



Monday, September 30, 2024

## MEMORANDUM

**To:** Hearings Officer, Daniel Kearns  
**From:** Laurie Joseph, Community Development Director and Chris Negelspace, City Engineer  
**Re:** Buxton Ranch Remand Hearing, rebuttal to written comments submitted by Joel Haugen on September 26, 2024

Staff offers the below rebuttal as additional findings in regard to the two written comments submitted by Joel Haugen in relation to the Buxton Ranch remand hearing on September 30, 2024:

**Item No. 1:** In regard to whether or not the City Council can delegate their quasi-judicial decision-making authority to a hearings officer, staff asserts that this is allowed, due to the following provisions:

1. There are no provisions within the SMC (Scappoose Municipal Code) or City Charter that govern the process for how a remand is handled, including a remand hearing.
2. SMC 2.04.170.A - Miscellaneous, states, "Any procedural matter not covered by the Charter or by a rule adopted by the council shall be resolved by a majority vote of Council. The Council voted on June 12, 2024, by a majority vote, to delegate their quasi-judicial decision-making authority to a hearings officer.
3. The City also enjoys home rule authority under the City Charter Sections 4 and 5:

*4. Powers of the City.*

***The City shall have all the powers which the constitution, statutes and common law of the United States and of this State expressly or impliedly grant or allow municipalities as fully as though this Charter specifically enumerated each of those powers. The City shall exercise the power of eminent domain pursuant to state law but shall not condemn property for the sole purpose of economic development.***

*5. Construction of Charter.*

***In this Charter, no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the City would have if the particular power were not mentioned. The Charter shall be liberally construed to the end that the City may have all the powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the State constitution.***

4. Additionally, LUBA has previously found that, "A local government also enjoys considerable discretion in selecting the procedures it will follow on remand." Siporen v. City of Medford, 55 Or LUBA 29, 48 (2007).

**Item No. 2:** In regard to the submittal of the 2023 SWMP (Stormwater Master Plan) and Figure 2-4, staff offers the below information as additional findings:

5. Mr. Haugen submitted the 2023 SWMP (Stormwater Master Plan) and Figure 2-4 to “identify stormwater approval standards relevant to whether the Buxton Ranch development complies with the comprehensive plan and land use regulations”.
6. The second assignment of error requires the City to allow parties to respond to the evidence that was entered by the applicant when the record was reopened during the December 12, 2022 City Council hearing in connection with the introduction of the condition of approval limiting the number of lots to 44 and increasing the minimum lot size to 4,000 square feet. This new evidence now being introduced by Mr. Haugen bears no relationship to that prior evidence and is outside the scope of the second assignment of error. Mr. Haugen’s broad characterization of the scope of the remand on the second assignment of error would allow introduction of evidence to revisit every aspect of the application, which was clearly not LUBA’s intent on remand. In short, the evidence being presented is not relevant to the issues on remand.
7. The evidence Mr. Haugen seeks to introduce also does not constitute standards or criteria applicable to the application, because it was adopted by the City after the land use application in this case was submitted. The SWMP was adopted on May 15, 2023 via Ord 915. The Buxton application was submitted on February 23, 2022. Therefore, the 2023 SWMP is not applicable to the Buxton Ranch application in any way per ORS 227.178(3) (the Goal Post Rule) since it had not been adopted yet when the Buxton Ranch application was first submitted.
8. Mr. Haugen misconstrues the purpose and effect of the SWMP and the maps in question. He has superimposed the project site onto Figure 2-4 incorrectly (the project site is located further west on site than depicted in Mr. Haugen’s exhibit) and states that since it is located within the area identified as floodplain and wetlands and since it is not within the hatched area labeled as developable, this means that the application is not consistent with the Comprehensive Plan and applicable land use regulations and should be denied.
9. The SWMP does not contain approval standards related to land use applications. The land use regulations and approval criteria related to storm drainage are contained in SDC 17.154.100. Findings were included in the Planning Commission staff report dated October 20, 2022 related to this criteria, which is included as Exhibit 3 to the applicants remand narrative. The findings were accepted by the City Council in their original decision and are not the subject of the current remand.
10. Figure 2-4, a planning level map in the 2023 SWMP, is not the governing floodplain or wetland map for the City in terms of regulating land uses, nor does the term “developable” on a planning level map relate to any criteria in the development code that would be recognized as enforceable to a specific land use application. The relevant approval criteria are contained within the Planning Commission staff report.
11. The FIRM (flood insurance rate map), approved by FEMA, is the official map the City uses to regulate floodplain development, as stated in SDC 17.84.030(B).
12. The Applicant completed wetland delineations, approved by the Department of State Lands to determine the regulatory wetland boundaries on site, included as Exhibit 15 to the Planning Commission staff report.
13. The applicant completed a LOMR (Letter of Map Revision), approved by FEMA, to determine the current regulatory floodplain boundary, included as Exhibit 8 to the Planning Commission staff report.