

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

CENTRAL OREGON LANDWATCH,

*Respondent*  
*Cross-Respondent,*

*v.*

DESCHUTES COUNTY,

*Petitioner*  
*Cross-Respondent,*  
*and*

Anthony ACETI,  
*Respondent*  
*Cross-Petitioner.*

Land Use Board of Appeals  
2017009; A165313

Argued and submitted August 30, 2017.

Daniel A. Terrell argued the cause for petitioner-cross-respondent and respondent-cross-petitioner. With him on the joint brief were Law Office of Bill Kloos, PC, and David Adam Smith.

Carol Macbeth argued the cause and filed the brief for respondent-cross-respondent.

Before Armstrong, Presiding Judge, and Tookey, Judge, and Shorr, Judge.

PER CURIAM

Affirmed on petition and cross-petition.

## PER CURIAM

Petitioner Deschutes County and cross-petitioner Aceti (petitioners) seek judicial review of an order of the Land Use Board of Appeals (LUBA), reversing a decision of the county's board of commissioners. LUBA reversed the county's decision approving a Rural Industrial comprehensive plan designation and related zoning for the subject property on the basis that the county's interpretation of the Deschutes County Comprehensive Plan (DCCP) as permitting those changes conflicts with the DCCP's express language. Petitioners jointly contend that LUBA's decision was unlawful in substance because it failed to defer to the county's plausible interpretation of the DCCP.

We review LUBA's decision to determine whether it is "unlawful in substance." ORS 197.850(9)(a). LUBA must accept the county's interpretation of the county's land use regulations unless LUBA determines, among other things, that the county's interpretation is "inconsistent with the express language of the comprehensive plan or land use regulation." ORS 197.829(1)(a).

"A LUBA decision is 'unlawful in substance' \*\*\* if, in contravention of the standard of review set out at ORS 197.829(1), LUBA substitutes its own interpretation of a local government's land use regulations for a plausible interpretation of those regulations offered by the local government. In the face of a claim that LUBA violated that standard, [we] must determine whether the local government's interpretation in fact *is* 'plausible.'"

*Siporen v. City of Medford*, 349 Or 247, 261, 243 P3d 776 (2010) (emphasis in original).

Here, we conclude that the county's interpretation of the DCCP is not plausible because it conflicts with the DCCP's express language. Section 3.4 of the DCCP explains:

"In Deschutes County there are a handful of properties zoned Rural Commercial and Rural Industrial. These designations recognize uses that predated State land use laws. New commercial or industrial sites are controlled by State regulation and additional development is anticipated to be minimal and only for specific sites, such as around the Bend Airport."

Section 3.4 then describes the Rural Industrial designation as follows:

“The Rural Industrial plan designation applies to specific exception areas located outside unincorporated communities and urban growth boundaries. The Rural Industrial plan designation and zoning brings these areas into compliance with state rules by adopting zoning to ensure that they remain rural and that the uses allowed are less intensive than those allowed in unincorporated communities as defined in OAR 660-022.

“The Rural Industrial designation applies to the following acknowledged exception areas.

“Redmond Military

“Deschutes Junction

“Bend Auto Recyclers”

The subject property in this case is not one of the three listed exception areas.

Based on the text of the introductory paragraph, the county interpreted the DCCP’s Rural Industrial designation to apply to new rural lands outside an urban growth boundary or an unincorporated community. However, such a broad interpretation conflicts with the express language of the DCCP, which applies the Rural Industrial designation only to the enumerated exception areas. Thus, LUBA properly applied its standard of review in reversing the county’s decision that approved a Rural Industrial designation for a property not specifically enumerated in section 3.4 of the DCCP.

Affirmed on petition and cross-petition.