

1 BEFORE THE LAND USE BOARD OF APPEALS

2 OF THE STATE OF OREGON

3  
4 THOMAS BISHOP, DORBINA BISHOP,  
5 and TRUSTEES OF THE BISHOP  
6 FAMILY TRUST,  
7 *Petitioners,*

8  
9 and

10  
11 PAUL LIPSCOMB, ARCHIE BLEYER,  
12 KEN GRAHAM, GISELA RYTER,  
13 JANET SLEATH, PAUL SLEATH,  
14 CENTRAL OREGON LANDWATCH,  
15 ROY DWYER, SUSAN STRAUSS,  
16 JEFF COUGHENOUR and SUSAN COUGHENOUR  
17 *Intervenors-Petitioners,*

18  
19 vs.

20  
21 DESCHUTES COUNTY,  
22 *Respondent,*

23  
24 and

25  
26 TANAGER DEVELOPMENT, LLC,  
27 and KC DEVELOPMENT GROUP, LLC,  
28 *Intervenors-Respondents.*

29  
30 LUBA Nos. 2018-111 and 2018-112

31  
32 ORDER ON MOTIONS FOR RECONSIDERATION

33 On October 12, 2018, the Board issued an order denying petitioners'  
34 motion to suspend this appeal, pending final resolution of an appeal of a circuit  
35 court decision that is currently pending before the Court of Appeals. *Bishop v.*

1 *Deschutes County*, \_\_ Or LUBA \_\_ (LUBA Nos. 2018-011/112, Order, Oct 12,  
2 2018). Briefly, the present appeal challenges a county decision approving  
3 development on intervenors-respondents' (intervenors') property. In the related  
4 circuit court action, petitioners sought declaratory and injunctive relief from the  
5 circuit court, specifically an order to remove two existing reservoirs for which  
6 the county decision before us retroactively grants land use approval. Petitioners  
7 argued in their motion to suspend that if the Court of Appeals' proceeding is  
8 resolved in petitioners' favor, and the circuit court decision is remanded, and if  
9 on remand the circuit court grants petitioners the relief they request, that outcome  
10 could potentially affect LUBA's consideration of the issues raised in the present  
11 appeal, possibly mooted the present appeal, and therefore LUBA should suspend  
12 the present appeal until the final outcome of the circuit court litigation on remand.  
13 We rejected that argument.

14 On October 25 and 26, 2018, petitioners and intervenor-petitioner Central  
15 Oregon Landwatch (COLW), respectively, filed motions to reconsider our  
16 October 12, 2018 order. Subsequently, five of the unrepresented individual  
17 intervenors-petitioners filed responses to the motions to reconsider, which in fact  
18 were in support of the motions. On November 8, 2018, intervenors filed  
19 responses in opposition to the motions for reconsideration.

20 We have considered the motions and responses, and remain unpersuaded  
21 that the present appeal should be suspended over intervenors' objections under  
22 any argument advanced by petitioners or COLW. The only argument that

1 requires additional discussion involves ORS 197.840(1)(d), which authorizes  
2 LUBA to exclude from the 77-day period to make a final decision on the appeal  
3 that ORS 197.830(14) imposes on LUBA “[a]ny reasonable period of delay  
4 resulting from a continuance granted by [a LUBA Board member], if the member  
5 granted the continuance on the basis of findings that the ends of justice served by  
6 granting the continuance outweigh the best interest of the public and the parties  
7 in having a decision within 77 days.”<sup>1</sup> We noted in our October 12, 2018 order

---

<sup>1</sup> ORS 197.840 provides, in relevant part:

“(1) The following periods of delay shall be excluded from the 77-day period within which the board must make a final decision on a petition under ORS 197.830(14):

“\* \* \* \* \*

“(d) Any reasonable period of delay resulting from a continuance granted by a member of the board on the member’s own motion or at the request of one of the parties, if the member granted the continuance on the basis of findings that the ends of justice served by granting the continuance outweigh the best interest of the public and the parties in having a decision within 77 days.

“(2) No period of delay resulting from a continuance granted by the board under subsection (1)(d) of this section shall be excludable under this section unless the board sets forth in the record, either orally or in writing, its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the other parties in a decision within the 77 days. The factors the board shall

1 that petitioners did not request that LUBA grant a continuance under ORS  
2 197.840(1)(d). In their motion for reconsideration, petitioners now request that  
3 we make the findings necessary to grant a continuance under ORS 197.840(1)(d)  
4 and (2).

5 LUBA's determination whether to suspend the 77-day deadline to resolve  
6 an appeal, based on findings under ORS 197.840(1)(d) and (2), is a discretionary  
7 decision. We have considered petitioners' arguments and the responses thereto,  
8 and are not persuaded that, to the extent the "ends of justice" would be served by  
9 indefinitely suspending this appeal, those ends outweigh the best interest of the  
10 public and the parties in meeting the 77-day deadline. ORS 197.840(1)(d). As  
11 explained in our earlier order, the possibility that the circuit court proceeding will  
12 resume *and* result in petitioners' obtaining the full extent of requested relief, *and*  
13 that that the requested relief might affect or moot the present appeal, is too  
14 tenuous a basis to indefinitely suspend the 77-day deadline.

---

consider in determining whether to grant a continuance under  
subsection (1)(d) of this section in any case are as follows:

- “(a) Whether the failure to grant a continuance in the proceeding  
would be likely to make a continuation of the proceeding  
impossible or result in a miscarriage of justice; or
- “(b) Whether the case is so unusual or so complex, due to the  
number of parties or the existence of novel questions of fact  
or law, that it is unreasonable to expect adequate  
consideration of the issues within the 77-day time limit.”

1       We are also not persuaded that the issues petitioners would likely raise in  
2       the present appeal are “so unusual or so complex, due to the number of parties or  
3       the existence of novel questions of fact or law, that it is unreasonable to expect  
4       adequate consideration of the issues within the 77-day time limit.” ORS  
5       197.840(2)(b).

6       Petitioners’ and COLW’s motions for reconsideration are denied.

7       **BRIEFING SCHEDULE**

8       On November 1, 2018, the county transmitted the record in this appeal.  
9       Absent the filing of objections to the record, the record is settled as of the date of  
10      this order. The petitions for review are due 21 days, and the responses brief due  
11      42 days, from the date of this order. The Board’s final opinion and order is due  
12      77 days from the date of this order.

13      Dated this 16th day of November, 2018.

14  
15  
16      \_\_\_\_\_  
17      Tod A. Bassham  
18      Board Member