

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 SWALLEY IRRIGATION DISTRICT,

5 *Petitioner,*

6  
7 and

8  
9 ROSE & ASSOCIATES, LLC,  
10 and CENTRAL OREGON LANDWATCH,

11 *Intervenors-Petitioners,*

12  
13 vs.

14  
15 DESCHUTES COUNTY,

16 *Respondent,*

17  
18 and

19  
20 CITY OF BEND, SHEVLIN SAND AND GRAVEL, LLC,

21 RICHARD CARPENTER, JELINDA CARPENTER,

22 JOHN McGILVARY, MARK ANDERSON,

23 NEWLAND COMMUNITIES, LLC,

24 TUMALO CREEK DEVELOPMENT, LLC,

25 and BROOKS RESOURCES CORPORATION,

26 *Intervenors-Respondents.*

27  
28 LUBA Nos. 2009-033 and 2009-034

29  
30 Appeal from Deschutes County.

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32 Wendie L. Kellington, Lake Oswego, represented petitioner Swalley Irrigation  
33 District.

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35 Robert S. Lovlien, Bend and Edward P. Fitch, Redmond, represented intervenor-  
36 petitioner Rose & Associates, LLC.

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38 Paul D. Dewey, Bend, represented intervenor-petitioner Central Oregon Landwatch.

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40 Laurie E. Craghead, Assistant County Counsel, Bend, represented respondent  
41 Deschutes County.

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43 Mary A. Winters, Bend and Roger A. Alfred, Portland, represented intervenor-  
44 respondent City of Bend.

1 Corinne C. Sherton, Salem, represented intervenor-respondent Shevlin Sand &  
2 Gravel, LLC.

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4 Bruce W. White, Bend, represented intervenors-respondents Richard Carpenter,  
5 Jelinda Carpenter, and John McGilvary.

6  
7 Andrew H. Stamp, Lake Oswego, represented intervenor-respondent Mark Anderson.

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9 Liz Fancher, Bend, represented intervenor-respondent Newland Communities, LLC.

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11 David C. Allen, Madras, represented intervenor-respondent Tumalo Creek  
12 Development, LLC.

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14 Jeffrey G. Condit and Kelly S. Hossaini, Portland, represented intervenor-respondent  
15 Brooks Resources Corporation.

16  
17 RYAN, Board Member; BASSHAM, Board Chair; HOLSTUN, Board Member,  
18 participated in the decision.

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20 DISMISSED 07/01/2009

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

1    **JURISDICTION**

2           In LUBA Nos. 2009-033 and 2009-034, petitioner appeals two county ordinances,  
3    Ordinances 2009-001 and 2009-002, that amended the county’s code, comprehensive plan  
4    goals and policies, comprehensive plan map and the transportation systems plan in  
5    conjunction with the city of Bend’s expansion of its urban growth boundary (UGB). In  
6    *Swalley Irrigation District v. City of Bend*, \_\_ Or LUBA \_\_ (LUBA Nos. 2009-012, 2009-  
7    013, 2009-031, and 2009-032, May 8, 2009), we dismissed petitioner’s appeals of two  
8    ordinances adopted by the City of Bend amending its UGB and the city’s development code.  
9    We concluded that under ORS 197.825(2)(c)(A), LUBA lacked jurisdiction over the appeals  
10   of the city ordinances because the challenged decisions had been submitted to the Oregon  
11   Department of Land Conservation and Development (DLCD) for review pursuant to ORS  
12   197.626.<sup>1</sup>

13           Although ORS 197.626 requires *a city* that amends its UGB to submit the amendment  
14   to DLCD for review, the statute does not explicitly require a county that amends its  
15   comprehensive plan map and text in conjunction with a city’s UGB amendment to submit  
16   those amendments to DLCD. However, Ordinances 2009-001 and 2009-002 have been

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<sup>1</sup> ORS 197.825(2)(c)(A) provides that LUBA’s jurisdiction does not include matters that are:

“Submitted to the Department of Land Conservation and Development for acknowledgment under ORS 197.251, 197.626 or 197.628 to 197.650 or a matter arising out of a local government decision submitted to the department for acknowledgment, unless the Director of the Department of Land Conservation and Development, in the director’s sole discretion, transfers the matter to [LUBA] \* \* \*.”

ORS 197.626 provides:

“\* \* \* [A] city with a population of 2,500 or more within its urban growth boundary that amends the urban growth boundary to include more than 50 acres or that designates urban reserve under ORS 195.145, or a county that amends the county’s comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under ORS 195.141, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.”

1 submitted to DLCD as part of the City of Bend's submittal of its ordinances to DLCD.<sup>2</sup>  
2 Under ORS 197.825(2)(c)(A), LUBA does not have jurisdiction over *a local government*  
3 *decision* that is submitted to DLCD under ORS 197.626. Thus, because Ordinances 2009-  
4 001 and 2009-002 have been submitted to DLCD under ORS 197.626, under ORS  
5 197.825(2)(c)(A), LUBA lacks jurisdiction over the county's decisions, unless LUBA  
6 receives a transfer of matters pursuant to OAR 660-025-0250(2).

7 Accordingly, LUBA Nos. 2009-033 and 2009-034 are dismissed.

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<sup>2</sup> The notice of adoption that was submitted to DLCD includes the following description of the UGB amendment:

“Enclosed for DLCD review are four (4) ordinances through which the City of Bend and Deschutes County approved an amendment to the Bend UGB. \* \* \*”