

LUBA Case Summaries

May 2025

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Case summaries below may include references to LUBA's headnote index. Similarly indexed headnotes can be found at <https://www.oregon.gov/luba/Pages/Headnotes.aspx>.

● ***Ferguson Creek Investment, LLC v. Lane County*, LUBA No 2023-087 (May 1, 2025)** (Opinion by Bassham, Board Member)

On remand from the Court of Appeals. Petitioner appealed a hearings official's decision denying an application for nonconforming use verification of a dwelling on EFU. In *Ferguson Creek Investment, LLC v. Lane County*, LUBA No 2023-087 (Apr 29, 2024), LUBA held that the hearings official had, contrary to ORS 215.130(11), improperly considered facts that occurred more than 20 years before the date of the nonconforming use verification application, and remanded the decision. The Court of Appeals held that the 20-year look-back restriction in ORS 215.130(11) did not bar the hearings official from considering evidence prior to the beginning of the 20-year look-back period that the legal nonconforming use, a dwelling, was replaced by a different dwelling, without required approvals. Held: The hearings official made adequate findings supported by substantial evidence that petitioner had not met its burden of establishing that the dwelling at issue is the same structure as the legal nonconforming structure. Affirmed.

1.6.1 Administrative Law – Substantial Evidence – Generally.

1.8 Administrative Law – Burden of Proof.

36.1 Nonconforming Uses – Generally.

36.4 Nonconforming Uses – Abandonment/Interruption.

● ***Landwatch Lane County v. Lane County*, LUBA Nos 2024-047/048/049 (May 7, 2025)** (Opinion by Wilson, Board Member)

Petitioner appealed three separate hearings official decisions approving legal lot verifications. Held: Petitioner failed to file the petition for review within the time allowed by OAR 661-010-0030(1) or any extension of that time under OAR 661-010-0067(2). Dismissed.

27.10.3 LUBA Procedures/Rules – Time Limits – Petition for Review.

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- ***Kaluga, LLC v. Clackamas County*, LUBA No 2025-025 (May 8, 2025)**
(Opinion by Bassham, Board Member)

Petitioners appealed a county compliance hearings officer code enforcement decision. Held: Petitioners requested that the appeal be dismissed. Dismissed.

- ***Housing Land Advocates v. City of Happy Valley*, LUBA Nos 2024-074/075 (May 12, 2025)**
(Opinion by Zamudio, Board Chair)

Petitioners appealed the city council's adoption of an ordinance amending the city code's approval standards for cottage clusters and a map amendment that establishes a cottage cluster exclusion overlay zone. Held: The city did not misconstrue ORS 197A.420(2)—the Middle Housing Statute—as permitting the city to exclude cottage cluster development from some lots or parcels zoned for residential use that allow for the development of detached single-family dwellings. ORS 197A.420(2)(a) does not obligate the city to allow every type of middle housing on each and every lot or parcel zoned for residential use that allows for the development of detached single-family dwellings. OAR 660-046-0205(3)(b), which sets out a Performance Metric Approach allowing cities to limit cottage clusters to 70 percent of lots or parcels, is not invalid as applied in light of ORS 197A.420(2)(a). Goal 2 (Land Use Planning) does not require the city to establish an independent factual base for its policy choice to treat cottage clusters differently from other middle housing types because OAR 660-046-0205(3)(b) expressly allows that approach. ORS 197A.100(1), which requires the city to develop and adopt a housing production strategy, does not apply to the challenged amendments. The city failed to evaluate whether existing or planned public facilities are adequate to support the densities allowed under the challenged amendments, as required by Goal 11 (Public Facilities and Services) as construed in *Coopman v. City of Eugene*, 327 Or App 6, 534 P3d 1105 (2023). Remanded.

28.5 LUBA Scope of Review – Legislative Decisions.

6.5 Goal 2 Land Use Planning – Adequate Factual Base

15 Goal 11 – Public Facilities and Services/Goal 11 Rule.

- ***Redside Restoration Project One, LLC v. Deschutes County*, LUBA Nos 2024-082/083/085 (May 16, 2025)**
(Opinion by Bassham, Board Member)

Petitioners appealed a board of commissioners decision on remand concluding that the subject property is not agricultural land and redesignating a 710-acre tract from Agricultural to Rural Residential Exception Area, and rezoning it from exclusive farm use to rural residential 10-acre minimum. Held: The obligations imposed under ORS 215.422(3) to disclose *ex parte* contacts continue after the county issues a decision on a land use application. A county commissioner's participation in an LCDC meeting after the public hearing on the application did not constitute *ex parte* communication requiring disclosure under ORS 215.422(3). The county commissioner's statements at the LCDC meeting describing a preference for different policies and legal frameworks were insufficient to demonstrate actual bias that is required to disqualify an elected decisionmaker. The county did not err in concluding that the subject property is not "Agricultural

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Land” as defined in Goal 3 (Agricultural Lands). Petitioners’ argument that the “necessary to permit farm practices to be undertaken on adjacent or nearby lands” test in OAR 660-033-0020(1)(a)(C) requires evaluation of impacts on hypothetical or potential farm practices was waived. The county’s findings that the subject property is not “suitable for farm use” did not misconstrue OAR 660-033-0020(1)(a)(B) and were supported by substantial evidence. Affirmed.

25.6.5 Local Government Procedures – Hearings – Impartial Tribunal.

7.2.3 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Suitable Land.

7.2.4 Goal 3 – Agricultural Lands/ Goal 3 Rule – Agricultural Land Definition – Other Necessary Land.

• *DLCD v. Clackamas County*, LUBA Nos 2024-026/027 (May 19, 2025) (Opinion by Zamudio, Board Chair)

Petitioners appealed a hearings officer decision approving applications for a zone change from Rural Residential Farm-Forest 5-Acre to Rural Area Residential 2-Acre and a 28-lot subdivision for future development of single-family dwellings. Held: The parties stipulated to remand. OAR 661-010-0071(2)(e). Remanded.

• *Landwatch Lane County v. Lane County*, LUBA No 2024-019 (May 23, 2025) (Opinion by Zamudio, Board Chair)

On remand from the Court of Appeals. Petitioner appealed pursuant to House Bill (HB) 3362 (2023) a 2015 county planning director decision approving a forest template dwelling on property zoned Impacted Forest Lands. Held: Petitioner requested that the appeal be dismissed. Dismissed.

• *Oregon Coast Alliance v. Clatsop County*, LUBA No 2024-087 (May 27, 2025) (Opinion by Wilson, Board Member)

Petitioner appealed legislative amendments to the county code that increase the variety of housing types allowed within unincorporated portions of the county to encourage housing production at all price points. Held: The county’s argument that its existing regulatory scheme ensured compliance with the OAR 660-022-0030(8) rules regarding zoning applied to lands within unincorporated communities was not supported by an adequate factual base. The county’s findings regarding compliance with comprehensive plan policies were supported by an adequate factual base. Petitioner’s argument that the amendments violate state law because they designate certain development actions as subject to Type I procedures provided no basis for reversal or remand. Remanded.

6.5 Goal 2 – Land Use Planning – Adequate Factual Base.

28.5 LUBA Scope of Review – Legislative Decisions.

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