

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

3
4 ANNUZIATA GOULD,
5 *Petitioner,*

6
7 and

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9 CENTRAL OREGON LANDWATCH,
10 *Intervenor-Petitioner,*

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12 vs.

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14 DESCHUTES COUNTY,
15 *Respondent,*

16
17 and

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19 CENTRAL LAND & CATTLE COMPANY, LLC,
20 *Intervenor-Respondent.*

21
22 LUBA No. 2019-136

23
24 ORDER

25 **MOTION TO CONSOLIDATE AND REMAND**

26 In our final opinion and order dated June 21, 2019, we remanded the
27 county’s decision approving a tentative plan, site plan review, and site plan
28 review application modification for phased development of a destination resort.
29 *Gould v. Deschutes County*, 79 Or LUBA 561 (2019). Petitioner appealed to the
30 Court of Appeals, which dismissed the appeal as untimely filed. The Supreme
31 Court reversed the Court of Appeals. *Gould v. Deschutes County*, 367 Or 427,
32 478 P3d 982 (2020). The Court of Appeals affirmed our decision, *Gould v.*

1 *Deschutes County*, 310 Or App 868, 484 P3d 1073 (2021), and issued an
2 appellate judgment that is effective June 11, 2021.

3 While that case went up the appellate ladder, intervenor-respondent
4 Central Land & Cattle Company, LLC (intervenor) initiated remand proceedings
5 with the county, which resulted in the county’s approval decision that is
6 challenged in this appeal.

7 Intervenor moves to consolidate this appeal with the appeal in LUBA No.
8 2018-140, and remand those appeals together. We deny the motion.

9 First, the appeal in LUBA No. 2018-140 is complete, our decision is final,
10 and we no longer have jurisdiction to consolidate that appeal with this appeal.
11 *See Mazeski v. Wasco County*, 30 Or LUBA 442 (1995) (LUBA does not retain
12 jurisdiction over a proceeding after it has issued a final opinion and order);
13 *Fechtig v. City of Albany*, 27 Or LUBA 648 (1994) (LUBA lacks jurisdiction to
14 reopen an appeal after its final opinion and order in that appeal is issued); *see*
15 *also Oregon Shores Conservation Coalition v. Coos County*, ___ Or LUBA ___
16 (LUBA Nos 2019-137/2020-006) (slip op at 21) (explaining that “LUBA’s notice
17 of appellate judgment is simply a *notice* of the Court of Appeals’ appellate
18 judgment and does not constitute a resolution or decision of any kind,” and that
19 “[t]he sole purpose of LUBA’s notice is to advise the parties that LUBA will play
20 no further role in reviewing the underlying decision” (emphasis in original)).
21 Second, even if we did have jurisdiction over LUBA No. 2018-140, we do not
22 have authority to do what intervenor requests. The Court of Appeals has held that

1 LUBA lacks statutory authority to remand an appeal over a party’s objection after
2 the record is filed. *Dexter Lost Valley Community Assn. v. Lane County*, 255 Or
3 App 701, 708, 300 P3d 1243 (2013).¹ The county did not join in intervenor’s
4 motion and petitioner objects to the motion.

5 Intervenor’s motion to consolidate and remand is denied.

6 **MOTION TO BIFURCATE**

7 Petitioner moves to bifurcate the issues in this appeal so that the parties
8 may first address the county’s jurisdiction to issue the underlying decision and
9 then proceed to briefing on the merits of the decision only if we determine that
10 the county had jurisdiction to issue the decision.

11 Intervenor opposes the motion to bifurcate, arguing that intervenor agrees
12 to a voluntary remand of the underlying decision.

13 As explained above, intervenor does not have unilateral authority to initiate
14 a voluntary remand of the underlying decision. We are tasked with timely review
15 of land use decisions. *See* ORS 197.805 (“It is the policy of the Legislative
16 Assembly that time is of the essence in reaching final decisions in matters
17 involving land use and that those decisions be made consistently with sound
18 principles governing judicial review.”). While we may suspend an appeal to
19 determine whether we have jurisdiction, we do not think that the parties’ dispute

¹ LUBA has allowed voluntary remands where all parties agree to the remand. *Conte v. City of Eugene*, 78 Or LUBA 289, 291 (2018); *Landwatch Lane County v. Lane County*, 78 Or LUBA 272, 275 (2018).

1 over whether the county had jurisdiction to issue the challenged decision should
2 further delay briefing on the merits and a final decision in this appeal.

3 Petitioner’s motion to bifurcate is denied.

4 **RECORD OBJECTIONS**

5 On January 6, 2020, the county transmitted the record in this appeal.
6 Petitioner and intervenor filed record objections. On February 10, 2020, the
7 county transmitted an amended record and a status report stating that the amended
8 record replaces the original record and resolves all record objections. No party
9 objects to the amended record. The Board and the parties shall refer to the
10 amended record.

11 **REACTIVATION AND BRIEFING SCHEDULE**

12 In an order dated February 18, 2020, while this appeal was suspended
13 pending resolution of record objections, we issued an order suspending all further
14 deadlines in this appeal pending the appellate courts’ resolution of the appeal in
15 LUBA No. 2018-140. *Gould v. Deschutes County*, ___ Or LUBA ___ (LUBA
16 No 2019-136, Order, Feb 18, 2020). This appeal is reactivated.

17 The record is settled as of the date of this order. The petition for review
18 shall be due 21 days after the date of this order. The response briefs shall be due
19 42 days after the date of this order. The final opinion and order shall be due 77
20 days after the date of this order.

1 Dated this 28th day of July 2021.

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H. M. Zamudio

7 Board Chair