

## LUBA Case Summaries May 2024

---

Note: This information is compiled and made available to the public by the Land Use Board of Appeals (LUBA). These case summaries are provided for public informational use only. These case summaries are not considered part of the Board's opinion and should not be cited as legal authority. Summarized decisions may be subject to judicial review, which may result in all or part of the LUBA decision being invalidated.

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.

---

● ***Jenkinson v. Lane County* (LUBA Nos 2022-101/102, May 1, 2024)**  
(Opinion by Zamudio, Board Member)

On remand from the Court of Appeals. Petitioners appealed two hearings officer decisions denying petitioners' applications for two legal lot verifications. Held: Petitioners argued that the hearings officer misconstrued applicable law in concluding that two 1961 conveyances constituted an unlawful division of land. LUBA remanded for the reasons set out in the Court of Appeal's decision, *Jenkinson v. Lane County*, 329 Or App 372, 540 P3d 1126 (2023). Remanded.

● ***Landwatch Lane County v. Lane County* (LUBA No 2024-016, May 3, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed an administrative approval of a property line adjustment. Held: Petitioner requested that this appeal be dismissed. Dismissed.

● ***Landwatch Lane County v. Lane County* (LUBA No 2024-018, May 3, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed an administrative approval of a property line adjustment. Held: Petitioner requested that this appeal be dismissed. Dismissed.

● ***Neice v. Prosper Portland* (LUBA No 2023-091, May 3, 2024)**  
(Opinion by Rudd, Board Member; Ryan, Board Chair, Concurring)

Petitioners appealed a resolution adopted by the Prosper Portland Commission authorizing Prosper Portland to enter into an agreement with the City of Portland for operation of a navigation center to provide short term shelter and assistance accessing social service programs for persons experiencing homelessness. Held: Petitioners claimed that this was a land use decision under the significant impacts test. *Billington v. Polk County*, 299 Or 471, 480, 703 P2d 232 (1985). Petitioners failed to meet their burden to establish that this decision would have an actual, qualitatively or quantitatively significant impact on present or future land uses or that it impacts the land use status quo of the area. *Carlson v. City of Dunes City*, 28 Or LUBA 411, 414 (1994); *City of Pendleton v. Kerns*, 294 Or 126,135, 653 P2d 992 (1982). Dismissed.

## LUBA Case Summaries May 2024

● ***Friends of Marion County v. Marion County* (LUBA No 2023-072, May 16, 2024)**  
(Opinion by Zamudio, Board Member)

Petitioner appealed amendments to the Marion County Code that allow and regulate event businesses as conditional use home occupations in the Exclusive Farm Use (EFU), Special Agriculture, and Farm/Timber zones. Held: LUBA reviews the adoption of new regulations that implement state law for consistency with state law. Where the petitioner raises a facial challenge to a new land use regulation, arguing that it is inconsistent with the statute that it implements, petitioner must demonstrate that the new regulation is “categorically incapable of being applied consistently” with the statute. *Okray v. City of Cottage Grove*, 47 Or LUBA 297 (2004) (citing *Rogue Valley Assoc. of Realtors v. City of Ashland*, 158 Or App 1, 4, 970 P2d 685, rev den, 328 Or 594 (1999)). The new regulations are capable of being applied consistently with the five-employee limit in ORS 215.448(1)(b), which is an indirect limit on the size and scope of the home occupation activities. Nothing in ORS 215.283(2)(i), which allows on EFU land “[h]ome occupations as provided in ORS 215.448[,]” or ORS 215.448 sets a numerical limit on the overall number of persons that may be present at a site that is operated as a home occupation. The county did not err in failing to adopt a numerical limit on the number of event attendees. Affirmed.

● ***North Hideaway Hills Neighbors v. Lane County* (LUBA Nos 2023-081/083, May 20, 2024)**  
(Opinion by Rudd, Board Member)

In LUBA No. 2023-081, a neighborhood association appealed a county hearings official’s approval of a home occupation permit for dog boarding, training, and breeding. In LUBA No. 2023-083, the applicant appealed the hearings official’s imposition of a condition of approval limiting the size of a structure to be utilized as part of the home occupation. Held: Lane Code 16.214(3)(d) must be interpreted in a manner consistent with the state law that it implements. ORS 215.317(1)(f) and ORS 215.213(2)(n) provide that home occupations may be allowed pursuant to compliance with ORS 215.448. ORS 215.448(1)(a) provides that the home occupation shall be operated by a resident of the property on which the business is located or by the resident’s employee. “Home occupation” encompasses activities which one engages from the property containing their residence and can constitute a phase of the business. ORS 215.448(1)(c)’s requirement that the home occupation operate substantially within the dwelling or other buildings normally associated with uses permitted in the zone does not regulate other, offsite activities supportive of or supported by the home occupation. Substantial evidence supported the hearings official’s conclusion that the disputed structure is larger than “[o]ther buildings normally associated with uses permitted in the zone in which the property is located.” ORS 215.448(1)(c)(B). Affirmed.

● ***Orr v. Crook County* (LUBA No 2023-025, May 23, 2024)**  
(Opinion by Zamudio, Board Member)

Petitioners appealed an agreement to abate that was entered into by the county and property owners concerning use of the property allegedly in violation of a conditional use permit. Thereafter, the parties agreed to suspend the appeal and the appeal was suspended. The parties did not respond to LUBA’s order directing the parties to advise LUBA of the status of the appeal. Held: Dismissed.

**LUBA Case Summaries**  
**May 2024**

- ***1000 Friends of Oregon v. City of North Plains* (LUBA No 2023-056, May 24, 2024)**  
(Opinion by Ryan, Board Chair)

Petitioner appealed a city ordinance which amended the city’s urban growth boundary and adopted associated comprehensive plan text amendments. Held: LUBA lacked jurisdiction over the appeal under ORS 197.825(2)(c)(A) because the challenged ordinance was submitted to the Department of Land Conservation and Development for review pursuant to ORS 197.626. Dismissed.

- ***Meyer v. City of King City* (LUBA No 2024-004, May 31, 2024)**  
(Opinion by Rudd, Board Member)

Petitioner appealed the city council’s adoption of an ordinance annexing and applying city zoning to a portion of the Kingston Terrace Planning Area. Held: “Cherry stemming” annexation is not *per se* unreasonable and reasonableness is not a high bar and supports deference to the city council’s annexation decision if not arbitrary or unreasonable. The goals, policies, and implementation measures in the Kingston Terrace Master Plan (KTMP) support a conclusion that the approved annexation adds lands to the city that are valuable for prospective city uses and to provide places for businesses and homes. The annexation is reasonable because it is consistent with the city’s objective to provide diverse housing opportunities and is consistent with the first phase of development anticipated by the KTMP. Substantial evidence supports the city’s conclusion that the right-of-way does not include “electors registered in the territory proposed to be annexed” who must be included in the consent count. ORS 222.170(2). Petitioner did not demonstrate that the rezoning allowed by this decision would create a conflict with an inventoried Statewide Planning Goal 5 (Natural Resources, Scenic and Historic Areas, and Open Spaces) resource. Affirmed.

- ***DLCD v. Clackamas County* (LUBA No 2023-078, May 31, 2024)**  
(Opinion by Ryan, Board Chair)

Petitioner appealed a hearings officer decision approving a zoning map change from Farm-Forest 10-acre to Rural Area Residential 2-acre, which would allow subdivision of the subject 111-acre property into approximately 55 two-acre lots. Held: OAR 660-004-0040(7) requires an applicant who seeks to change the zoning of a property from one rural residential zoning map designation to a higher density rural residential zoning map designation to obtain an exception to Goal 14 (Urbanization). The county erred in approving the requested zoning map change without requiring an exception to Goal 14. Remanded.

**[End of Document]**