

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON

3
4 WAVESEER OF OREGON, LLC,
5 *Petitioner,*

6
7 vs.

8
9 DESCHUTES COUNTY,
10 *Respondent.*

11
12 LUBA Nos. 2020-021/031

13
14 FINAL OPINION
15 AND ORDER

16
17 Appeal from Deschutes County.

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19 Corinne S. Celko, Portland, represented petitioner.

20
21 D. Adam Smith, Assistant Legal Counsel, Bend, represented respondent.

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23 RYAN, Board Member; RUDD, Board Chair; ZAMUDIO, Board
24 Member, participated in the decision.

25
26 DISMISSED 10/02/2020

27
28 You are entitled to judicial review of this Order. Judicial review is
29 governed by the provisions of ORS 197.850.

2 **NATURE OF THE DECISIONS**

3 In LUBA No. 2020-021, petitioner appeals an “oral land use decision
4 regarding uses occurring on property located at 61311 Williamsen Ranch Road,
5 Bend, OR 97701 in Deschutes County, * * * also known as the Rhinestone
6 Ranch.” Notice of Intent to Appeal 1 (LUBA No 2020-021). In LUBA No. 2020-
7 031, petitioner appeals “[r]espondent’s land use decision entitled, ‘Rhinestone
8 Ranch / January 7, 2019 Meeting Recap / Recent Events.’ The decision was
9 reduced to writing and adopted by the County on February 5, 2020.” Notice of
10 Intent to Appeal 1 (LUBA No. 2020-031).

11 **BACKGROUND**

12 Petitioner previously applied to develop a marijuana production facility on
13 its property zoned for exclusive farm use (EFU). The board of county
14 commissioners denied petitioner’s application, concluding that petitioner’s
15 property is located within 1000 feet of a “youth activity center” and that
16 marijuana production was therefore prohibited by the Deschutes County Code.
17 The property identified by the board of commissioners as the “youth activity
18 center” within 1000 feet of petitioner’s property is known as the Rhinestone
19 Ranch, and is the subject of the two decisions appealed in these consolidated
20 appeals.

21 In *Waveseer of Oregon, LLC v. Deschutes County*, ___ Or LUBA ___
22 (LUBA No 2019-036, Oct 17, 2019), we remanded the county’s decision denying

1 petitioner’s application for development of a marijuana production facility
2 because the county’s interpretation of “youth activity center” was contrary to
3 state law. Between December 2019 and March 2020 the county held proceedings
4 on remand, during which the uses on the Rhinestone Ranch were discussed orally
5 and evaluated in writing.¹ During the remand proceedings, petitioner filed the
6 present appeals.

7 **JURISDICTION**

8 The legislature has authorized LUBA to review “land use decision[s],” as
9 defined in ORS 197.015(10)(a)(A), which provides that a “[l]and use decision”
10 includes “[a] final decision or determination made by a local government or
11 special district that concerns the adoption, amendment or application of” a
12 statewide planning goal, comprehensive plan provision, or land use regulation.”
13 Under OAR 661-010-0010(3), as relevant here, “[a] decision becomes final when
14 it is reduced to writing and bears the necessary signatures of the decision
15 maker(s) * * *.”

16 In an April 13, 2020 order, we raised the issue of our jurisdiction over the
17 appeals on our own motion pursuant to *Adams v. City of Ashland*, 33 Or LUBA
18 552, 554 (1997). *Waveseer of Oregon, LLC v. Deschutes County*, ___ Or LUBA

¹ At the conclusion of the remand proceeding, the county again denied petitioner’s application. On appeal, we reversed that decision. *Waveseer of Oregon, LLC v. Deschutes County*, ___ Or LUBA ___ (LUBA No. 2020-038, Aug 10, 2020).

1 ____ (LUBA Nos. 2020-021/031, Order, Apr 13, 2020). We questioned whether
2 LUBA has jurisdiction over an appeal of an “oral * * * decision” or a “Meeting
3 Recap.” Order, slip op at 2.

4 Petitioner and respondent then filed memoranda regarding our jurisdiction
5 over the appeals. In their memoranda, the parties agree that the decision
6 challenged in LUBA No. 2020-031 is not a land use decision as defined in ORS
7 197.015(10)(a)(A), and petitioner requests dismissal of that appeal. In its
8 memorandum, petitioner also argues that the decision challenged in LUBA No.
9 2020-021 is not a land use decision over which LUBA has jurisdiction, and
10 requests dismissal of that appeal.

11 The appeals are dismissed.

Certificate of Mailing

I hereby certify that I served the foregoing Final Opinion and Order for LUBA No. 2020-021/031 on October 2, 2020, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:


Corinne Celko
Emerge Law Group
621 SW Morrison St., Suite 900
Portland, OR 97205

Corinne S. Celko
Emerge Law Group
621 SW Morrison Street, Suite 900
Portland, OR 97205

David Doyle
Deschutes County Counsel
1300 NW Wall Street, Suite 205
Bend, OR 97703

Dated this 2nd day of October, 2020.

Caleb Huegel
Staff Attorney



Vanessa Steele
Executive Support Specialist