



Deschutes County Board of Commissioners  
1300 NW Wall St., Suite 200, Bend, OR 97701-1960  
(541) 388-6570 - Fax (541) 385-3202 - [www.deschutes.org](http://www.deschutes.org)

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## **AGENDA REQUEST & STAFF REPORT**

**For Board Business Meeting of March 4, 2015**

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**DATE:** February 17, 2015

**FROM:** Anthony Raguine            CDD            541-617-4739

**TITLE OF AGENDA ITEM:**

Board of County Commissioners (Board) deliberation for Tumalo Irrigation District's request for county sign-off on a Land Use Compatibility Statement (LUCS) to transfer water right from Tumalo Creek to reservoirs on property owned by KC Development Group LLC.

**PUBLIC HEARING ON THIS DATE?** No.

**BACKGROUND AND POLICY IMPLICATIONS:**

The Planning Division initially signed-off on the LUCS indicating the water right transfer was allowed as an outright permitted use. This decision was appealed to the Deschutes County Hearings Officer. The Hearings Officer determined that the creation of the reservoirs to store the water required a conditional use permit for surface mining in conjunction with an irrigation district, and further that a conditional use permit was required to establish a recreation facility. The Hearings Officer's decision was appealed to the Board. A public hearing before the Board was held on January 29, 2015.

To date, all of the written evidence and testimony is scanned to the Deschutes County Property Information (DIAL) website, <http://dial.deschutes.org>. Any written evidence and testimony received after submittal of this agenda request will be scanned to DIAL at least one week prior to the Board's deliberation date.

**FISCAL IMPLICATIONS:**

None.

**RECOMMENDATION & ACTION REQUESTED:**

Open public meeting and initiate deliberations on the Tumalo Irrigation District LUCS.

**ATTENDANCE:** Anthony Raguine and Legal Counsel

**DISTRIBUTION OF DOCUMENTS:**

Anthony Raguine, CDD  
John Laherty, Legal Counsel



# TID Land Use Compatibility Statement (LUCS)

Land Use File Nos. 247-14-000-238-PS, 247-14-000274-A, 247-14-000452-A, 247-14-000453-A

Question Number	Question/Issue Area	Staff Comments	BOCC Answer	BOCC Next Step
1	Is a LUCS sign-off a development action or a land use action?	Hearings Officer pointed to <i>Curl v Deschutes County</i> . LUBA found that simply categorizing the use is a development action, regardless of the amount of discretion necessary to categorize the use.	Development action	Go to Question # 2
		The Bishops argue that the discretion necessary to categorize the use makes the LUCS a land use action.	Land use action	Go to Question # 3
2	Did the Planning Director have the authority to treat the development action as a land use action?	TID argues that because the Planning Director found that the use is allowed without review, the LUCS is expressly excluded from the statutory definition of land use decision under ORS 197.015(10)(b)(H).	No	Since only TID has appeal rights to a development action, the Bishops appeal must be dismissed. Provide final county sign-off of LUCS as is. No notice of the decision to any other parties.
		Hearings Officer pointed to <i>Kuhn v Deschutes County</i> . LUBA found that although the Hearings Officer is not bound by the CDD Director's determination to treat a LUCS as a land use action rather than a development action, nevertheless where the county provided notice and the opportunity for local appeal, the appellants were entitled to take advantage of that appeal.	Yes	Go to Question # 3
3	The LUCS only identified the water right transfer. Should the LUCS have also identified the creation of new reservoirs?	Hearings Officer pointed to <i>Curl v Deschutes County</i> . LUBA found that omitting components of a project is a mischaracterization of the use and that the omitted components must be considered when characterizing the use.	Yes	Go to Question # 4
		TID argues that the reservoirs were essentially already on-site due to the previous mining activity on the property.	No	Go to Question # 6
4	Under Deschutes County Code (DCC) 18.60.020(I), the "Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District" is an outright permitted use. Under DCC 18.60.030(W), "Surface mining...in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for...reservoirs", is a conditional use. Since "reservoirs" are specifically called out as a conditional use, does this expressly prohibit creation of a reservoir as an outright permitted use?	The "surface mining" requirement for a conditional use leaves open the possibility that a reservoir could be created by non-surface mining means.	No	Go to Question # 5
		Under the ordinary rules of statutory construction, where a use is specified as a conditional use, it is prohibited as an outright permitted use.	Yes	Go to Question # 7
5	Under DCC 18.60.020(I), the "Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District", is an outright permitted use. Is the water right transfer and creation of new reservoirs an outright permitted use in the Rural Residential (RR-10) Zone?	Hearings Officer found that the activity necessary to create the reservoirs goes beyond the operation, maintenance, and piping of an existing irrigation system, and is not an outright permitted use.	No	Go to Question #'s 7, 8 & 9
		TID argues the activity on-site is consistent with the operation, maintenance, and piping of an existing irrigation system.	Yes	Issue LUCS as is, and provide notice of the decision to those entitled to notice.
			Cells shaded blue denote Hearings Officer finding	

6	Under Deschutes County Code (DCC) 18.60.020(I), the "Operation, maintenance, and piping of existing irrigation systems operated by an Irrigation District" is an outright permitted use. Since the LUCS correctly identifies only the water right transfer, is the water right transfer allowed outright Rural Residential (RR10) Zone?	The Notice of Decision issued by Planning characterized the water right transfer as an outright permitted use. TID agrees.	Yes	Issue LUCS as is, and provide notice of the decision to those entitled to notice.
		Hearings Officer found that the activity necessary to create the reservoirs goes beyond the operation, maintenance, and piping of an existing irrigation system, and is not an outright permitted use.	No	If the use is not allowed outright under DCC 18.60.020(I), what is the correct use characterization? Go to Question #'s 7, 8 & 9.
7	Under DCC 18.60.030(W), "Surface mining...in conjunction with the operation and maintenance of irrigation systems operated by an Irrigation District, including the excavation and mining for...reservoirs", is a conditional use. Is the creation of new reservoirs consistent with this conditional use characterization?	Hearings Officer analyzed the definition of "surface mining" against the activity on-site, considering Squaw Creek Irrigation District's text amendment to add both the outright permitted use and the conditional use to the code. Hearings Officer found that the activity to create the reservoirs does constitute surface mining requiring a conditional use permit.	Yes	LUCS must be amended to indicate that the use is allowed with conditional use permit approval. Notice of the decision must be provided to those entitled to notice.
		TID argues that the pits already exist on-site, and any additional earth movement was the result of temporary use permit approval TU-14-8, which allowed rock crushing for road maintenance and landscaping.	No	If the use is not allowed outright under DCC 18.60.020(I), or conditionally under DCC 18.60.030(W), what is the correct use characterization?
8	Under DCC 18.60.030(G), "Recreation oriented facility requiring large acreage such as off road vehicle track or race track, but not including a rodeo grounds", is a conditional use. Should the southern reservoir be characterized as a recreation-oriented facility?	Hearings Officer found that evidence in the record was sufficient to characterize the use as a recreation facility. Evidence includes photos of water skiing, and design elements of the reservoir such as a boat ramp, pilings for boat docks, and island turn-arounds.	Yes	LUCS must be amended to indicate that the use is allowed with conditional use permit approval. Notice of the decision must be provided to those entitled to notice.
		TID argues that the primary purpose of the reservoirs is to store water, and that water skiing is a typical secondary use of reservoirs.	No	If the use is not allowed outright under DCC 18.60.020(I), or conditionally under DCC 18.60.030(G), what is the correct use characterization?
9	Under DCC 18.60.030(F), a "Cluster development", requires conditional use approval. Does the creation of the reservoirs constitute the first phase of a future cluster subdivision?	Hearings Officer found that a cluster subdivision would require additional components such as roads and utilities, and would require additional land use approval beyond the general conditional use approval - including conditional use criteria specific to cluster subdivisions and tentative plan approval.	No	Prepare LUCS based on BOCC answers to previous matrix questions.
		The Bishops state that the evidence in the record includes well drilling on-site for future dwellings, the creation of a westerly road, and statements by the property owner of a future cluster subdivision. The Bishops argue that this is sufficient to require conditional use approval.	Yes	LUCS must be amended to indicate that the use is allowed with conditional use permit and tentative plan approval. Notice of the decision must be provided to those entitled to notice.

Cells shaded blue denote Hearings Officer finding