

1                               BEFORE THE LAND USE BOARD OF APPEALS

2                               OF THE STATE OF OREGON

3                               ANNUNZIATA GOULD,  
4                               *Petitioner,*

5  
6  
7                               vs.

8  
9                               DESCHUTES COUNTY,  
10                              *Respondent,*

11  
12                             and

13  
14                            THORNBURGH RESORT COMPANY, LLC,  
15                            *Intervenor-Respondent.*

16  
17                            LUBA No. 2008-203

18                            ORDER

19   **MOTION TO INTERVENE**

20               Thornburgh Resort Company, LLC, the applicant below, moves to intervene on the  
21 side of the respondent in this appeal. There is no opposition to the motion and it is granted.

22   **RECORD OBJECTIONS**

23               The Record in this appeal is 3,133 pages long. The table of contents, alone, is 27  
24 pages long. The Record is made up of seven volumes, labeled Volumes I through VII.  
25 There is an eighth separately bound volume of color documents, which adds more than 100  
26 additional pages. We understand from the county's response, that it intends to separately  
27 submit a number of oversized exhibits at oral argument in this matter, and that those  
28 oversized exhibits will have their own table of contents.

29               The parties have reached agreement on some objections and others remain to be  
30 resolved. We now resolve those objections as set out below.

31       **A.     Record Color Copies (Supplemental Record)**

32               As noted above, there is a separately bound volume of color maps, entitled "Record  
33 Color Copies." However, the Record Color Copies document is referred to many times in

1 the Record table of contents as the “Supplemental Record.” To avoid confusion with the  
2 supplemental record that will be required as a result of this order, we have modified the title  
3 of that document to read “Record Color Copies (Supplemental Record).” The parties shall  
4 do the same.

5 **B. Petitioner’s Objection 1.**

6 Record item 192 (Record 1075-78) and Record item 193 (Record 1078-82) were  
7 attachments to Record Item 132 (Record 781-791). The county acknowledges that Record  
8 Items 192 and 193 should have been included in the record following Record Item 132.  
9 Petitioner proposes that the county correct the error by submitting an amended table of  
10 contents for the Record to identify Record Items 192 and 193 as attachments to Record Item  
11 132. Rather than being required to submit revised tables of contents for all seven volumes of  
12 the record, the county requests that LUBA instead allow the county to clarify the relationship  
13 of those documents in the table of contents for the Second Supplemental Record.

14 All parties are now aware of the relationship of Record Items 132, 192 and 193.  
15 Petitioner’s proposed solution would require the county to submit revisions of the table of  
16 contents for each of the seven volumes of the Record. The county’s proposed solution does  
17 not provide the needed clarification where it is needed. If the record were not so lengthy we  
18 likely would require the county to submit an amended table of contents. But requiring the  
19 county to submit an amended table of contents for all seven volumes of the record would  
20 require far more effort and expense than is justified by the limited benefit that would result.  
21 This order is sufficient to establish the relationship of those documents in this appeal.

22 Petitioner’s Objection 1 is denied.

23 **C. Petitioner’s Objections 2, 4 and 7.**

24 The county has agreed to submit a Second Supplemental Record. That Second  
25 Supplemental Record will resolve Petitioner’s Objections 2, 4 and 7. Those objections are  
26 sustained.

1           **D       Petitioner’s Objection 3**

2           Petitioner contends that “[t]he clarity of the color figure of [Record] Item 293 at Rec.  
3   1556 isn’t adequate because the shadings of pink and red are difficult to differentiate.”  
4   Petitioner proposes that she be allowed to attach a better copy of that figure to her petition  
5   for review. The county does not object to this resolution of Petitioner’s Objection 3.<sup>1</sup>

6           With the parties’ agreement concerning Petitioner’s Objection 3, there does not  
7   appear to be any reason to consider that objection further.

8           **E.       Petitioner’s Objections 5 and 6.**

9           As the county correctly notes, Petitioner’s Objections 5 and 6 are not really record  
10   objections. We do not consider those objections further.

11          **F.       Petitioner’s Objection Regarding the Documents at Record 885-89)**

12          This objection post-dated petitioner’s initial seven record objections and is  
13   unnumbered. The county agrees to attempt to locate the oversized exhibits that correspond  
14   with the documents at Record 885-89 and to include those oversized exhibits with the  
15   oversized exhibits that will be submitted at the time of oral argument. If the county has not  
16   already done so, it shall advise petitioner if those documents have been found and will  
17   identify them in the table of contents that will accompany the oversized exhibits that are to  
18   be submitted at the time of oral argument in this matter.

19          **G.       Intervenor-Respondent’s (Thornburgh’s) Objections 1, 2 and 4**

20          As noted earlier, the county has agreed to submit a Second Supplemental Record.  
21   That Second Supplemental Record will resolve Thornburgh’s Objection 1, which concerns a  
22   number of documents, as well as Thornburgh’s Record Objections 2 and 4.

---

<sup>1</sup> The parties probably meant to refer to the document that appears at Record 1565 rather than the document that appears at Record 1556.

1           **H.       Thornburgh's Record Objection 3**

2           We understand the county to take the position that the parties' resolution of  
3   Petitioner's Objection 3 also resolves Thornburgh's Objection 3. We therefore do not  
4   consider that objection further.

5           **I.       Second Supplemental Record**

6           We list below the documents that are to be included in the Second Supplemental  
7   Record. We also identify below the record objection that is resolved by each Second  
8   Supplemental Record item.

9

	<b>Supplemental Record Item</b>	<b>Record Objection</b>
1.	The Missing Page From Record Item 240 (Record 805-06)	Petitioner's Objection 2
2.	Petitioner's Petition for Review in LUBA No. 2008-068, dated 6/23/08	Petitioner's Objection 4
3.	March 14, 2008 Letter From Martha Pagel to Ruth Wahl With Draft Well Indemnification Plan	Petitioner's Objection 7A
4.	November 9, 2007 Email From Kevin Harrison	Petitioner's Objection 7B
5.	December 21, 2007 Email From Catherine Morrow	Petitioner's Objection 7C
6.	April 10, 2007 Memo From Ken Lite	Petitioner's Objection 7D
7.	July 30, 2007 Email and Revised Plan Submitted to Mr. Harrison and Mr. Gorman	Petitioner's Objection 7E
8.	May 21, 2008 Emails Between Ruth Wahl and George Kolb	Petitioner's Objection 7F
9.	June 3, 2008 Email From Paul Blikstad to Ruth Wahl on the Thornburgh DCRFPD#1 Annexation	Petitioner's Objection 7G
10.	September 18, 2008 Email From Peter Livingston to acbattorney@quest.net, RE: Final Arguments in Thornburgh FMP	Thornburgh's Objection 1(1)
11.	September 18, 2008 Email From Peter Livingston to Laurie E. Craghead, RE: Briefing Schedule for Thornburgh FMP	Thornburgh's Objection 1(2)

1

12.	September 16, 2008 Email From Peter Livingston to Ruth Herzer, RE” Gould Rebuttal	Thornburgh’s Objection 1(3)
13.	June 9, 2008 Email From Kameron DeLashmutt to ruthhe@co.deschutes.or.us	Thornburgh’s Objection 1(4)
14.	Appointment as Agent of Record, dated June 8, 2008	Thornburgh’s Objection 1(4a)
15.	April 14, 2008 Email From Ruth Wahl to Martha Pagel, RE: FMP Schedule	Thornburgh’s Objection 1(5)
16.	December 27, 2007 Email From Martha Pagel to Catherine Morrow, RE: Thornburgh Well Monitoring / Indemnification Plan	Thornburgh’s Objection 1(6)
17.	November 9, 2007 Email From Martha Pagel to Kevin Harrison, RE: Thornburgh Well Monitoring / Indemnification Plan	Thornburgh’s Objection 1(7)
18.	July 31, 2007 Email From Kevin Harrison to Martha Pagel, RE: Thornburgh Well Monitoring / Indemnification Plan – Review Draft	Thornburgh’s Objection 1(8)
19.	Well Indemnification Plan, Thornburgh Resort, Review Draft, undated	Thornburgh’s Objection 1(8a)
20.	September 18, 2007 Email From Ruth Wahl to Peter Livingston, RE: Completeness Letter	Thornburgh’s Objection 1(9)
21.	July 30, 2007 Email From Martha Pagel to Kevinh@deschutes.org RE: Thornburgh Well Monitoring / Indemnification Plan – Review Draft	Thornburgh’s Objection 1(10)
22.	The Missing Page From the WRG Design, Inc. Report (the missing page follows the page at Record 1949)	Thornburgh’s Objection 2
23.	March 14, 2008 Letter from Martha Pagel to Ruth Wahl	Thornburgh’s Objection 4

## 2 CONCLUSION

3 The county will include the oversized exhibits that correspond with the documents  
4 that appear at Record 885-89 in the oversize exhibits that it submits to LUBA at the time of  
5 oral argument and will include a separate table of contents for all of the oversized exhibits.  
6 The county will submit a Second Supplemental Record as provided in this order. Upon  
7 receipt of that Second Supplemental Record, LUBA will issue an order settling the record  
8 and establishing a briefing schedule.

9 The county shall have 21 days from the date of this order to transmit the Second  
10 Supplemental Record.

1 Dated this 14<sup>th</sup> day of May, 2009.

2

3

4

5

6

7

8

9

---

Michael A. Holstun  
Board Member