

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
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4 ANNUNZIATA GOULD,
5 *Petitioner,*
6

7 vs.
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9 DESCHUTES COUNTY,
10 *Respondent,*
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12 and
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14 THORNBURGH RESORT COMPANY, LLC and
15 CENTRAL OREGON IRRIGATION DISTRICT,
16 *Intervenor-Respondents.*
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18 LUBA No. 2006-100
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20 STEVE MUNSON,
21 *Petitioner,*
22

23 vs.
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25 DESCHUTES COUNTY,
26 *Respondent,*
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28 and
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30 THORNBURGH RESORT COMPANY, LLC and
31 CENTRAL OREGON IRRIGATION DISTRICT,
32 *Intervenor-Respondents.*
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34 LUBA No. 2006-101
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36 FINAL OPINION
37 AND ORDER
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39 On remand from the Court of Appeals.
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41 Paul D. Dewey, Bend, represented petitioner Gould.
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43 Jannett Wilson, Eugene, represented petitioner Munson.
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45 Laurie E. Craghead, Assistant County Legal Counsel, Bend, represented respondent.

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2 Peter Livingston, Portland, represented intervenor-respondent Thornburgh Resort
3 Company, LLC.

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5 Elizabeth A. Dickson and Jennifer L. Coughlin, Bend, represented intervenor-
6 respondent Central Oregon Irrigation District.

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8 Renee Moulun, Assistant Attorney General, Salem, represented Oregon Water
9 Resources Department.

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11 HOLSTUN, Board Chair; BASSHAM, Board Member; RYAN, Board Member,
12 participated in the decision.

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15 REMANDED

01/15/2008

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17 You are entitled to judicial review of this Order. Judicial review is governed by the
18 provisions of ORS 197.850.

Opinion by Holstun.

This appeal is before us on remand from the Court of Appeals. *Gould v. Deschutes County*, 54 Or LUBA 205 (2007), *rev'd and remanded* 216 Or App 150, 171 P3d 1017 (2007). This appeal concerns a destination resort. Deschutes County Code (DCC) 18.113.070(D) requires that the proposed destination resort's negative impacts on fish and wildlife resources must be "completely mitigated so that there is no net loss or net degradation of the resource." To comply with DCC 18.113.070(D), the applicant submitted reports and a memorandum of understanding with the federal Bureau of Land Management. In petitioner Gould's eleventh assignment of error and petitioner Munson's fourth assignment of error, petitioners argued that the county erred in finding that those submittals were sufficient to demonstrate compliance with DCC 18.113.070(D) mitigation standard. LUBA agreed with the county and intervenor-respondent Thornburgh that those submittals were sufficient and denied those assignments of error. 54 Or LUBA at 257-62.

On appeal to the Court of Appeals, petitioners argued that the particulars of the applicant's wildlife impact mitigation plan were not sufficiently known for the county to find that the DCC 18.113.070(D) mitigation standard will be met. Petitioners argued that LUBA erred in concluding otherwise and that LUBA erred in denying petitioner Gould's eleventh assignment of error and petitioner Munson's fourth assignment of error. The Court of Appeals agreed with petitioners.

The county's decision is remanded in accordance with (1) our initial decision, which sustained petitioner Gould's third assignment of error and sustained petitioner Gould's first, fourth, and eighth assignments of error, in part, and (2) the Court of Appeals' decision that LUBA improperly denied petitioner Gould's eleventh assignment of error and petitioner Munson's fourth assignment of error.