals determined that Goal 11 (Public Facilities and Services) obligates the city to consider the impact on public facilities and services from the middle housing allowed by the amendments and to adopt provisions addressing those impacts that are equivalent to the standards set out in the Large Cities Middle Housing Model Code. The city’s public facilities plan, which predates its middle housing amendments, does not provide an adequate factual base to support a conclusion that the city’s Goal 11 obligations are satisfied. The city’s existing code requirements do not address the sufficiency of public facilities for middle housing applications in a manner that is equivalent to the Large Cities Middle Housing Model Code. Remanded.

● ***Rogue Advocates v. Josephine County* (LUBA No 2024-013, July 12, 2024)**  
(Opinion by Ryan, Board Chair)

Petitioner appealed a county ordinance amending the Josephine County Code Wildfire and Emergency Safety Standards and Standards and Criteria for New Dwellings. Held: The county’s interpretation that a “forest protection district” is encompassed in the definition of “fire protection district” misconstrues ORS 215.730. The decision fails to demonstrate that the county considered whether the decision is consistent with the county’s comprehensive plan policies and recommendations for structural fire protection. The decision fails to demonstrate compliance with the Statewide Planning Goal 11 (Public Facilities and Services) requirement that the county ensure that adequate fire protection services are available for residential development on rural lands. Remanded.

● ***Kennon v. City of Union* (LUBA No 2024-021, July 16, 2024)**  
(Opinion by Rudd, Board Member)

Petitioners appealed a city council decision approving their application for a partition with a condition that requires petitioners to apply a chip seal surface to an adjacent city street. Held: The city’s findings are inadequate because they fail to explain the nexus between the chip seal condition of approval and the government’s land use interest. *Nollan v. California Coastal Comm’n*, 483 US 825, 107 S Ct 3141, 97 L Ed 2d 677 (1987), *Dolan v. City of Tigard*, 512 US 374, 114 S Ct 2309, 129 L Ed 2d 304 (1994). Remanded.

● ***Kupillas v. Clackamas County* (LUBA No 2024-014, July 19, 2024)**  
(Opinion by Zamudio, Board Member)

Petitioners appealed a hearings officer decision approving a conditional use permit for a home occupation event business on land zoned for mixed farm and forest use. Held: The hearings officer misconstrued ORS 215.760 by concluding that the applicant’s barn, which is an

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“agricultural building,” as defined in ORS 455.315 and authorized by ORS 215.760(1), could be converted for use as a home occupation event facility. Remanded.

● ***ODFW v. Jackson County* (LUBA No 2024-002, July 24, 2024)**  
(Opinion by Zamudio, Board Member)

Petitioner appealed a post acknowledgment plan amendment (PAPA) that changes the comprehensive plan designation from Agriculture to Aggregate Resource and the zoning map designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for 435 acres, and adds 324 acres to the county’s inventory of significant aggregate resources. Held: LUBA will accept a state agency brief submitted pursuant to ORS 197.820(4) and OAR 661-010-0038 that sets out the agency’s view of the operation of that agency’s administrative rules that are at issue in the appeal. A state agency that files a state agency brief may file a motion to take official notice under OAR 661-010-0046. Petitioner’s reference, by title only, to a county wildlife habitat overlay is insufficient to provide the county and the parties fair notice and an adequate opportunity to respond to the issue of whether the county was required to apply code approval criteria; thus, that issue is waived. ORS 197.835(3); ORS 197.797(1). The county failed to specify conflicts with wildlife habitat and the decision’s findings are insufficient to explain how those conflicts can be mitigated. OAR 660-023-0180(5)(b), (c). The board of commissioners implicitly and plausibly interpreted their comprehensive plan to conclude that the subject property is within the deer and elk habitat overlay. ORS 197.829(1); *Siporen v. City of Medford*, 349 Or 247, 243 P3d 776 (2010). Remanded.

● ***Central Oregon Landwatch v. Jefferson County* (LUBA No 2023-026, July 25, 2024)**  
(Opinion by Zamudio, Board Member)

On remand from the Court of Appeals. Petitioner appealed a board of commissioners decision approving a comprehensive plan map amendment and zone change from Range Land to Rural Residential 2 acre, including approving exceptions to Statewide Planning Goals 3 (Agricultural Lands) and 14 (Urbanization). Petitioner argued that the county erred by finding that the decision does not authorize the expansion of an existing unincorporated community and by not addressing the criteria for such an expansion. OAR 660-004-0020(4); OAR 660-004-0022(4). LUBA agreed and the Court of Appeals reversed and remanded that portion of LUBA’s decision. *Central Oregon Landwatch v. Jefferson County*, 332 Or App 302, 550 P3d 424 (2024). Held: The court’s decision does not require LUBA to revisit the resolution of petitioner’s other assignments of error. Remanded.

● ***1000 Friends of Oregon v. Washington County* (LUBA Nos 2024-006/007, July 30, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed an amendment to the county’s Transportation System Plan (TSP) to include three refinement areas. Held: The county’s amendment to its TSP is a “refinement plan,” as defined in OAR 660-012-0025(44). The county misconstrued OAR 660-012-0025(3) as allowing it to defer making a decision identifying the transportation need. The county’s findings are inadequate to address OAR 660-012-0025(3)(a) through (e). The county’s findings in response to OAR 660-012-0030 are conclusory, and therefore inadequate, in that they do not explain how the

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evidence in referenced previous studies and in the TSP's technical appendix support the conclusion that there is a transportation need to be addressed by further planning of the refinement areas. Remanded.

• ***Nishioka v. City of Brookings* (LUBA No 2024-039, July 31, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed a city council decision approving a conditional use permit to allow the construction and use of storage units. Held: Petitioner failed to timely file their petition for review as required by OAR 661-010-0030(1) and ORS 197.830(11). Failure to timely file a petition for review will result in dismissal of the appeal. *Towey v. City of Hood River*, \_\_\_ Or LUBA \_\_\_ (LUBA No 2021-057, Mar 21, 2022), *aff'd*, 321 Or App 414, 516 P3d 738 (2022) (slip op at 12); *Terrace Lakes Homeowners Assoc. v. City of Salem*, 29 Or LUBA 532, 535, *aff'd* 138 Or App 188, 906 P2d 871 (1995). Dismissed.

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