



BOARD OF COMMISSIONERS

BOARD OF COUNTY COMMISSIONERS MEETING

9:00 AM, WEDNESDAY, AUGUST 16, 2023

Barnes Sawyer Rooms - Deschutes Services Building - 1300 NW Wall Street – Bend

(541) 388-6570 | www.deschutes.org

AGENDA

MEETING FORMAT: In accordance with Oregon state law, this meeting is open to the public and can be accessed and attended in person or remotely, with the exception of any executive session.

Members of the public may view the meeting in real time via YouTube using this link: <http://bit.ly/3mmlnzy>. To view the meeting via Zoom, see below.

Citizen Input: The public may comment on any topic that is not on the current agenda. Alternatively, comments may be submitted on any topic at any time by emailing citizeninput@deschutes.org or leaving a voice message at 541-385-1734.

When in-person comment from the public is allowed at the meeting, public comment will also be allowed via computer, phone or other virtual means.

Zoom Meeting Information: This meeting may be accessed via Zoom using a phone or computer.

- To join the meeting via Zoom from a computer, use this link: <http://bit.ly/3h3oqdD>.
- To join by phone, call 253-215-8782 and enter webinar ID # 899 4635 9970 followed by the passcode 013510.
- If joining by a browser, use the raise hand icon to indicate you would like to provide public comment, if and when allowed. If using a phone, press *6 to indicate you would like to speak and *9 to unmute yourself when you are called on.



Deschutes County encourages persons with disabilities to participate in all programs and activities. This event/location is accessible to people with disabilities. If you need accommodations to make participation possible, call (541) 388-6572 or email brenda.fritsvold@deschutes.org.

Time estimates: The times listed on agenda items are estimates only. Generally, items will be heard in sequential order and items, including public hearings, may be heard before or after their listed times.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

CITIZEN INPUT: Citizen Input may be provided as comment on any topic that is not on the agenda.

Note: In addition to the option of providing in-person comments at the meeting, citizen input comments may be emailed to citizeninput@deschutes.org or you may leave a brief voicemail at 541.385.1734.

CONSENT AGENDA

1. Consideration of Board Signature on letters appointing Denney Kelley and reappointing Tony De Alicante to the Sunriver Service District Managing Board.
2. Consideration of Board Signature on letters thanking Robert Foster and Gerhard Beenen for their service on the Sunriver Service District Managing Board.
3. Consideration of Board Signature on letter reappointing Tami Pike for service on the Deschutes County Public Health Advisory Board.
4. Consideration of Board Signature on letter appointing Sabrina Haggerty for service on the Deschutes County Bicycle-Pedestrian Advisory Board.
5. Approval of minutes of the June 17 and 19, 2023 BOCC meetings

ACTION ITEMS

6. **9:10 AM** Public Hearing to receive testimony regarding proposed revisions to the County contracting code
7. **9:25 AM** Public Hearing on a request to vacate a portion of Schibel Road (continued from 8/9/2023)
8. **10:25 AM** First reading of Ordinance 2023-018 – Griffin Plan Amendment/Zone Change
9. **10:30 AM** Deliberations: Remand of LBNW LLC Plan Amendment and Zone Change
10. **11:00 AM** 2023 Spay & Neuter Grant Program Award Recommendations

OTHER ITEMS

These can be any items not included on the agenda that the Commissioners wish to discuss as part of the meeting, pursuant to ORS 192.640.

EXECUTIVE SESSION

At any time during the meeting, an executive session could be called to address issues relating to ORS 192.660(2)(e), real property negotiations; ORS 192.660(2)(h), litigation; ORS 192.660(2)(d), labor negotiations; ORS 192.660(2)(b), personnel issues; or other executive session categories.

Executive sessions are closed to the public; however, with few exceptions and under specific guidelines, are open to the media.

ADJOURN

SUNRIVER OWNERS ASSOCIATION
Board of Directors Resolution
2023-002
Recommending Appointment to Position #5
Sunriver Service District Managing Board

Whereas, the Sunriver Service District Governing Body is comprised of the Board of County Commissioners of Deschutes County, Oregon, and


Whereas, the Sunriver Service District Management Agreement (Deschutes County Contract No. 2002-147) provides for appointment of Sunriver Service District Managing Board member by the District Governing Body, and

Whereas, said Agreement provides for such appointments after review of recommendations by the Sunriver Owners Association, and

Whereas, the term of Position #5 will expire on August 31, 2023.

Now, Therefore it is resolved by the SROA Board of Directors that Denney Kelley be recommended to the Sunriver Service District Governing Body for appointment to Position #5 of the Sunriver Service District Managing Board for a term to expire on August 31, 2026.


In Witness Whereof, The Directors of Sunriver Owners Association have executed this Resolution on July 15, 2023.


 Gerhard Beenen, President

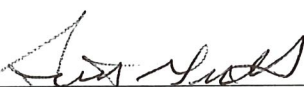

 Keith Mobley, Director

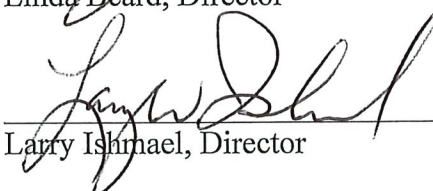

 Bill Burke, Vice President

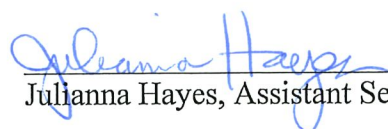
 Tony De Alicante, Director


 Clark Pederson, Treasurer


 Linda Beard, Director


 Scott Gillies, Secretary


 Larry Ishmael, Director


 Julianna Hayes, Assistant Secretary

SUNRIVER OWNERS ASSOCIATION
Board of Directors Resolution
2023-003

Recommending Appointment to Position #1
Sunriver Service District Managing Board

Whereas, the Sunriver Service District Governing Body is comprised of the Board of County Commissioners of Deschutes County, Oregon, and

Whereas the Sunriver Service District Management Agreement (Deschutes County Contract No. 2002-147) provides for appointment of Sunriver Service District Managing Board member by the District Governing Body, and

Whereas said Agreement provides for such appointments after review of recommendations by the Sunriver Owners Association, and

Whereas said Agreement requires that persons serving in Position #1 and Position #2 must be current members of the Board of Directors of the Sunriver Owners Association, and

Whereas Tony De Alicante's term in Position 1 will expire on August 31, 2023, and he has agreed to continue to serve until his term on the SROA Board of Directors expires,

Now, Therefore it is resolved by the Board of Directors that Tony De Alicante be recommended to the Sunriver Service District Governing Body for appointment to Position #1 of the Sunriver Service District Managing Board for a term to expire on August 31, 2026.


In Witness Whereof, The Directors of Sunriver Owners Association have executed this Resolution on July 15, 2023.


 Gerhard Beenen, President


 Keith Mobley, Director

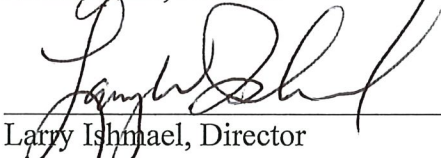

 Bill Burke, Vice President

 Tony De Alicante, Director


 Clark Pederson, Treasurer


 Linda Beard, Director


 Scott Gillies, Secretary


 Larry Ishmael, Director


 Julianna Hayes, Director



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 16, 2023

SUBJECT: Public Hearing to receive testimony regarding proposed revisions to the County contracting code

RECOMMENDED ACTION:

First, hold a public hearing; thereafter, move first reading of Ordinance No. 2023-012 amending Deschutes County Code sections 2.36 and 2.37.

Alternatively, the Board may want to move first and second reading of the ordinance and immediate adoption by emergency.

BACKGROUND AND POLICY IMPLICATIONS:

SB 1047 provided substantive changes to public contracting requirements. County staff have also identified needed revisions.

BUDGET IMPACTS:

None

ATTENDANCE:

Admin

Legal

REVIEWED

LEGAL COUNSEL

REVIEWED

LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Title 2.36 and Title 2.37, Contracting, of the Deschutes County Code.

- * *
- * *
- * *

ORDINANCE NO. 2023-012

WHEREAS, the Deschutes County Code (DCC) contains rules and regulations duly enacted through ordinance by Deschutes County and the Deschutes County Board of Commissioners; and

WHEREAS, from time-to-time the need arises to make amendments, including new enactments to the DCC; and

WHEREAS, staff from Facilities, Administration, and Legal have identified a need to amend DCC 2.36 and DCC 2.37 to reflect state law changes in SB 1047 and also revisions appropriate for county operations; and

WHEREAS, the Board of County Commissioners of Deschutes County considered this matter at a duly noticed public hearing during the Board meeting on August 16, 2023, and determined that DCC 2.36 and DCC 2.37 should be amended; now therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS
as follows:

Section 1. AMENDMENT. DCC 2.36 and DCC 2.37 are amended to read as described in Exhibit “A,” attached hereto and by this reference incorporated herein, with new language underlined and language to be deleted in ~~strikethrough~~.

Section 2. **ADOPTION.** This Ordinance takes effect 90 days after second reading.

///

Dated this _____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DeBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: _____ day of _____, 2023.

Date of 2nd Reading: _____ day of _____, 2023.

<u>Commissioner</u>	Record of Adoption Vote			
	<u>Yes</u>	<u>No</u>	<u>Abstained</u>	<u>Excused</u>
Patti Adair				
Phil Chang				
Anthony DeBone				

Effective date: _____ day of _____, 2023.

EXHIBIT A

(To Ordinance No. 2023-012)

CHAPTER 2.36 LOCAL CONTRACT REVIEW BOARD

2.36.010 Purpose; Statutory Authority

2.36.020 Creation And Functions Of Board

2.36.030 Model Public Contract Rules

2.36.040 Exemptions From Competitive Bidding

2.36.050 Delegation

2.36.010 Purpose; Statutory Authority

The purpose of DCC 2.36 is to authorize the Board to perform the duties of a local contract review board in lieu of permitting the Public Contract Review Board to perform the functions of reviewing public contracts as required by Oregon Laws 1975, Chapter 771.

HISTORY

Adopted by Ord. [203-8](#) §1 on 1/21/1976

2.36.020 Creation And Functions Of Board

The Board is designated a local contract review board to perform the functions of the Public Contract Review Board.

HISTORY

Adopted by Ord. [203-8](#) §2 on 1/21/1976

2.36.030 Model Public Contract Rules

The Attorney General's Model Public Contract Rules adopted pursuant to operative sections of ORS Chps. 279A, 279B and 279C, shall be the rules of the local contract review board. Procedures for personal services contracts required by ORS 279A.055 are set forth in DCC 4.06.

HISTORY

Adopted by Ord. [97-030](#) §1 on 4/2/1997

Amended by Ord. [98-092](#) §1 on 12/16/1998

Amended by Ord. [2003-018](#) §1 on 6/9/2003

Amended by Ord. [2020-005](#) §1 on 1/1/2021

2.36.040 Exemptions From Competitive Bidding

~~See DCC 2.37.070 and DCC 2.37.090 for exemptions. In addition to the exemptions from competitive bids or proposals set forth in operative sections of ORS Chps. 279A, 279B and 279C contracts may be awarded as follows:~~

~~A. ——— Contracts, other than contracts for personal services, may be awarded without competitive bidding pursuant to DCC 2.36.030 for the following classes of contracts:~~

~~1. ——— Emergency contracts.~~

2. ~~Contracts \$10,000 or over, but under \$150,000, where competitive written quotes were obtained.~~

3. ~~Contracts under \$10,000 need not be awarded competitively.~~

B. ~~Where a contract is awarded under DCC 2.36.040, the department head or elected official awarding the contract shall document in the records of the County the quotes received, or if no quotes were received, the reason why it was not feasible or required to obtain quotes.~~

C. ~~Except for emergency contracts, the aggregate of all contracts awarded by the County under DCC 2.36.040(A)(2) where it was not feasible to obtain competitive quotes, shall not exceed \$75,000 to any one contractor in any one fiscal year; and under DCC 2.36.040(A)(3), shall not exceed \$20,000 to any one contractor in any one fiscal year.~~

D. ~~When competitive quotes are obtained, award of contract shall be to the lowest responsible quote in conformance with the specifications.~~

E. ~~An oral quote received by telephone shall be considered a written quote when it is recorded in the records of the County.~~

HISTORY

Adopted by Ord. [98-092](#) §1 on 12/16/1998

Amended by Ord. [99-035](#) §1 on 11/24/1999

Amended by Ord. [2000-012](#) §1 on 5/8/2000

Amended by Ord. [2020-005](#) §1 on 1/1/2021

Amended by Ord. 2023-012 §1 on 8/16/2023

2.36.050 Delegation

- A. ~~Excepting the department head of the Health Department who shall have contract authority to \$50,000, Each County employee and elected official designated as a department head of the County is authorized to contract in an amount not to exceed \$5025,000 for each contract, amendment, and/or change order provided sufficient sums are appropriated and unencumbered in the County budget and there are sufficient cash resources available to pay the maximum consideration set forth in each contract.~~
- B. The County Administrator may award competitive bids and enter into contracts, amendments, and/or change orders in an amount not to exceed \$~~2~~150,000 for each contract, amendment, and/or change order~~any single contract.~~

HISTORY

Adopted by Ord. [98-092](#) §1 on 12/16/1998

Amended by Ord. [2000-012](#) §1 on 5/8/2000

Amended by Ord. [2007-002](#) §1 on 1/24/2007

Amended by Ord. [2020-005](#) §1 on 1/1/2021

Amended by Ord. 2023-012 §1 on 8/16/2023

CHAPTER 2.37 PUBLIC CONTRACTING CODE

[2.37.010 Purpose; Statutory Authority](#)

[2.37.020 Model Public Contract Rules](#)

[2.37.030 Public Contract Review Board](#)

[2.37.040 Purchasing Agent](#)

[2.37.050 Definitions](#)

[2.37.060 Signature Authority](#)

[2.37.065 Competitive Sealed Proposals \(Repealed\)](#)

[2.37.070 Class Special Procurements](#)

[2.37.080 Exemption For Certain Personal Services](#)

[2.37.090 Exemption From Sealed Bids Or Proposals](#)

[2.37.100 Purchases Through Federal Programs](#)

[2.37.110 Contracts For Disposal Of Personal Property](#)

[2.37.120 Notice Of Intent To Award; Notice To Proceed And Contract Administration](#)

[2.37.130 Qualified Pool](#)

[2.37.140 Contested Case Procedures](#)

[2.37.150 Standard Contract Provisions](#)

[2.37.160 Competitive Electronic Auction Bidding](#)

2.37.010 Purpose; Statutory Authority

The purpose of DCC 2.37 is to implement the provisions of ORS 279A, 279B and 279C, which may be collectively referred to herein as the Public Contracting Code. This chapter shall be known as the Deschutes County Contracting Code and may be referred to herein as "this chapter."

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

2.37.020 Model Public Contract Rules

~~Except as otherwise provided in this chapter or by rule or order of the Board, the~~ Model Rules of Public Contract Procedure, OAR 137, divisions 46, 47, 48 and 49, herein referred to as the Model Rules, adopted by the Oregon Attorney General, as amended in 2008, and from time to time amended, shall be the rules of the Deschutes County Contract Review Board. Where ~~reference these rules conflict with any provision of the Public Contracting Code, unless expressly stated that this chapter will apply, is made in these rules to any provision of the Public Contracting Code, unless this chapter provides otherwise,~~ the corresponding provisions of the Model Rules shall ~~also~~ apply.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

~~Amended by Ord. [2023-012xxx](#) §1 on 8/16/2023~~[DATE](#)

2.37.030 Public Contract Review Board

Except as expressly delegated under this chapter or by Board Resolution, the Board of County Commissioners, "Board," acting in its capacity as the governing body of the County or of each and every County service district, reserves to itself the exercise of all duties and authority of a contract review board and a contracting agency under state law. Where this chapter refers to the "County," unless the context indicates a different meaning, the reference shall mean and include Deschutes County or the particular County service district for which the Board is the governing body.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

2.37.040 Purchasing Agent

- A. The County Administrator is designated as the Purchasing Agent of the County and is hereby authorized to issue or cause to be issued all solicitations and to award all County contracts for which the contract price does not exceed \$~~2~~150,000. Subject to the provisions of this chapter, the Purchasing Agent may adopt and amend all solicitation materials, contracts and forms required or permitted to be adopted by contracting agencies under the Public Contracting Code or otherwise convenient for the County's contracting needs.
- B. In the context of requests for County proposals the department director and in the case of county service districts, each administrator, director or managing board, is authorized to determine the method of contractor selection and selection criteria.
- C. Notwithstanding ORS 279B.075, the Purchasing Agent and in the case of county service districts, each administrator, director or managing board, is authorized to determine that goods or services, or classes of goods or services, are available from only one source, based upon one or more of the following findings: (1) that the efficient utilization of existing goods requires the acquisition of compatible goods or services; (2) that the goods or services required for the exchange of software or data with other public or private agencies are available from only one source; (3) that the goods or services are for use in a pilot or experimental project; or (4) other findings that support the conclusion that the goods or services are available from only one source. In making the determination under this subsection C the Purchasing Agent or other authorized representative shall publish notice at least seven (7) days in advance and consider any written comments or objections. At the conclusion of the seven-day notice period written findings to justify the sole source determination shall be prepared and placed in the contract file. A copy of such findings shall promptly be furnished to all persons who submitted written comments or objections.
- D. In the case of county service districts the director, administrator or managing board is designated as the purchasing agent of the district and is hereby authorized to issue all solicitations and to award all district contracts for which the contract price does not exceed \$~~50~~25,000 unless otherwise specifically set forth in the operating agreement between the County and the district. Subject to the provisions of this chapter, the purchasing agent of the district may adopt and amend all solicitation materials, contracts and forms required or

permitted to be adopted by contracting agencies under the Public Contracting Code or otherwise convenient for the district's contracting needs.

- E. Whenever the Oregon State Legislative Assembly enacts laws or the attorney general modifies the Model Rules, the County Legal Counsel shall review this chapter and recommend to the Board any modifications required to ensure compliance with changes in state law or the Model Rules.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

2.37.050 Definitions

The following terms used in this chapter shall have the meanings set forth below:

- A. "Award" means the selection of a person to provide goods, services or public improvements under a public contract. The award of a contract is not binding on the County until the contract is executed by the person and the County.
- B. "Bid" means a binding, sealed, written offer to provide goods, services or public improvements for a specified price or prices.
- C. "Concession agreement" means a contract that authorizes and requires a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from real property owned or managed by the County, and under which the concessionaire makes payments to the County based, at least in part, on the concessionaire's revenues or sales. The term "concession agreement" does not include a mere rental agreement, license or lease for the use of premises.
- D. "Contract price" means the total amount paid or to be paid under a contract, including any approved alternates, and any fully executed change orders or amendments.
- E. "Debarment" means a declaration by the Purchasing Agent or the Board under ORS 279B.130 or ORS 279C.440 that prohibits a potential contractor from competing for the County's public contracts for a prescribed period of time.
- F. "Disposal" means any arrangement for the transfer of personal property by the County under which the County relinquishes ownership.
- G. "Emergency" means circumstances that: (1) could not have been reasonably foreseen; (2) creates a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and (3) requires prompt execution of a contract to remedy the condition.
- H. "Findings" are the statements of fact that provide justification for a determination. Findings may include, but are not limited to, information regarding operation, budget and financial data; public benefits; cost savings; competition in public contracts; quality and aesthetic

considerations, value engineering; specialized expertise needed; public safety; market conditions; technical complexity; availability, performance and funding sources.

- I. "Goods" means any item or combination of supplies, equipment, materials or other personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto.
- J. "Informal solicitation" means a solicitation made in accordance with the Contracting Code and this chapter to a limited number of potential contractors, in which the Solicitation Agent attempts to obtain at least three quotes or proposals.
- K. "Invitation to bid" means a publicly advertised request for competitive sealed bids.
- L. "Offeror" means a person who submits a bid, quote or proposal to enter into a public contract with the County.
- M. "Personal services contract" means a contract with an independent contractor predominantly for services that require special training or certification, skill, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of judgment or skills, and for which the quality of the service depends on attributes that are unique to the service provider. Personal services include, but are not limited to, the services of architects, engineers, land surveyors, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The Purchasing Agent or the Board shall have discretion to determine whether additional types of services not specifically mentioned in this paragraph fit within the definition of personal services.
- N. "Proposal" means a binding offer to provide goods, services or public improvements with the understanding that acceptance will depend on the evaluation of factors other than, or in addition to, price. A Proposal may be made in response to a request for proposals or under an informal solicitation.
- O. "Qualified pool" means a pool of vendors who are pre-qualified to compete for the award of contracts for certain types of contracts or to provide certain types of services.
- P. "Quote" means a price offer made in response to an informal or qualified pool solicitation to provide goods, services or public improvements.
- Q. "Request for proposals" means a publicly advertised request for sealed competitive proposals.
- R. "Services" means and includes all types of services (including construction labor) other than personal services.
- S. "Solicitation" means an invitation to one or more potential contractors to submit a bid, proposal, quote, statement of qualifications or letter of interest to the County with respect to a proposed project, procurement or other contracting opportunity. The word "solicitation" also refers to the process by which the County requests, receives and evaluates potential contractors and awards public contracts.

- T. "Solicitation Agent" means with respect to a particular solicitation or contract, the County employee charged with responsibility for conducting the solicitation and making an award, or making a recommendation on award to a department head, the Purchasing Agent or the Board.
- U. "Solicitation documents" means all informational materials issued by the County for a solicitation, including, but not limited to advertisements, instructions, submission requirements and schedules, award criteria, contract terms and specifications, and all laws, regulations and documents incorporated by reference.
- V. "Surplus property" means personal property owned by the County, which is no longer needed for use by the department to which such property has been assigned.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

2.37.060 Signature Authority

- A. ~~Excepting the department head of the Health Department who shall have contract authority to \$50,000, Each~~ County Department Head and each elected County official designated as a department head (unless expressly provided otherwise by the Board of County Commissioners) is authorized to award competitive bids and proposals and enter into contracts, [amendments, and/or change orders](#) in an amount not to exceed ~~\$5025~~,000 for each [contract, amendment, and/or change order](#)~~contract~~, provided sufficient sums are appropriated and unencumbered in the County or, as applicable, district budget and there are sufficient cash resources available to pay the maximum consideration set forth in each and every contract.
- B. The County Administrator is authorized to award competitive bids and proposals and enter into contracts, [amendments, and/or change orders](#) in an amount not to exceed ~~\$24~~50,000 for [each any single](#) contract, [amendment, and/or change order](#) provided sufficient sums are appropriated and unencumbered in the County budget and there are sufficient cash resources available to pay the maximum consideration set forth in each and every contract. For purposes of this subsection contracts shall include agreements between the county and any public entity, including federal, state and local governments.
- C. In determining the monetary limits of authority to enter into contracts, [amendments, and/or change orders](#) on behalf of the County, the cost or price for the [specific contract, amendment, and/or change order](#) ~~entire term, including optional renewals~~ shall be considered.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2014-024](#) §1 on 8/27/2014

Amended by Ord. [2020-005](#) §1 on 1/1/2021

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

2.37.065 Competitive Sealed Proposals (Repealed)

HISTORY

Repealed by Ord. [2014-024](#) on 8/27/2014

2.37.070 Class Special Procurements

- A. The County may award a public contract under a Class Special Procurement pursuant to the requirements of ORS 279B.085. Such procurements allow the County to enter into one or more contracts over time without following the requirements of competitive sealed bidding, competitive sealed proposals or intermediate procurements.
- B. The Board of County Commissioners declares the following as classes of special procurements. Such contracts may be awarded in any manner, which the Solicitation Agent deems appropriate to the County's needs, including by direct appointment or purchase. Except where otherwise provided the Solicitation Agent shall make a record of the method of award.
 1. Manufacturer Direct Supplies. The County may purchase goods directly from a manufacturer without competitive bidding if a large volume purchase is required and the cost from the manufacturer is the same or less than the cost the manufacturer charges to its distributor(s). Procurements of this type are made on a contract-by-contract basis and are not requirements contracts.
 2. Purchase of Advertising Contracts. Contracts for the placing of notices or advertisements may be published in any medium.
 3. Contracts Up to ~~\$2510~~,000. Contracts of any type for which the contract price does not exceed ~~\$2510~~,000 without a record of the method of award.
 4. Copyrighted Materials; Library Materials. The County may purchase copyrighted materials where there is only one known supplier available for such goods. This includes, but is not limited to, works of art, books, periodicals, curriculum materials, reference materials, audio and visual media, training materials in any media and non-mass marketed software from a particular publisher or its designated distributor.
 5. Requirements Contracts. The County may competitively select a vendor to provide specified goods and services that are routine or repetitive over a defined contract term at particular prices even though the precise volume or number of such purchases is not known in advance.
 6. Use of Existing Contractors. When a public improvement is in need of minor alteration or repair at or near the site of work being performed by another County contractor, the County may hire that contractor to perform the work, provided:
 - a. The contractor was hired through a selection process permitted by County Code;
 - b. The Solicitation Agent first obtains a price quotation for the additional work from the contractor that is competitive and reasonable;

- c. The total cost of the proposed work and the original work will not exceed the Bureau of Labor and Industries' prevailing wage threshold; and
 - d. The original contract is amended to reflect the new work and is approved by the Purchasing Agent before work begins.
- 7. Purchase of Used Personal Property or Equipment. The County may directly purchase used personal property and equipment if such property is suitable for the County's needs and can be purchased for a lower cost than substantially similarly new property. For this purpose the cost of used property shall be based upon the life-cycle cost of the property over the period for which the property will be used by the County.
- 8. Hazardous Material Removal and Oil Clean-up. When ordered to clean up or remove hazardous material or oil by the Oregon Department of Environmental Quality, the County may directly acquire such services from any qualified or certified vendor. In doing so, the following conditions apply:
 - a. To the extent reasonable under the circumstances, encourage competition by attempting to obtain informal price quotations or proposals from potential suppliers of goods and services.
 - b. The county department responsible for managing or coordinating the clean-up shall prepare and submit to the Purchasing Agent a written description of the circumstances that require it and a copy of the DEQ order for the cleanup , together with a request for contract authorization;
 - c. The county department shall record whether there was time for competition, and, if so, the measures taken to encourage competition, the amount of the price quotations obtained, if any, and the reason for selecting the contractor to whom award is made; and
 - d. The timeline for cleanup does not permit use of intermediate or formal procurement procedures.
- 9. Change orders and amendments to contracts and price agreements. The County may execute contract amendments and change orders, as follows:
 - a. An original valid contract exists between the parties;
 - b. The change order is within the general scope of the contract;
 - c. The change order is implemented in accordance with the change provisions of the contract;
 - d. The amount of the aggregate cost change resulting from all change orders does not exceed twenty-five (25%) of the initial contract; and
 - e. The change order does not modify the contract's terms and conditions except to reflect a change in:
 - 1. the amount of payments;

2. technical specifications, time of delivery, place of delivery, form of delivery, quantity or manufacturer of services or goods;
 3. completion date of the project;
 4. any combination of the foregoing under the Contract; and,
 - 4.5. (5) the amounts of any applicable performance and payment bonds are proportionally increased.
- f. Contract change orders are authorized under this subsection where the original contractor is allegedly in default and the contractor's surety can provide substitute performance pursuant to the original contract to complete or correct the work at hand.
10. Concession Agreements. Contracts entered into by the Fair and Expo Center which grant a franchise or concession to a private entity or individual to promote or sell, for its own business purposes, specified types of goods or services from all or a portion of the fairgrounds and under which the concessionaire or promoter makes payments to the Fair and Expo Center based, at least in part, on the concessionaire's revenues from sales or the value of such promotion to the sponsor's business, whether on or off the fairgrounds property. The Director of the Fair and Expo Center shall, subject to approval of the Deschutes County Fair Board, prepare and implement selection criteria, based upon the proprietary nature of the Fair and Expo Center. A Concession Agreement does not include an agreement, which represents a rental, lease, license, permit or other arrangement for the use of public property. The Fair and Expo Center Director may award concession agreements in connection with the annual fair by any method deemed appropriate by the Director, including without limitation, by direct appointment, private negotiation, from a qualified pool, or using a competitive process.
 11. Equipment Repair. Contracts for equipment repair or overhauling, provided the service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing.
 12. Abandoned, Seized and Non-Owned Personal Property. Contracts or arrangements for the sale or other disposal of abandoned, seized or other personal property not owned by the County at the time the County obtains possession are not subject to competitive procurement procedures.
 13. Sponsorship Agreements. Sponsorship agreements, under which the County receives a gift, donation or consideration in exchange for official recognition of the person making the donation or payment may be awarded by any method deemed appropriate by the County, including without limitation, by direct appointment, negotiation, from a qualified pool, or using a competitive process.
 14. Renewals. Contracts that are being renewed in accordance with their terms (and may include a fiscal adjustment not exceeding one-half of the established CPI January –

January COLA) are not considered to be newly issued Contracts and are not subject to competitive procurement procedures.

15. Temporary Extensions or Renewals. Contracts for a single period of one year or less, for the temporary extension or renewal of an expiring and non-renewable, or recently expired contract, other than a contract for public improvements.
16. Temporary Use of County-Owned Property. The County may negotiate and enter into a license, permit or other contract for the temporary use of County-owned property without using a competitive selection process if:
 - a. The contract results from an unsolicited proposal to the County based on the unique attributes of the property or the unique needs of the proposer;
 - b. The proposed use of the property is consistent with the County's use of the property and the public interest; and
 - c. The County reserves the right to terminate the contract without penalty, in the event that the County determines that the contract is no longer consistent with the County's present or planned use of the property or the public interest.
17. Event agreements between the Fair and Expo Center and private parties, which represent a rental, lease, license, permit or other arrangement for the use of a portion of the fairgrounds property whether a fee is paid or not.
18. Franchises for cable television and for collection and disposal or processing of solid waste and recyclable material.
19. Leases and revocable permits for use of county-owned real property, including right-of-way.
20. Contracts for paper products which are specified to be used in conjunction with the County Clerk's election ballot tabulation equipment.
21. Collective bargaining agreements
22. Contracts with area humane societies, which generally involve receipt, care for and disposition of stray domestic animals.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2014-024](#) §1 on 8/27/2014

Amended by Ord. [2020-005](#) §1 on 1/1/2021

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

2.37.080 Exemption For Certain Personal Services

- A. The County may award contracts for personal services, as defined in DCC 2.37.050, under the procedures of ORS 279C.100 through 279C.125 and the Model Rules which implement such

statutes, or subsection B of this section without following the selection procedures set forth elsewhere in the Model Rules.

- B. Direct Appointment. In any of the following circumstances a qualified provider of personal services may be appointed under any method deemed in the County's best interest by the Solicitation Agent, including by direct appointment.
 - 1. Under circumstances which could not reasonably have been foreseen which create a substantial risk of loss, damage, interruption of services or threat to the public health and safety and require the prompt performance of the services to remedy the situation; or
 - 2. Where the estimated fee does not exceed \$725,000 in any fiscal year or \$2150,000 over the full term, including optional renewals; or
 - 3. Contracts of not more than \$2150,000 for the continuation of work by a contractor who performed preliminary studies, analysis or planning for the work under a prior contract may be awarded without competition if the prior contract was awarded under a competitive process and the Solicitation Agent determines that use of the original contractor will significantly reduce the costs of or risks associated with the work.
 - 4. Contracts for maintenance, repair and technical support for computer hardware, software and networking systems.
 - 5. Services provided by a psychologist, psychiatrist or psychiatric nurse practitioner.
- C. Direct appointment pursuant to this section shall be competitive to the extent practicable and may be based upon criteria which include without limitation the provider's experience, available resources, the project's location and the provider's pricing.
- D. The County may select a provider of personal services under this section from a qualified pool, or from:
 - 1. The County's current list of qualified providers;
 - 2. From another public contracting agency's current list of qualified providers pursuant to an intergovernmental agreement; or
 - 3. From among all qualified providers offering the necessary services that the County can reasonably locate under the circumstances.
- E. Design-Build or Construction Manager/General Contractor. Contracts for the construction of public improvements using a design/build or construction manager/general contractor construction method shall be awarded under a request for proposals. The determination to construct a project using a design/build or construction manager/general contractor construction method must be approved by the Board or its designee, upon application of the Purchasing Agent and in compliance with competitive bidding requirements as specified in ORS 279A.065(3).

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2014-024](#) §1 on 8/27/2014

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

2.37.090 Exemption From Sealed Bids Or Proposals

In addition to the contracts not subject to the Public Contracting Code, pursuant to ORS 279A.025, and contracts which are exempt from competitive bidding and proposal requirements under this chapter, contracts may be awarded as follows:

- A. Contracts, other than contracts for personal services, may be awarded without competitive sealed bids under ORS 279B.055 and without competitive sealed proposals under ORS 279B.060, pursuant to ORS 279B.065, 279B.070, 279B.075, 279B.080, or 279B.085 and the Model Rules for the following classes of cases:
 1. The Purchasing Agent determines that an emergency condition exists which requires prompt execution of a contract. The determination shall be made prior to execution of a contract and part of the acquisition record. Exemption under this paragraph shall include exemption from bid security and payment and performance bond requirements. An amendment to any contract entered into pursuant to this paragraph shall be approved in accordance with required procurement procedures.
 2. Contracts under ~~\$2510~~,000 need not be awarded competitively.
 3. Contracts exceeding ~~\$2510~~,000 but not exceeding ~~\$21~~50,000, where competitive quotes or proposals are obtained.
- B. Where a contract is awarded under paragraphs 3 of subsection A of this section, the department awarding the contract shall obtain at least three (3) informally solicited quotes or proposals, if possible; shall document in its records the quotes and proposals received, and if fewer than three, the effort that was made to obtain quotes or proposals. A quote or proposal received by telephone shall be considered a written quote when it is recorded in records of the County. A quote or proposal received by email shall be considered a written quote or proposal when it is received by the County.
- C. If a contract is awarded under this section, the County shall award the contract to the offeror whose quote or proposal will best serve the County's interests, taking into account price, as well as, considerations including, but not limited to experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.
- D. The Board may approve a contract specific special procurement if it finds after giving notice pursuant to ORS 279B.055(4) that a written request submitted by the Purchasing Agent demonstrates that the use of a special procurement as described in the request, or in alternative procedures described by the Purchasing Agent will:

1. Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts; and
 2. Is reasonably expected to result in substantial cost savings to the county or to the public, or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under ORS 279B.055, 279B.060, 279B.065 or 279B.070.
- E. Unless otherwise provided in the contract or purchase order, the provisions of Section 2.37.150 shall apply to all contracts entered into pursuant to this section.

HISTORY

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2014-024](#) §1 on 8/27/2014

Amended by Ord. [2023-012](#) §1 on 8/16/2023

2.37.100 Purchases Through Federal Programs

Goods and services may be purchased without competitive procedures under a local government purchasing program administered by the United States General Services Administration ("GSA") as provided in this section.

- A. The procurement must be made in accordance with procedures established by GSA for procurements by local governments, and under purchase orders or contracts submitted to and approved by the Purchasing Agent or the Board. The Solicitation Agent shall provide the Purchasing Agent with a copy of the letter, memorandum or other documentation from GSA establishing permission to the County to purchase under the federal program.
- B. The price of the goods or services must be established under price agreements between the federally approved vendor and GSA.
- C. The price of the goods or services must be less than the price at which such goods or services are available under state or local cooperative purchasing programs that are available to the County.
- D. If a single purchase of goods or services exceeds \$~~21~~50,000, the Solicitation Agent must obtain informal written quotes or proposals from at least two additional vendors (if reasonably available) and find, in writing, that the goods or services offered by GSA represent the best value for the County. This subsection does not apply to the purchase of equipment manufactured or sold solely for military or law enforcement purposes.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2023-012](#) §1 on 8/16/2023

2.37.110 Contracts For Disposal Of Personal Property

- A. General Methods. Except as otherwise provided in subsection E of this section, surplus property may be disposed of by any of the following methods upon a determination by the Solicitation Agent that the method of disposal is in the best interest of the County. Factors that may be considered by the Solicitation Agent include costs of sale, administrative costs, and public benefits to the County. The Solicitation Agent shall maintain a record of the reason for the disposal method selected, and the manner of disposal, including the name of the person to whom the surplus property was transferred.
1. Governments. Without competition, by transfer or sale to another County department or public agency.
 2. Auction. By publicly advertised auction to the highest bidder.
 3. Bids. By publicly advertised invitation to bid.
 4. Liquidation Sale. By liquidation sale using a commercially recognized third-party liquidator selected in accordance with rules for the award of personal services contracts.
 5. Fixed Price Sale. The Solicitation Agent may establish a selling price based upon an independent appraisal or published schedule of values generally accepted by the insurance industry, schedule and advertise a sale date, and sell to the first buyer meeting the sales terms.
 6. Trade-In. By trade-in, in conjunction with acquisition of other price-based items under a competitive solicitation. The solicitation shall require the offer to state the total value assigned to the surplus property to be traded.
 7. Donation. By donation to any organization operating within or providing a service to residents of the County which is recognized by the Internal Revenue Service as an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- B. Disposal of Property with Minimal Value. Surplus property which has a value of less than \$1500, or for which the costs of sale are likely to exceed sale proceeds may be disposed of by any means determined to be cost-effective, including by disposal as waste. The official making the disposal shall make a record of the value of the item and the manner of disposal.
- C. Personal-Use Items. An item (or indivisible set) of specialized and personal use with a current value of less than \$2100, other than police officer's handguns which may exceed \$2100 in value, may be sold to the employee or retired or terminated employee for whose use it was purchased. These items may be sold for fair market value without bid and by a process deemed most efficient by the Purchasing Agent or the Board.
- D. Restriction on Sale to County Employees. County employees shall not be restricted from competing, as members of the public, for the purchase of publicly sold surplus property, but shall not be permitted to offer to purchase property to be sold to the first qualifying bidder until at least three days after the first date on which notice of the sale is first publicly advertised.

- E. The provisions of this section are in addition to other methods of disposition of surplus county property provided by DCC chapter 2.70, state law or analogous provisions of federal law.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2020-005](#) §1 on 1/1/2021

[Amended by Ord. 2023-012 §1 on 8/16/2023](#)

2.37.120 Notice Of Intent To Award; Notice To Proceed And Contract Administration

- A. At least seven (7) days before the award of a public contract, unless the Purchasing Agent or the Board determines that seven days is impractical, the Purchasing Agent shall post on the county's website or provide each bidder or proposer notice of the county's intent to award a contract. This subsection does not apply to a contract awarded as a small procurement under ORS 279B.065, an intermediate procurement under ORS 279B.070, a sole-source procurement under ORS 279B.075, an emergency procurement under ORS 279B.080 or a special procurement under ORS 279B.085.
- B. Unless a timely protest is received and after issuing notice in accordance with subsection A of this section, if required, the Purchasing Agent shall prepare a contract in accordance with the contractor selection results and furnish same for the contractor's execution.
- C. After the contractor has executed the contract and furnished bonds, if required, and proofs of insurance the Purchasing Agent shall execute the contract, if within the Purchasing Agent's authority, or submit same to the Board for approval.
- D. If the Board approves the contract, it shall adopt an order or otherwise authorize the Purchasing Agent to execute the contract and to approve change orders within the scope of 2.37.080.B.9 or amendments within the scope of the project for which the contract has been prepared.
- E. The contractor shall not begin work under the contract until the contract is fully executed and in the case of public works contracts the county has issued and delivered a Notice to Proceed.
- F. For purchases of goods the county may indicate in the solicitation that the selected contractor will be issued a purchase order, which refers to 2.37.150 for required contract terms.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

2.37.130 Qualified Pool

- A. General. To create a qualified pool, the Purchasing Agent or Board may invite prospective contractors to submit proposals to the County for inclusion as participants in a pool of contractors qualified to provide certain types of goods, services, or projects including personal services, and public improvements.

- B. The invitation to participate in a qualified pool shall be advertised in the manner provided for advertisements of invitations to bid and requests for proposals by publication in at least one newspaper of general statewide circulation. If qualification will be for a term that exceeds one year or allows open entry on a continuous basis, the invitation to participate in the pool must be re-published at least once per year and shall be posted at the County's main office and on its website.
- C. Contents of Solicitation. Requests for participation in a qualified pool shall describe the scope of goods or services or projects for which the pool will be maintained, and the minimum qualifications for participation in the pool, which may include, but shall not be limited to qualifications related to financial stability, contracts with manufacturers or distributors, certification as an emerging small business, insurance, licensure, education, training, experience and demonstrated skills of key personnel, access to equipment, and other relevant qualifications that are important to the contracting needs of the County. The solicitation may provide that proposals will be evaluated and decisions over participation will be made based upon proposers meeting minimum qualifications, as well as the price or rate of compensation for particular services in the county's best interest.
- D. The operation of each qualified pool may be governed by the provisions of a retainer contract to which the County and each qualified pool participant is a party. The Contract shall contain or incorporate by reference all terms required by the County, including, without limitation, price, performance, business registration or licensure, continuing education, equipment, staff resources, insurance, required standard contract terms as set forth in Section 2.37.150 and requirements for the submission, on an annual or other periodic basis, of evidence of continuing qualification. The selection procedures shall be objective and open to all qualified pool participants and afford all participants the opportunity to compete for or receive job awards. Unless expressly provided in the retainer contract, participation in a qualified pool will not entitle a participant to an award of any County contract. The county will refer to the qualified pool participants or any subset of such pool established by the County in determining when particular services are needed, and select the most appropriate participant for award of a contract, which may be based upon County solicitation of additional competitive proposals.
- E. Use of Qualified Pools. Subject to the provisions of these regulations concerning methods of solicitation for classes of contracts, the Solicitation Agent or the Board shall award all contracts for goods or services of the type for which a qualified pool is created from among the qualified participants, unless the Solicitation Agent or the Board determines that best interests of the County require traditional solicitation, in which case, pool participants shall be notified of the solicitation and invited to submit competitive proposals.
- F. Amendment and Termination. The Purchasing Agent or the County may discontinue a qualified pool at any time, or may change the requirements for eligibility as a participant in the pool at any time, by giving notice to all participants in the qualified pool.
- G. Protest of Failure to Qualify. The Purchasing Agent shall notify any applicant who fails to qualify for participation in a pool that it may appeal a qualified pool decision to the Board in the manner described in section 2.37.140.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

2.37.140 Contested Case Procedures

- A. Any person who has been debarred from competing for County contracts or for whom prequalification has been denied, revoked or revised, or who would be entitled under the Public Contracting Code and who wishes to file a protest must appeal the County's decision to the Board as provided in this section. The Board may conduct a de novo hearing or appoint a hearing officer to conduct such a hearing and recommend a decision, in which case the Board shall consider the matter on the record developed by the hearing officer, and, if specifically allowed by the Board, on de novo review or limited de novo review.
- B. For purposes of this section, "Party" means:
 - 1. Each person entitled as of right to a hearing before the Board;
 - 2. Each person named by the County to be a party; or
 - 3. Any person requesting to participate before the agency as a party or in a limited party status which the County determines either has an interest in the outcome of the County's proceeding or represents a public interest in such result.
- C. Filing of Appeal. The person must file and the County must receive a written (hard copy, not fax or electronic) notice of appeal with the Purchasing Agent no later than seven (7) days after the prospective contractor's receipt of notice of the County's decision which is the subject of the protest. If the seventh day falls on a Saturday, Sunday or legal holiday, the deadline shall be extended to the next regular business day. The notice of the County's decision shall be deemed received no later than three (3) days after the date on which the County makes the decision. Except as otherwise provided in this section, the contents and filing of protests shall be in accordance with the Public Contracting Code (ORS 279B.400 to 279B.425) and the Model Public Contracting Rules (OAR 137-047-0700 to 137-047-0800).
- D. Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.
- E. Unless precluded by law, informal disposition may be made of any case by stipulation, agreed settlement, consent order, default or written agreement.
- F. Members of the Board shall place on the record a statement of the substance of any written or oral *ex parte* communications on a fact in issue made to the member during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.
- G. The record in support of a decision shall be made at the time set for hearing or any extension thereof approved by the Board. Testimony may be given without oath or affirmation. Cross-examination of witnesses by parties shall not be allowed. Provided however, the Board may question any witness appearing before it. A verbatim oral, written or mechanical record shall be

made of all motions, rulings and testimony. The Board presiding at the hearing shall ensure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer. The record need not be transcribed unless requested for purposes of court review. The party requesting transcription shall pay the cost thereof unless the Board determines on affidavit the indigence of the requesting party.

H. Evidence in contested cases. In contested cases:

1. Irrelevant, immaterial or unduly repetitious evidence shall be excluded but erroneous rulings on evidence shall not preclude action on the record unless shown to have substantially prejudiced the rights of a party. All other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The Board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Any part of the evidence may be received in written form.
 2. All evidence shall be offered and made a part of the record in the case, and except for matters stipulated to and except as provided in paragraph (4) of this subsection, no other factual information or evidence shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. The burden of presenting evidence to support a fact or position in a case rests on the proponent of the fact or position.
 3. Every party shall have the right to submit rebuttal evidence.
 4. The Board may take notice of judicially cognizable facts. Parties shall be notified at any time during the proceeding but in any event prior to the final decision of material officially noticed and they shall be afforded an opportunity to contest the facts so noticed.
 5. Cross-examination of witnesses is not allowed, however, questions may be tendered to the chair who may then direct all or some of such questions to a witness.
- I. Costs. The Board may allocate the County's costs for the hearing between the appellant and the County. The allocation shall be based upon facts found by the Board and stated in the Board's decision that, in the Board's opinion, warrant such allocation of costs. If the County does not allocate costs, the costs shall be paid by the appellant, if the decision is upheld, or by the County, if the decision is overturned.
- J. The Board shall issue a written, proposed final order, including findings of fact and conclusions of law, and furnish a copy thereof on all parties. The proposed order shall become final no later than seven (7) days following the date of the proposed order, unless the Board within that period issues an amended order.

HISTORY

Adopted by Ord. [2005-010](#) §1 on 2/28/2005

Amended by Ord. [2008-023](#) §1 on 11/23/2008

2.37.150 Standard Contract Provisions

- A. Except as otherwise provided in the solicitation document or otherwise approved by the Purchasing Agent or County Legal Counsel, the following standard public contract provisions shall be included expressly, by reference or by URL hyperlink where appropriate, in every contract of the County.
1. Contractor shall make payment promptly, as due, to all persons supplying to such contractor labor or material for the prosecution of the work provided for in the contract, and shall be responsible for payment to such persons supplying labor or material to any subcontractor.
 2. Contractor shall pay promptly all contributions or amounts due to the State Industrial Accident Fund and the State Unemployment Compensation Fund from contractor or any subcontractor in connection with the performance of the contract.
 3. Contractor shall not permit any lien or claim to be filed or prosecuted against the County on account of any labor or material furnished, shall assume responsibility for satisfaction of any lien so filed or prosecuted and shall defend against, indemnify and hold County harmless from any such lien or claim.
 4. Contractor and any subcontractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 5. For public improvement and construction contracts only, if contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or a subcontractor by any person in connection with the public contract as such claim becomes due, the County may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract. The payment of a claim in a manner authorized hereby shall not relieve the contractor or its surety from the obligation with respect to any unpaid claim. If the County is unable to determine the validity of any claim for labor or services furnished, the County may withhold from any current payment due contractor an amount equal to said claim until its validity is determined, and the claim, if valid, is paid by the contractor or the County. There shall be no final acceptance of the work under the contract until all such claims have been resolved.
 6. Contractor shall make payment promptly, as due, to any person, co-partnership, association or corporation furnishing medical, surgical, hospital or other needed care and attention, incident to sickness or injury, to the employees of contractor, of all sums which the contractor agreed to pay or collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing payment for such service.
 7. With certain exceptions listed below, contractor shall not require or permit any person to work more than 10 hours in any one day, or 40 hours in any one week except in case of necessity, emergency, or where public policy absolutely requires it, and in such cases the person shall be paid at least time and a half for:

- a. All overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday, or
- b. All overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday, and
- c. All work performed on the day specified in ORS 279B.020(1) for non-public improvement contracts or ORS 279C.540(1) for public improvement contracts.

For personal service contracts as designated under ORS 279A.055, instead of (a) and (b) above, a laborer shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under these contracts who are excluded under ORS 653.010 or 653.261 or under 29 USC Sections 201 to 209, from receiving overtime.

Contractor shall follow all other exceptions, pursuant to ORS 279B.235 (for non-public improvement contracts) and ORS 279C.540 (for improvement contracts), including contracts involving collective bargaining agreements, contracts for services and contracts for fire prevention and suppression. This paragraph 7 does not apply to contracts for purchase of goods or personal property.

Contractor must give notice to employees who work on a public contract in writing, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

- 8. The hourly rate of wage to be paid by any contractor or subcontractor to workers upon all public works shall be not less than the applicable prevailing rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed, in accordance with ORS 279C.800 to ORS 279C.850. For projects covered by the federal Davis-Bacon Act (40 USC 276a), contractor and subcontractor shall pay workers the higher of the state or federal prevailing rate of wage.
- 9. The contractor, its subcontractors, if any, and all employers working under the contract are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, or otherwise be exempt under ORS 656.126.
- 10. As to public improvement and construction contracts, Contractor shall comply with all applicable federal, state, and local laws and regulations, including but not limited to those dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. Entities which have enacted such laws or regulations include the following: **Federal:** Department of Agriculture, Forest Service, Soil Conservation Service, Army Corps of Engineers, Department of Energy, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau

of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupational Safety and Health Administration, Department of Transportation, Coast Guard, Federal Highway Administration, Water Resources Council, and Department of Homeland Security. **State:** Department of Administrative Services, Department of Agriculture, Columbia River Gorge Commission, Department of Consumer and Business Services, Oregon Occupational Safety and Health Division, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Land Conservation and Development, Department of Parks and Recreation, Soil and Water Conservation Commission, State Engineer, Department of Transportation, State Land Board, Water Resources Department. **Local:** City Councils, County Boards of Commissioners, County Service Districts, Sanitary Districts, Water Districts, Fire Protection Districts, Historical Preservation Commissions and Planning Commissions.

If new or amended statutes, ordinances, or regulations are adopted, or the contractor encounters a condition not referred to in the bid document not caused by the contractor and not discoverable by reasonable site inspection which requires compliance with federal, state, or local laws or regulations dealing with the prevention of environmental pollution or the preservation of natural resources, both the County and the contractor shall have all the rights and obligations specified in ORS 279C.525 to handle the situation.

11. The contract may be canceled at the election of County for any substantial breach, willful failure or refusal on the part of contractor to faithfully perform the contract according to its terms. The County may terminate the contract by written order or upon request of the contractor, if the work cannot be completed for reasons beyond the control of either the contractor or the County, or for any reason considered to be in the public interest other than a labor dispute, or by reason of any third party judicial proceeding relating to the work other than one filed in regards to a labor dispute, and when circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work. In either case, for public improvement contracts, if the work is suspended but the contract not terminated, the contractor is entitled to a reasonable time extension, costs, and overhead per ORS 297C.655. Unless otherwise stated in the contract, if the contract is terminated, the contractor shall be paid per ORS 279C.660 for a public improvement contract.
12. If the County does not appropriate funds for the next succeeding fiscal year to continue payments otherwise required by the contract, the contract will terminate at the end of the last fiscal year for which payments have been appropriated. The County will notify the contractor of such non-appropriation not later than 30 days before the beginning of the year within which funds are not appropriated. Upon termination pursuant to this subsection, the County shall have no further obligation to the contractor for payments

beyond the termination date. This provision does not permit the County to terminate the contract in order to provide similar services or goods from a different contractor.

13. By execution of the contract, contractor certifies, under penalty of perjury that:
 - a. To the best of contractor's knowledge, contractor is not in violation of any tax laws described in ORS 305.380(4), and
 - b. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.
 - c. Contractor prepared its bid or proposal related to this Agreement independently from all other bidders or proposers, and without collusion, fraud or other dishonesty.
14. Contractor agrees to prefer goods or services that have been manufactured or produced in this State if price, fitness, availability or quality are otherwise equal.
15. Contractor agrees not to assign the contract or any payments due under the contract without the proposed assignee being first approved and accepted in writing by the County.
16. Contractor agrees to make all provisions of the contract with the County applicable to any subcontractor performing work under the contract.
17. The County will not be responsible for any losses or unanticipated costs suffered by contractor as a result of the contractor's failure to obtain full information in advance in regard to all conditions pertaining to the work.
18. All modifications and amendments to the contract shall be effective only if in writing and executed by both parties.
19. The contractor certifies he or she has all necessary licenses, permits, or certificates of registration (including Construction Contractor Board registration or Landscape Contractor Board license, if applicable), necessary to perform the contract and further certifies that all subcontractors shall likewise have all necessary licenses, permits or certificates before performing any work. The failure of contractor to have or maintain such licenses, permits or certificates is grounds for rejection of a bid or immediate termination of the contract.
20. Unless otherwise provided, data which originates from the contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the County. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights. Data which is delivered under the contract, but which does not originate therefrom shall be transferred to the County with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; provided that such license shall be

limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise, the County, at the time of delivery of data furnished under the contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of the contract. The County shall receive prompt written notice of each notice or claim of copyright infringement received by the contractor with respect to any data delivered under the contract. The County shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

21. If as a result of the contract, the contractor produces a report, paper publication, brochure, pamphlet or other document on paper which uses more than a total 500 pages of 8 ½" by 11" paper, the contractor shall use recycled paper with at least 25% post-consumer content which meets printing specifications and availability requirements. In all other cases Contractor shall make reasonable efforts to use recycled materials in the performance of work required under the contract.
22. Unless otherwise provided in the contract approved by county legal counsel or in the bid documents, the current editions of the *Oregon Standard Specifications for Construction* adopted by the State of Oregon, and the *Manual on Uniform Traffic Control Devices*, shall be applicable to all road construction projects.
23. As to contracts for lawn and landscape maintenance, the contractor shall salvage, recycle, compost or mulch yard waste material in an approved, site, if feasible and cost-effective,
24. When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the contractor shall promptly report to the Department of Revenue on forms to be provided by the department the total contract, price, terms of payment, length of contract and such other information as the department may require before the County will make final payment on the contract.
25. In the event an action, lawsuit or proceeding, including appeal therefrom, is brought for violation of or to interpret any of the terms of the contract, each party shall be responsible for their own attorney fees, expenses, costs and disbursements for said action, lawsuit, proceeding or appeal.
26. Contractor is not carrying out a function on behalf of County, and County does not have the right of direction or control of the manner in which Contractor delivers services under the Contract or exercise any control over the activities of Contractor. Contractor is not an officer, employee or agent of County as those terms are used in ORS 30.265. Contractor covenants for itself and its successors in interest and assigns that it will not claim or assert that Contractor is an officer, employee or agent of the County, as those terms are used in ORS 30.265.
27. Contractor shall adhere to and enforce a zero tolerance policy for the use of alcohol and the unlawful selling, possession or use of drugs while performing work under the Contract.

28. The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein, which would conflict with law, are deemed inoperative to that extent.
29. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders:
- a. Titles VI and VII of the Civil Rights Act of 1964, as amended;
 - b. Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
 - c. the Americans with Disabilities Act of 1990, as amended and ORS 659A.112 through 659A.139;
 - d. Executive Order 11246, as amended;
 - e. the Health Insurance Portability and Accountability Act of 1996;
 - f. the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
 - g. the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
 - h. ORS Chapter 659A, as amended;
 - i. all regulations and administrative rules established pursuant to the foregoing laws; and
 - j. all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

The above listed laws, regulations and executive orders and all regulations and administrative rules established pursuant to those laws are incorporated by reference herein to the extent that they are applicable to the Contract or required by law to be so incorporated.

30. Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).
31. Indemnification. To the fullest extent authorized by law, Contractor agrees to indemnify, defend, reimburse and hold harmless County, its officers, employees and agents (the "Indemnified Parties") from any and all threatened, alleged or actual claims, suits, allegations, damages, liabilities, costs, expenses, losses and judgments, including, but not limited to, those which relate to personal or real property damage, personal injury or death, attorney and expert/consultant fees and costs, and both economic and non-economic losses, to the extent caused by the negligence, breach of contract, breach of warranty (express or implied), or other improper conduct of Contractor, its employees, subcontractors, or anyone for whose acts Contractor is responsible. If claims are

asserted against any Indemnified Party by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the Contractor's indemnification obligation and other obligations under this section shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable to the employee by or for the Contractor or subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

HISTORY

Adopted by Ord. [2008-023](#) §1 on 11/23/2008

Amended by Ord. [2010-033](#) §1 on 3/28/2011

2.37.160 Competitive Electronic Auction Bidding

- A. The County may utilize electronic or online solicitation, subject to the provisions of this Code, for the purchase of goods as provided in this section. Any of the steps provided in this section prior to award of a contract may be accomplished through the use of an agent. The objective of this procurement method is to inform suppliers prior to the close of an auction what the current low bid is and enable such suppliers to submit additional lower bids prior to the close of bidding or award of the contract.
- B. An invitation to bid (ITB) pursuant to this section shall be issued and shall include a procurement description and all contract terms, either expressly or by reference, including without limitation a description of the property to be purchased, required specifications, number of units, warranties, delivery date and location, the pool of potential suppliers, the method by which prospective offerors register with the county and any prequalification requirements, the county representative's name and contact information and the timeframe for which the auction will be open to bids. The ITB shall include notice that bids will be received in an electronic auction manner.
- C. The Solicitation must designate both an opening date and time and a closing date and time. The closing date and time need not be a fixed point in time, but may remain dependant on a variable specified in the solicitation. At the opening date and time, the county must begin accepting real time electronic offers. The solicitation must remain open until the closing date and time. The county may require offerors to register and prequalify before the opening date and time and, as a part of that registration, to agree to the terms, conditions, or other requirements of the solicitation. Following receipt of the first offer after the opening date and time, the lowest offer price or, if proposals are accepted, the ranking of each proposal (without disclosing the identity of the proposer), must be posted electronically to the internet and updated on a real time basis. At any time before the closing date and time, an offeror may lower the price of its offer or revise its proposal except that after opening date and time, an offeror may not lower its price unless that price is below the then lowest offer. Offer prices may not be increased after opening. Except for offer prices, offers may be modified only as otherwise allowed by these rules or the solicitation document.
- D. Withdrawal of bids may be allowed in accordance with OAR 137-047-0470 (Mistake). If an offer is withdrawn, no later offer submitted by the same offeror may be for a higher price. If the

lowest responsive offer is withdrawn after the closing date and time, the county may cancel the solicitation or reopen the solicitation to all pre-existing offerors by giving notice to all pre-existing offerors of both the new opening date and time and the new closing date and time. Notice that electronic solicitation will be reopened must be given as specified in the solicitation document.

- E. Failure of the electronic procurement system. In the event of a failure of the electronic procurement system that interferes with the ability of offerors to submit offers, protest, or to otherwise meet the requirements of the procurement, the county may cancel the solicitation or may extend the solicitation by providing notice of the extension immediately after the system becomes available.
- F. At the conclusion of the auction the records of bids received and the identity of each bidder shall be open to public inspection.
- G. The contract shall be awarded within 60 days by written notice to the lowest responsible bidder. Extensions of the date of the award may be made by mutual written consent of the contracting officer and the low bidder. County may reject any proposals not in substantial compliance with all prescribed procedures and requirements, and may reject for good cause, any or all proposals upon a finding that it is in the public interest to do so.

HISTORY

Adopted by Ord. [2008-023](#) §1 on 11/23/2008



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 16, 2023

SUBJECT: Public Hearing on the request to vacate a Portion of Schibel Road (continued from 8/9/2023)

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department has received a petition to vacate a portion of Schibel Road in Section 05 of Township 17S, Range 12E, W.M. As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing.

BUDGET IMPACTS:

None

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director

PUBLIC HEARING ROAD VACATION PORTION OF SCHIBEL ROAD

Cody Smith, P.E.
County Engineer/Assistant Director
Road Department

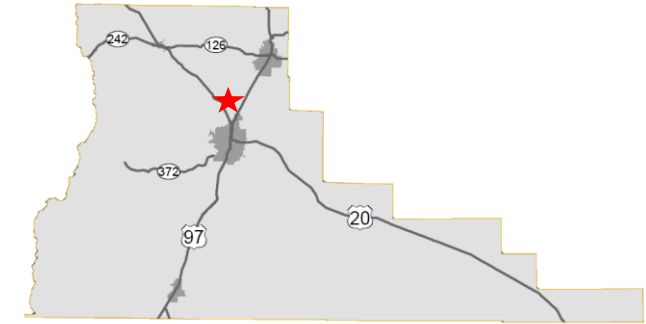
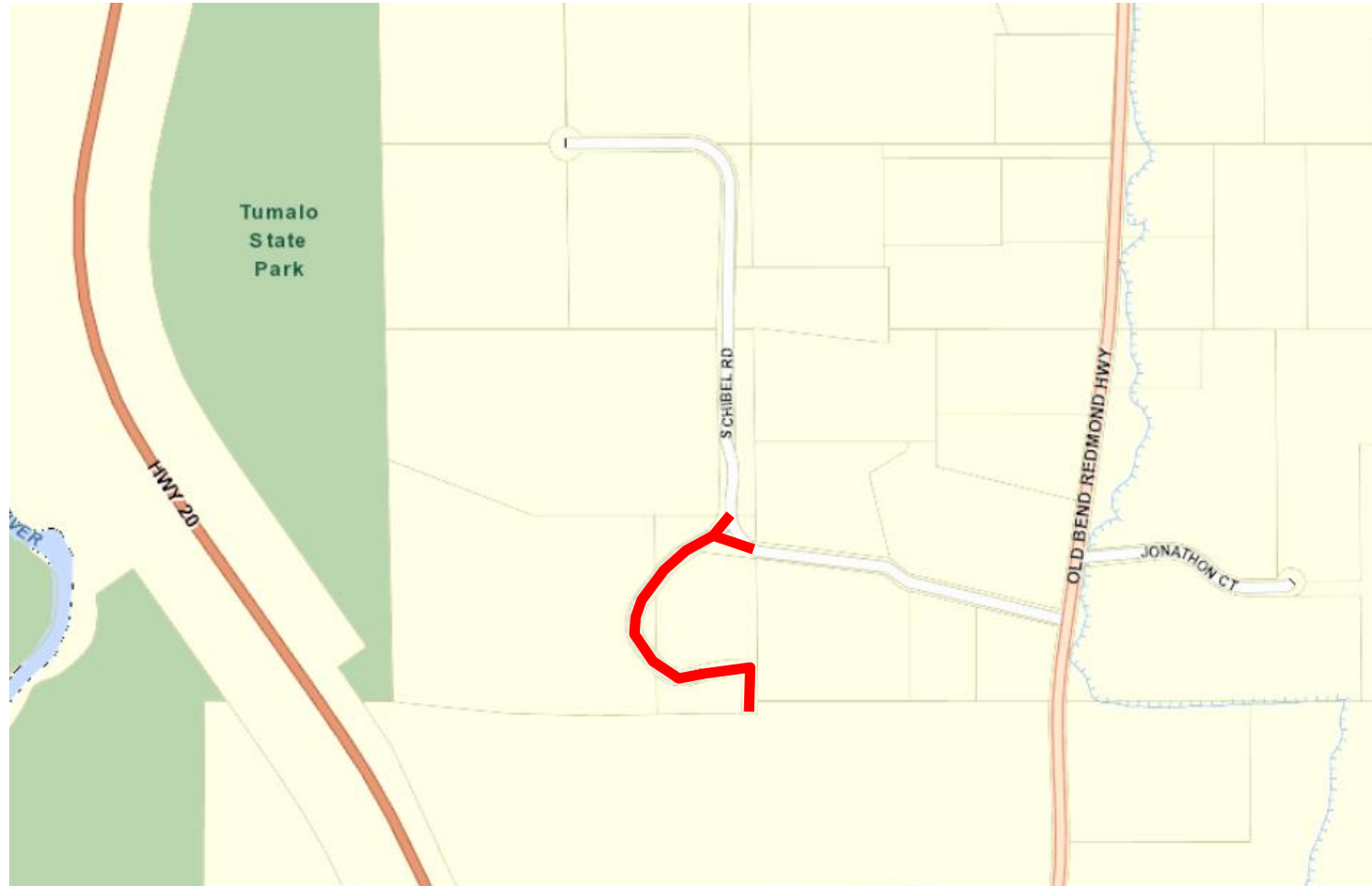


Agenda

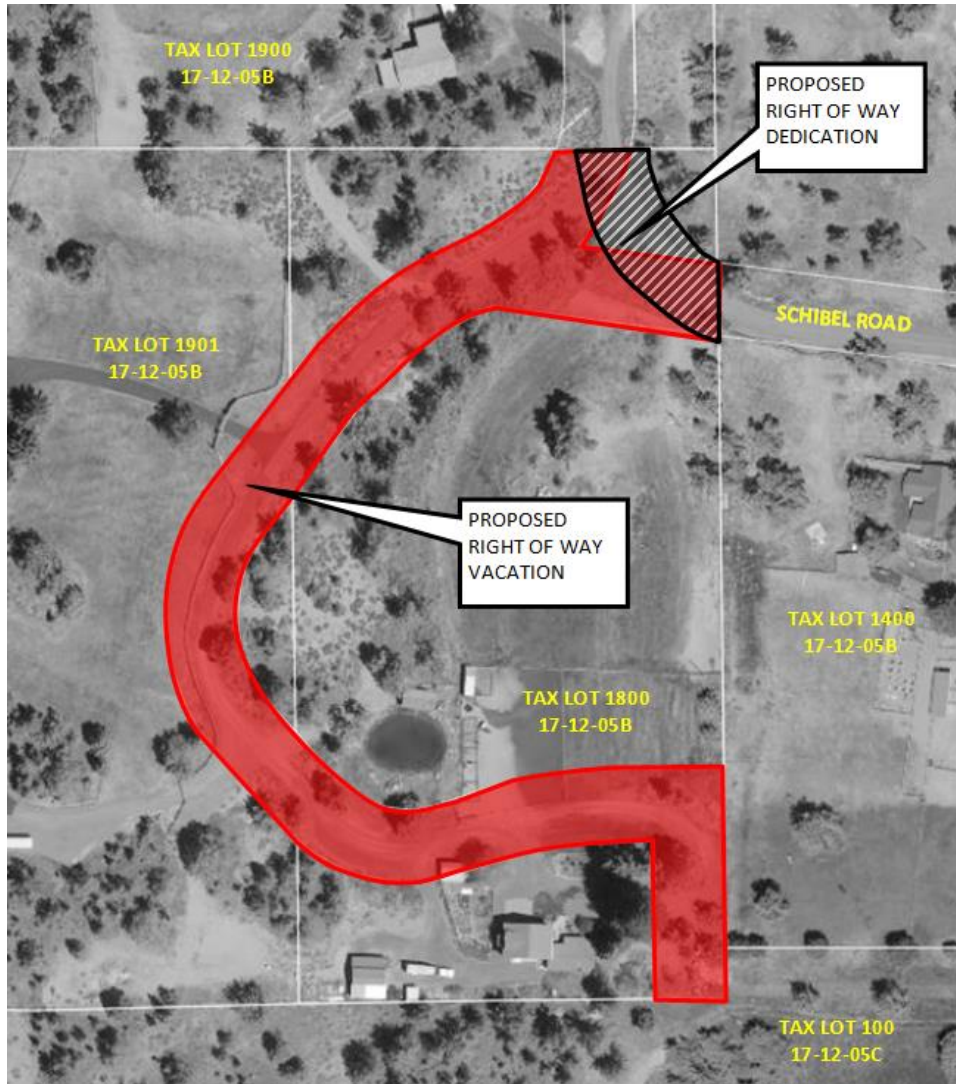
- Background Information
- Staff Findings
- Staff Recommendation
- Public Hearing



Background Information



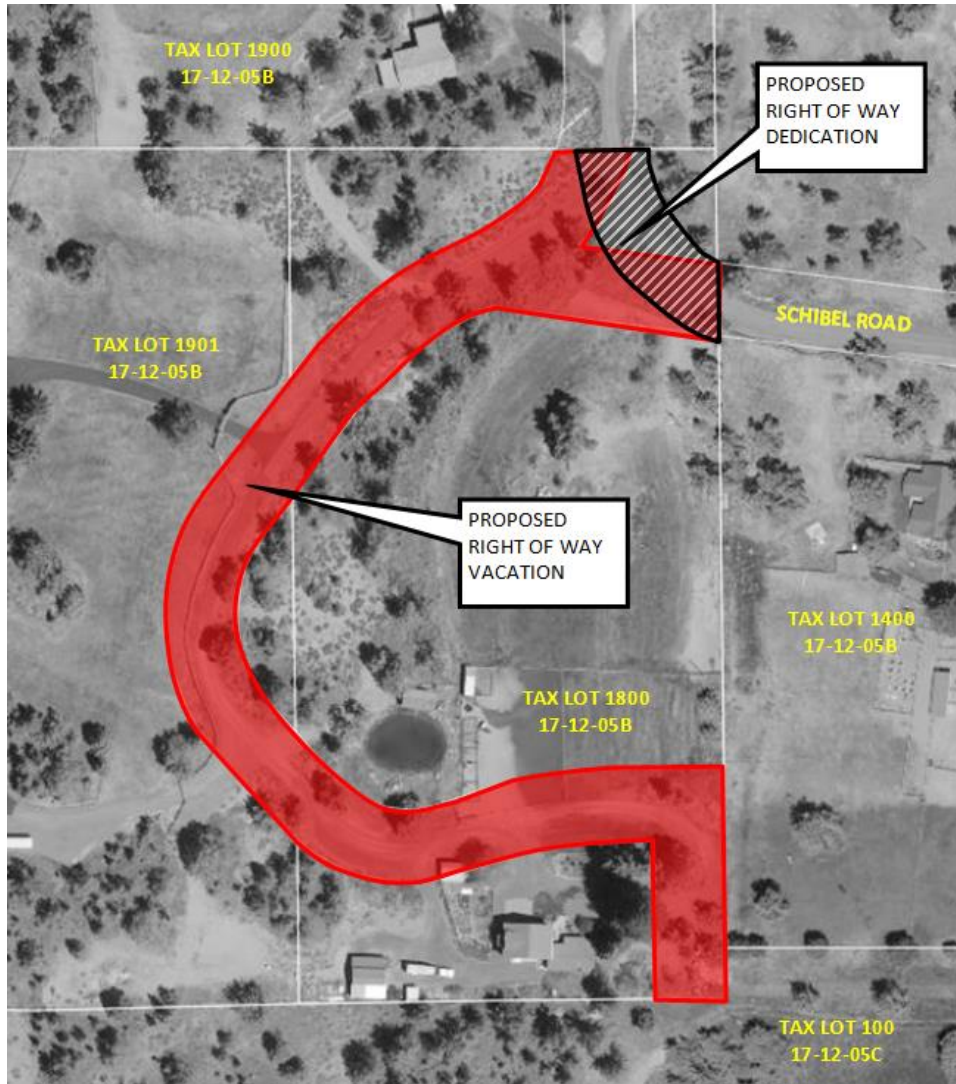
Background Information



- Petitioners (as Abutting Property Owners per ORS 368.336)
 - Jeffrey and Kathryn Gates, owners of Tax Lot 1800 on Assessor's Map 17-12-05B (Chief Petitioner);
 - Marlene Wheeler Rennie, owner of Tax Lot 1901 and joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B; and
 - Terry A. Rennie, joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B.
- Abutting Property Owners, Not Petitioners
 - John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C



Background Information



- Schibel Road

- Right of Way Width = 60 feet
- Local Access Road, various width pavement constructed by property owners.
- Created in 1994 by Dedication Deed (Deed No. 1994-46818). Chief Petitioners (Gates) were joint grantors of the dedication
- "Y" intersection right of way does not coincide with the as-travelled roadway. Chief Petitioners have provided offer to dedicate new right of way for northern Schibel Road alignment to coincide with as-travelled roadway.
- Proposed vacation would effectively landlock Tax Lot 1901, potentially depriving the owners of that property of access necessary for the exercise of their property right. Submitted petition included a loss of access consent form signed by the property owners.



Background Information

Petitioners provided the following reasons (in bold italics) for the proposed vacation:

- 1) Invalid Dedication due to Restrictions and Reservations –Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991. The Deed of Dedication was accepted in 1994 by Deschutes County. The 60 foot width encroaches upon the septic system that was approved by Deschutes County.***



Background Information

Staff Response:

- Dedication of the subject portion of Schibel Road was valid, includes valid offer of the dedication by the owners and acceptance by the County governing body at the time of dedication
- It does appear that a portion of the disposal field and reserve area for the subject property's onsite wastewater system may exist within the proposed vacation area. Additionally, an outbuilding and a portion of a livestock corral also appear to exist within the proposed vacation area.
- Staff note that, while this situation encumbers both the public right of way and the underlying property, it does not invalidate the public road dedication.



Background Information

- 2) *Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.

- 3) *Decades old trees and landscaping would be lost.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.



Background Information

- 4) Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.***

Staff Response: Road Department records indicate that no County-funded maintenance or improvement of the subject portion of Schibel Road has ever occurred; however, Road Department staff note that County-funded maintenance of a local access road is forbidden under state law and that absence of County-funded maintenance is not indicative of a necessity to vacate the public's interest in a property.



Background Information

- 5) The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.***

Staff Response: John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C, has indicated to Road Department staff that he has interest in using Schibel Rd for future access. Nonetheless, Road Department staff believe that, generally, the subject right of way has only been used to access Tax Lots 1800 and 1901 as indicated by the Petitioners. The primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.



Background Information



Background Information

- 6) *Traffic will increase, and no traffic study has been done that we know of.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.

- 7) *Safety of the young children living on Schibel Road is a concern of the parents and neighbors.***

Staff Response: Staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.



Background Information

8) *It is not in the General Public's best interest.*

Staff Response: The Board of County Commissioners will make this determination.



Background Information

- 9) *Induced to sign dedication under false pretenses. We were told we could remove the southern portion of the dedication with a “single item deletion.”***

Staff Response: Current Road Department staff have no knowledge of the requirements or circumstances under which the subject right of way was dedicated in 1994. Road Department staff note that Jeffrey and Kathryn Gates, Chief Petitioners and owners of Tax Lot 1800 on Assessor’s Map 17-12-05B, were partial grantors for the 1994 dedication deed.



Background Information

10) Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.

Staff Response: The primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.



Background Information

- Service Providers
 - Avion Water – consent to the vacation
 - Central Electric Cooperative – consents to the vacation subject to easement granted by underlying property owners



Public Comments

- No written comments received by Road Department to date (8/9/2023) in response to hearing notice.
- Verbal comments provided by Terrie and Marlene Rennie (both petitioners) on 8/9/2023 in support of vacation.



Findings

- The proposed vacation area was dedicated to the public by dedication deed recorded at the Deschutes County Clerk's Office as Deed No. 1994-46818 (ORS 368.326).
- Owners of a recorded property right that would potentially be deprived of access necessary for the exercise of that property right with the proposed vacation have consented to the proposed vacation (ORS 368.331).



Findings

- The Petitioners, who represent the owners of more than sixty (60) percent of property abutting the subject right of way, have submitted complete petitions and submitted the required fee (ORS 368.341(1)(c); ORS 368.341(3); ORS 368.341(4); ORS 368.351).
- As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing (ORS 368.346).



Findings

- The subject right of way does not appear to be necessary for current or future public use.
- The subject right of way appears to coincide with onsite wastewater system components, an outbuilding, and other private property improvements for Tax Lot 1800 on Assessor's Map 17-12-05B.



Recommendation

- Road Department recommends:
 - **The proposed vacation is in the public interest.**
 - Board of County Commissioners adoption of a pending vacation order (Order No. 2023-017) that will be subject to the owners of Tax Lot 1800 (Gates) executing a dedication deed for the existing as-travelled north alignment of Schibel Road.



Public Hearing

- At this time, I request that the Board chair open the public hearing.
- After public testimony has been given today, I request that:
 - The Board Chair close the public hearing
 - The Board deliberate on the Road Department's recommendations





ROAD DEPARTMENT

MEMORANDUM

TO: Board of County Commissioners

FROM: Cody Smith, County Engineer/Assistant Road Department Director

DATE: July 14, 2023

SUBJECT: **Road Official's Report**
Vacation of a Portion of Schibel Road in Section 05, Township 17S, Range 12E, W.M.

Background:

Deschutes County Road Department has received a petition to vacate a portion of Schibel Road in Section 05 of Township 17S, Range 12E, W.M.. The Petitioners, who are owners of abutting or underlying property to the proposed vacation area, are:

- Jeffrey and Kathryn Gates, owners of Tax Lot 1800 on Assessor's Map 17-12-05B (Chief Petitioner);
- Marlene Wheeler Rennie, owner of Tax Lot 1901 and joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B; and
- Terry A. Rennie, joint owner of Tax Lot 1400 on Assessor's Map 17-12-05B.

The following individuals are owners of abutting or underlying property to the proposed vacation area who are not Petitioners to the proposed vacation:

- Carl Elwyn Owens III, owner of Tax Lot 1900 on Assessor's Map 17-12-05B; and
- John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C.

Schibel Road is a local access road that is not maintained by Deschutes County. From Old Bend Redmond Highway, Schibel Road proceeds west; approximately 1,240 ft. west of Old Bend Redmond Highway (within the boundaries of Tax Lot 1800), Schibel Road branches into two alignments, one alignment bearing north and one alignment bearing southwest. The northerly alignment across Tax Lot 1800 presently does not coincide with the established right of way. The subject right of way proposed for vacation includes the entirety of the right of way lying within the boundaries of Tax Lots 1800 and 1901, which includes the intersection of the two aforementioned alignments and the southwest alignment. The owners of Tax Lot 1800 have agreed to dedicate a new public right of way across their property to coincide with the existing as-travelled alignment of Schibel Road for the north alignment. The subject right of way proposed for vacation is 60 feet wide and was

created by dedication deed recorded at the Deschutes County Clerk’s Office as Deed No. 1994-46818. Most of the length of Schibel Road within the proposed vacation is paved at varying widths; Road Department staff understand that the road improvements were funded and constructed by current or previous owners of the underlying properties and that the improvements were not funded by the County. There are presently public utilities within the proposed vacation area consisting of facilities owned and operated by Central Electric Cooperative.

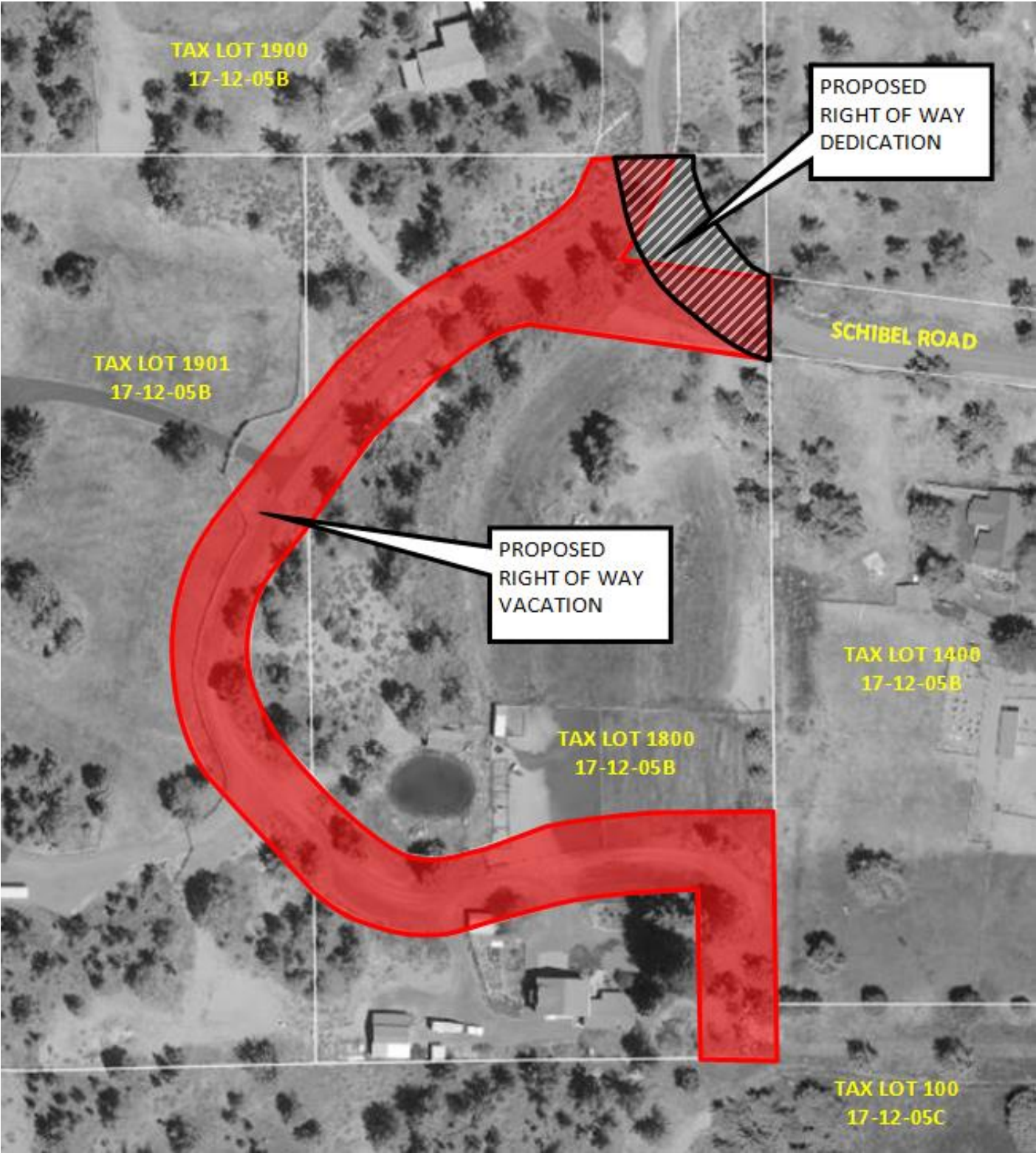


Figure – Aerial Photo of Proposed Vacation Area

The Petitioners provided the following reasons (in bold italics) for the proposed vacation; Road Department staff responses to the reasons provided by the Petitioners are also given below:

1. ***Invalid Dedication due to Restrictions and Reservations –Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991. The Deed of Dedication was accepted in 1994 by Deschutes County. The 60 foot width encroaches upon the septic system that was approved by Deschutes County.*** Road Department staff assert that the dedication of the subject portion of Schibel Road was valid, as Deed No. 1994-46818 includes valid offer of the dedication by the owners of the underlying property at the time of dedication and acceptance by the County governing body at the time of dedication. Based on a review of Community Development Department property records for Tax Lot 1800 on Assessor's Map 17-12-05B, it does appear that a portion of the disposal field and reserve area for the subject property's onsite wastewater system may exist within the proposed vacation area. Additionally, an outbuilding and a portion of a livestock corral also appear to exist within the proposed vacation area. Road Department staff note that, while this situation encumbers both the public right of way and the underlying property, it does not invalidate the public road dedication.
2. ***Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.
3. ***Decades old trees and landscaping would be lost.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.
4. ***Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.*** Road Department records indicate that no County-funded maintenance or improvement of the subject portion of Schibel Road has ever occurred; however, Road Department staff note that County-funded maintenance of a local access road is forbidden under state law and that absence of County-funded maintenance is not indicative of a necessity to vacate the public's interest in a property.
5. ***The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.*** John Kevin O'Leary, owner of Tax Lot 100 on Assessor's Map 17-12-05C, has indicated to Road Department staff that he has interest in using it for future access. Nonetheless, Road Department staff believe that, generally, the subject right of way has only been used to access Tax Lots 1800 and 1901 as indicated by the Petitioners. The primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.
6. ***Traffic will increase, and no traffic study has been done that we know of.*** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.

- 7. Safety of the young children living on Schibel Road is a concern of the parents and neighbors.** Road Department staff will not address this statement as it is not verifiable or indicative of a necessity to vacate the public's interest in a property.
- 8. It is not in the General Public's best interest.** The Board of County Commissioners will make this determination.
- 9. Induced to sign dedication under false pretenses. We were told we could remove the southern portion of the dedication with a "single item deletion."** Current Road Department staff have no knowledge of the requirements or circumstances under which the subject right of way was dedicated in 1994. Road Department staff note that Jeffrey and Kathryn Gates, Chief Petitioners and owners of Tax Lot 1800 on Assessor's Map 17-12-05B, were partial grantors for the 1994 dedication deed.
- 10. Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.** As indicated above, the primary access to Tax Lot 100 on Assessor's Map 17-12-05C is from Old Bend Redmond Highway.

A review of Assessor's Tax Map 17-12-05B indicates that the proposed vacation would effectively landlock Tax Lot 1901, potentially depriving the owners of that property of access necessary for the exercise of their property right. In regards to this matter, Road Department staff note that the submitted petition included a loss of access consent form signed by the property owners.

The Petitioners submitted completed service provider consent forms from those providers serving within or adjacent to the proposed vacation area; those service providers and their responses are listed below:

- Avion Water Company, Inc.
 - Representative: Mike Heffernan, Engineering Department
 - Service provider does not have existing facilities within the area proposed for vacation
 - **Service provider consents to the proposed vacation**
- Central Electric Cooperative
 - Representative: Parneli Perkins, Land and ROW Specialist
 - Service provider does have existing facilities within the area proposed for vacation
 - **Service provider consents to the proposed vacation but requests that an easement for utilities be granted within the proposed vacation area.** Service provider emailed Road Department staff on June 12, 2023 indicating that easement documents had been secured and that their organization was supportive of the proposed vacation.

Findings:

Based upon the submitted petition materials, responses to service provider notices, and the Road Department's research of the subject right of way, the Road Department makes the following findings:

- The proposed vacation area was dedicated to the public by dedication deed recorded at the Deschutes County Clerk's Office as Deed No. 1994-46818 (ORS 368.326).
- Owners of a recorded property right that would potentially be deprived of access necessary for the exercise of that property right with the proposed vacation have consented to the proposed vacation (ORS 368.331).

- The Petitioners, who represent the owners of more than sixty (60) percent of property abutting the subject right of way, have submitted complete petitions and submitted the required fee (ORS 368.341(1)(c); ORS 368.341(3); ORS 368.341(4); ORS 368.351).
- As the petition for vacation does not include acknowledged signatures of owners of 100 percent of property abutting the proposed vacation area, the vacation proceedings are subject to a public hearing (ORS 368.346).
- The subject right of way does not appear to be necessary for current or future public use.
- The subject right of way appears to coincide with onsite wastewater system components, an outbuilding, and other private property improvements for Tax Lot 1800 on Assessor's Map 17-12-05B.

Recommendation:

Based on the above findings, the Road Department has determined that the proposed vacation is in the public interest. The Road Department recommends that the Board of County Commissioners approve the proposed vacation with adoption of Order No. 2023-017 subject to the following conditions:

1. Prior to vacation of the subject right of way, the owners of Tax Lot 1800 on Assessor's Map 17-12-05B shall execute a dedication deed to coincide with the existing as-travelled north alignment of Schibel Road.
2. The vacated property shall vest with the rightful owner or owners holding title according to law in accordance with ORS 368.366(1)(c).

This report is made pursuant to ORS 368.326 through 368.366, concerning the vacation of county property.

PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

We, the undersigned (holding recorded interest or abutting the proposed property or owning improvements constructed on the proposed property for vacation), respectfully request the following described road be vacated.

Description of road to be vacated: See Attached Survey

Located in Schibel Rd Bend, Deschutes County.

Reason for road vacation request: _____

DATED this 29 day of July, 2022.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE	ZIP
<u>Hollyhock Living Trust</u>	<u>Marlene Wheeler</u>	<u>64245 Schibel</u>	<u>Bend</u>	<u>OR</u>	<u>97703</u>
<u>TERRY RENNIE TRUST</u>	<u>Marlene Wheeler</u>	<u>64245 Schibel</u>	<u>Bend</u>	<u>OR</u>	<u>97703</u>
<u>Hollyhock Survivor's TRUST</u>	<u>Marlene Wheeler</u>	<u>64225 Schibel</u>	<u>Bend</u>	<u>OR</u>	<u>97703</u>

STATE OF OREGON)
County of Deschutes) ss.

On this 29 day of July, in the year 2022, before me, a Notary Public, personally appeared Marlene Wheeler Rennie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

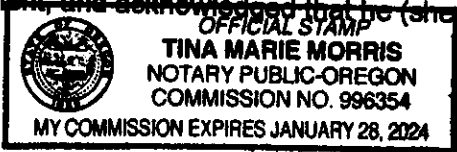
Tina Marie Morris
Notary Public for Oregon.

My Commission expires: 01/28/2024



STATE OF OREGON)
County of Deschutes) ss.

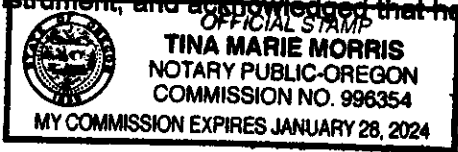
On this 29th day of JULY, in the year 2022, before me, a Notary Public, personally appeared TERRY A. Rennie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal
Tina Marie Morris
Notary Public for Oregon.
My Commission expires: 01/28/2024

STATE OF OREGON)
County of Deschutes) ss.

On this 29th day of JULY, in the year 2022, before me, a Notary Public, personally appeared Marlene Wheeler Rennie personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal
Tina Marie Morris
Notary Public for Oregon.
My Commission expires: 01/28/2024

STATE OF OREGON)
County of _____) ss.

On this _____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Notary Public for Oregon.
My Commission expires: _____

I CERTIFY THAT THIS IS THE TRUE AND ORIGINAL PETITION CIRCULATED BY ME.

SIGNATURE _____
ADDRESS _____
TELEPHONE: _____

PETITION FOR VACATION OF A PUBLIC ROAD

TO: THE DESCHUTES COUNTY BOARD OF COMMISSIONERS

We, the undersigned (holding recorded interest or abutting the proposed property or owning improvements constructed on the proposed property for vacation), respectfully request the following described road be vacated.

Description of road to be vacated: See attached

Located in _____, Deschutes County.

Reason for road vacation request: See attached

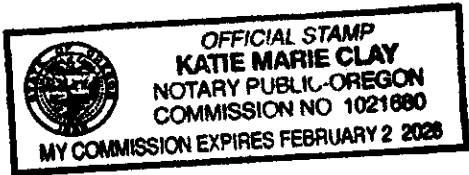
DATED this 29 day of July, 2022.

PRINT NAME	SIGNATURE	ADDRESS	CITY	STATE	ZIP
Kathryn Gates, Trustee	<u>Kathryn Gates</u>	<u>Trustee</u>	<u>64227 Schibel Rd</u>	<u>Bend</u>	<u>OR 97703</u>
Jeffrey Gates, Trustee	<u>Jeffrey Gates</u>	<u>Trustee</u>	<u>64227 Schibel Rd</u>	<u>Bend</u>	<u>OR 97703</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

STATE OF OREGON)
County of Deschutes) ss.

On this 29 day of July, in the year 2022 before me, a Notary Public, personally appeared Kathryn Gates, Trustee of the Jeffrey & Kathryn Gates Rev LIV Trust, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

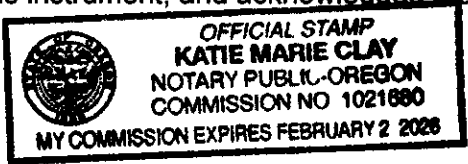
WITNESS my hand and official seal



Notary Public for Oregon.
My Commission expires: 2/2/2026

STATE OF OREGON)
County of Deschutes) ss.

On this 29 day of July, in the year 2022, before me, a Notary Public, personally appeared Jeffrey Gates, Trustee of the Jeffrey & Kathryn Gates Rev LIV Trust, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.



WITNESS my hand and official seal

Notary Public for Oregon.
My Commission expires: 2/2/2026

STATE OF OREGON)
County of _____) ss.

On this _____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Notary Public for Oregon.
My Commission expires: _____

STATE OF OREGON)
County of _____) ss.

On this _____ day of _____, in the year 20____, before me, a Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is(are) subscribed to this instrument, and acknowledged that he (she, they) executed it.

WITNESS my hand and official seal

Notary Public for Oregon.
My Commission expires: _____

I CERTIFY THAT THIS IS THE TRUE AND ORIGINAL PETITION CIRCULATED BY ME.

Kathryn J. Gates
SIGNATURE
64227 Schibel Rd
ADDRESS
TELEPHONE: 541-815-9608

Reason for Vacating the southern portion of Schibel Rd

1-Invalid Dedication due to Restrictions and Reservations-

Septic was installed & permitted by Deschutes County in 1980, repaired and permitted by Deschutes County in 1991.

The Deed of Dedication was accepted in 1994 by Deschutes County. The 60foot width encroaches upon the septic system, that was approved by Deschutes County.

2-Reduces property values of the 3 tax lots requesting this Vacation, which is 75% of the owners.

3-Decades old trees and landscaping would be lost.

4-Since 1994, the county has never used, improved, nor plowed this road to our knowledge. Not once that we know of has the county plowed the snow during the major snowstorms of 2017 & 2019.

5-The southern portion of the road that is requested to be vacated has not been used by the general public and has only been used as access and a driveway for tax lots 1800 and 1901.

6-Traffic will increase, and no traffic study has been done that we know of.

7-Safety of the young children living on Schibel Road is a concern of the parents and neighbors

8-It is not in the General Public's best interest.

9-Induced to sign the dedication under false pretenses. We were told we could remove the southern portion of the dedication with a "single item deletion"

10-Tax lot 100 to the south will not suffer loss of access as the site address of 64145 Old Bend Redmond Hwy is permitted, approved and installed.

EXHIBIT A
SCHIBEL ROAD – VACATION

A STRIP OF LAND BEING 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF CENTERLINE (WHEN MEASURED AT RIGHT ANGLES) LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SE 1/4, SW 1/4, NW 1/4) AND THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER (NW 1/4, SW 1/4), ALL IN SECTION 5, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FROM WHICH THE CENTER WEST ONE-SIXTEENTH CORNER OF SAID SECTION 5 BEARS NORTH 34°42'51" EAST, 51.73 FEET, THENCE NORTH 00°43'51" WEST, 161.76 FEET; THENCE SOUTH 88°32'18" WEST, 76.94 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 16°54'37", AN ARC LENGTH OF 88.54 FEET (THE CHORD OF WHICH BEARS SOUTH 80°05'00" WEST, 88.22 FEET); THENCE SOUTH 71°37'41" WEST, 39.52 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 110.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 65°21'54", AN ARC LENGTH OF 125.49 FEET (THE CHORD OF WHICH BEARS NORTH 75°41'22" WEST, 118.80 FEET); THENCE NORTH 43°00'25" WEST, 81.60 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 140.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 80°07'12", AN ARC LENGTH OF 195.77 FEET (THE CHORD OF WHICH BEARS NORTH 02°56'49" WEST, 180.21 FEET); THENCE NORTH 37°06'47" EAST, 125.37 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 300.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 27°17'49", AN ARC LENGTH OF 142.93 FEET (THE CHORD OF WHICH BEARS NORTH 50°45'42" EAST, 141.58 FEET); THENCE NORTH 64°24'36" EAST, 40.87 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 150.00 FOOT RADIUS CURVE TO THE LEFT, THROUGH A CENTRAL ANGLE OF 48°27'11", AN ARC LENGTH OF 126.85 FEET (THE CHORD OF WHICH BEARS NORTH 40°11'00" EAST, 123.10 FEET) TO A POINT ON THE ONE-SIXTYFORTH LINE AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION, THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT SAID ONE-SIXTYFORTH LINE AND AT THE SOUTH LINE OF TAX LOT 171205B001800.

TOGETHER WITH THE FOLLOWING DESCRIBED STRIP OF LAND BEING 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF CENTERLINE (WHEN MEASURED AT RIGHT ANGLES) WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER OF SAID SECTION 5 FROM WHICH THE CENTER WEST ONE-SIXTEENTH CORNER BEARS SOUTH 00°43'51" EAST, 536.04 FEET, THENCE NORTH 83°16'31" WEST, 147.04 FEET TO THE SIDELINE OF THE ABOVE DESCRIBED STRIP OF LAND AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION, THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT SAID SIDELINE OF THE ABOVE DESCRIBED STRIP OF LAND AND AT SAID NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER.

THIS LEGAL DESCRIPTION AND EXHIBIT MAP ARE BASED ON COUNTY SURVEY NO. 11789.



'EXHIBIT B' SCHIBEL ROAD VACATION

LOCATED IN THE SW 1/4, NW 1/4 AND THE NW 1/4,
SW 1/4 OF SECTION 5, T. 17 S., R. 12 E., W. M.

S-N 1/64 LINE N89°58'42"W 795.52'

SCHIBEL ROAD

102.86'

HOLLYHOCK 1994 LIVING TRUST
64245 SCHIBEL ROAD
TAX LOT 171205B001901

PORTION OF SCHIBEL ROAD
TO BE VACATED

JEFF AND KATHY GATES
64227 SCHIBEL ROAD
TAX LOT 171205B001800



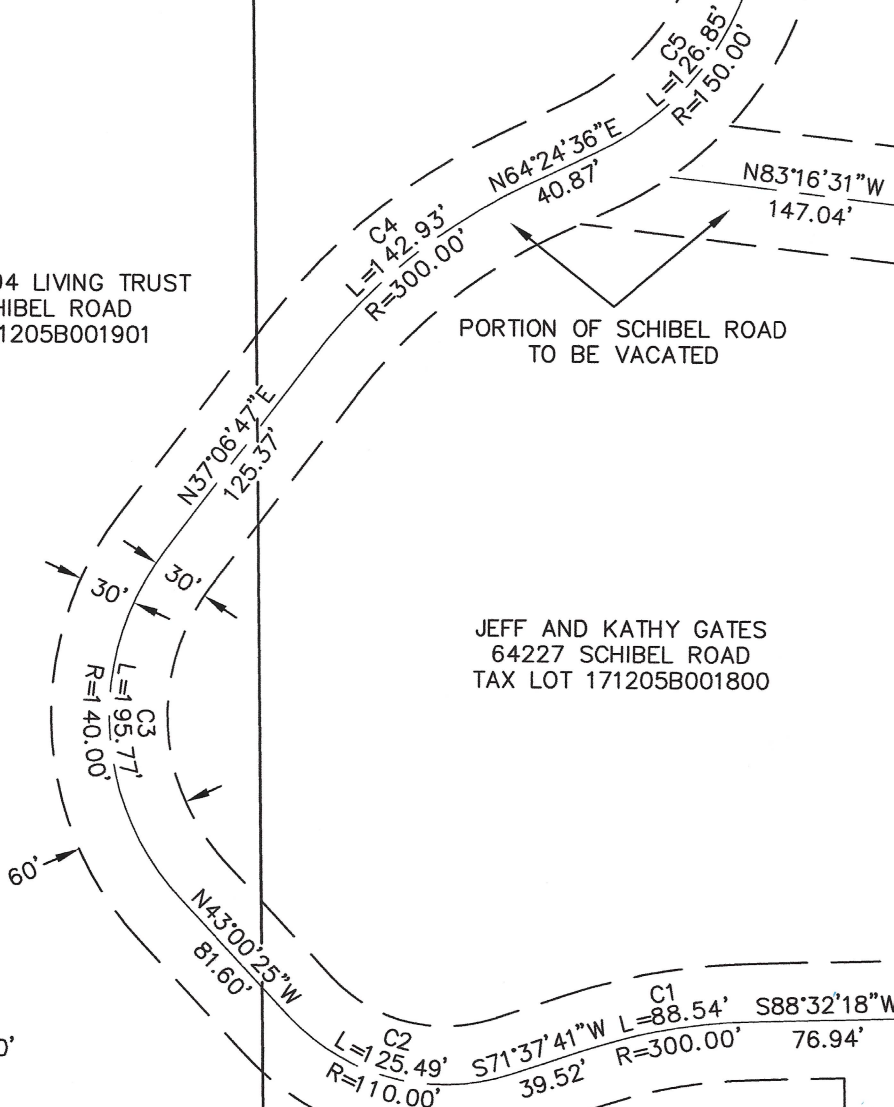
SCALE 1" = 100'

LEGAL DESCRIPTION AND EXHIBIT MAP
ARE BASED ON COUNTY SURVEY NO. 11789

N-S CENTERLINE OF NW 1/4
S00°43'51"E 536.04'

N00°43'51"W
161.76'

CW 1/16 CORNER
SECTION 5
T17S, R12E, W.M.



CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	BEARING	CHORD
C1	88.54'	300.00'	16°54'37"	S80°05'00"W	88.22'
C2	125.49'	110.00'	65°21'54"	N75°41'22"W	118.80'
C3	195.77'	140.00'	80°07'12"	N02°56'49"W	180.21'
C4	142.93'	300.00'	27°17'49"	N50°45'42"E	141.58'
C5	126.85'	150.00'	48°27'11"	N40°11'00"E	123.10'

P.O.B. OF 60' WIDE
EASEMENT BEARS
S34°42'51"W, 51.73'
FROM CW 1/16 CORNER

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 19, 1994
BRIAN W. REEVES
2677

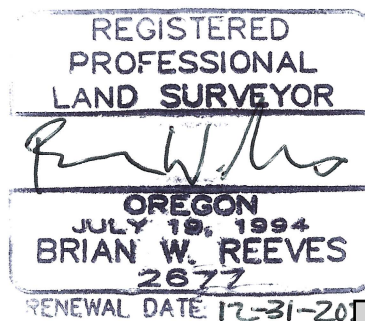
RENEWAL DATE 12-31-2023

EXHIBIT A
SCHIBEL ROAD – DEDICATION

A STRIP OF LAND BEING 60.00 FEET WIDE, 30.00 FEET ON EACH SIDE OF CENTERLINE (WHEN MEASURED AT RIGHT ANGLES) LOCATED IN THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SE 1/4, SW 1/4, NW 1/4) IN SECTION 5, TOWNSHIP 17 SOUTH, RANGE 12 EAST, WILLAMETTE MERIDIAN, DESCHUTES COUNTY, OREGON, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER OF SAID SECTION 5 FROM WHICH THE CENTER WEST ONE-SIXTEENTH CORNER BEARS SOUTH $00^{\circ}43'51''$ EAST, 536.04 FEET, THENCE NORTH $83^{\circ}16'31''$ WEST, 3.92 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A 105.88 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF $82^{\circ}05'22''$, AN ARC LENGTH OF 151.70 FEET (THE CHORD OF WHICH BEARS NORTH $42^{\circ}13'50''$ WEST, 139.05 FEET); THENCE NORTH $01^{\circ}11'09''$ WEST, 20.44 FEET TO A POINT ON THE ONE-SIXTYFORTH LINE AND THE TERMINUS OF THIS CENTERLINE DESCRIPTION, THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED TO TERMINATE AT SAID NORTH-SOUTH CENTERLINE OF THE NORTHWEST QUARTER AND AT THE ONE-SIXTYFORTH LINE.

THIS LEGAL DESCRIPTION AND EXHIBIT MAP ARE BASED ON COUNTY SURVEY NO. 11789.



'EXHIBIT B'

SCHIBEL ROAD DEDICATION

LOCATED IN THE SE 1/4, SW 1/4, NW 1/4 OF
SECTION 5, T. 17 S., R. 12 E., W. M.

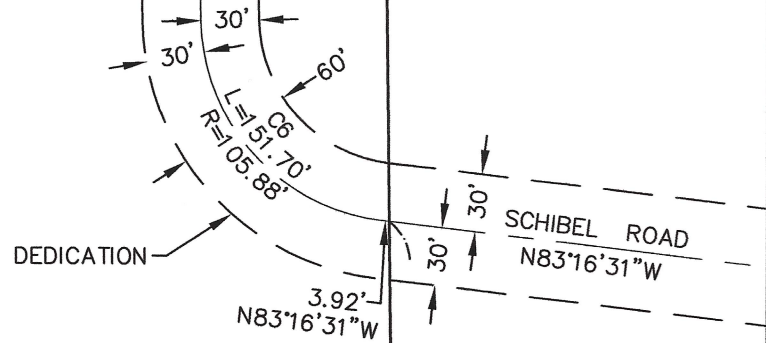
S-N 1/64 LINE N89°58'42"W 795.52'

HOLLYHOCK 1994 LIVING TRUST
64245 SCHIBEL ROAD
TAX LOT 171205B001901



SCALE 1" = 100'

JEFF AND KATHY GATES
64227 SCHIBEL ROAD
TAX LOT 171205B001800



LEGAL DESCRIPTION AND EXHIBIT MAP
ARE BASED ON COUNTY SURVEY NO. 11789
S00°43'51"E 536.04'
N-S CENTERLINE OF NW 1/4

E-W CENTER 1/4 LINE

CW 1/16 CORNER
SECTION 5
T17S, R12E, W.M.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

Brian W. Reeves

OREGON
JULY 19, 1994
BRIAN W. REEVES
2677

RENEWAL DATE 12-31-202

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	BEARING	CHORD
C6	151.70'	105.88'	82°05'22"	N42°13'50"W	139.05'

VACATION LOSS OF ACCESS CONSENT FORM

We, the undersigned, are the owners of Tax Lot 171205B001901 in Deschutes County, Oregon. The proposed road vacation of a portion of Schibel Road will deprive us of access to a public road necessary for the exercise of our recorded property right.


According to Oregon Revised Statutes 368.331:

368.331 Limitation on use of vacation proceedings to eliminate access. A county governing body shall not vacate public lands under ORS 368.326 to 368.366 if the vacation would deprive an owner of a recorded property right of access necessary for the exercise of that property right unless the county governing body has the consent of the owner.

We hereby give the Board of County Commissioners of Deschutes County, Oregon consent to proceed with the proposed road vacation of a portion of Schibel Road.

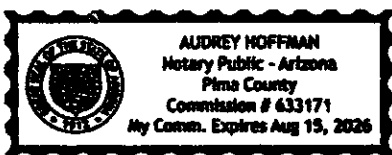
DATED this 27 day of FEBRUARY, 2023.


Marlene S Wheeler, Owner as Trustee
Hollyhock 1994 Living Trust,


Terry A Rennie, Owner

STATE OF ~~OREGON~~ ^{AH} ARIZONA)
County of ~~Deschutes~~ ^{AH} PIMA) SS.

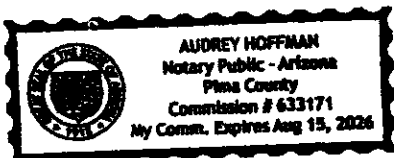
The foregoing instrument was acknowledged before me by Marlene S. Wheeler
this 27 day of FEBRUARY, 2023.





NOTARY PUBLIC FOR ~~OREGON~~ ^{AH} ARIZONA
MY COMMISSION EXPIRES: 08/15/24

STATE OF ~~OREGON~~ ^{AH} ARIZONA)
County of ~~Deschutes~~ ^{AH} PIMA) SS.

The foregoing instrument was acknowledged before me by Terry A. Rennie
this 27 day of FEBRUARY, 2023.




NOTARY PUBLIC FOR ~~OREGON~~ ^{AH} ARIZONA
MY COMMISSION EXPIRES: 08/15/24

SERVICE PROVIDER CONSENT FOR RIGHT OF WAY VACATION

Kathry Gates, as Chief Petitioner, intends to submit a petition for Deschutes
(Chief Petitioner's Name)

County, Oregon to vacate the public right of way described or depicted in the attached documents.

As a utility or other service provider, Avion Water Company, Inc.

- ☒ Does not have existing facilities within the area proposed for vacation.
- ☐ Have existing facilities within the area proposed for vacation.

Further, as a utility or other service provider, Avion Water Company, Inc.

- ☒ Consents to the vacation of this section of public right of way.
- ☐ Consents to the vacation of this section of public right of way but requests that an easement for utilities be granted within the area to be vacated by the underlying property owner.
- ☐ Does not consent to the proposed right of way vacation for the following reason:

Mike Heffernan
Print Name of Service Provider Representative

Engineering Department
Representative's Title

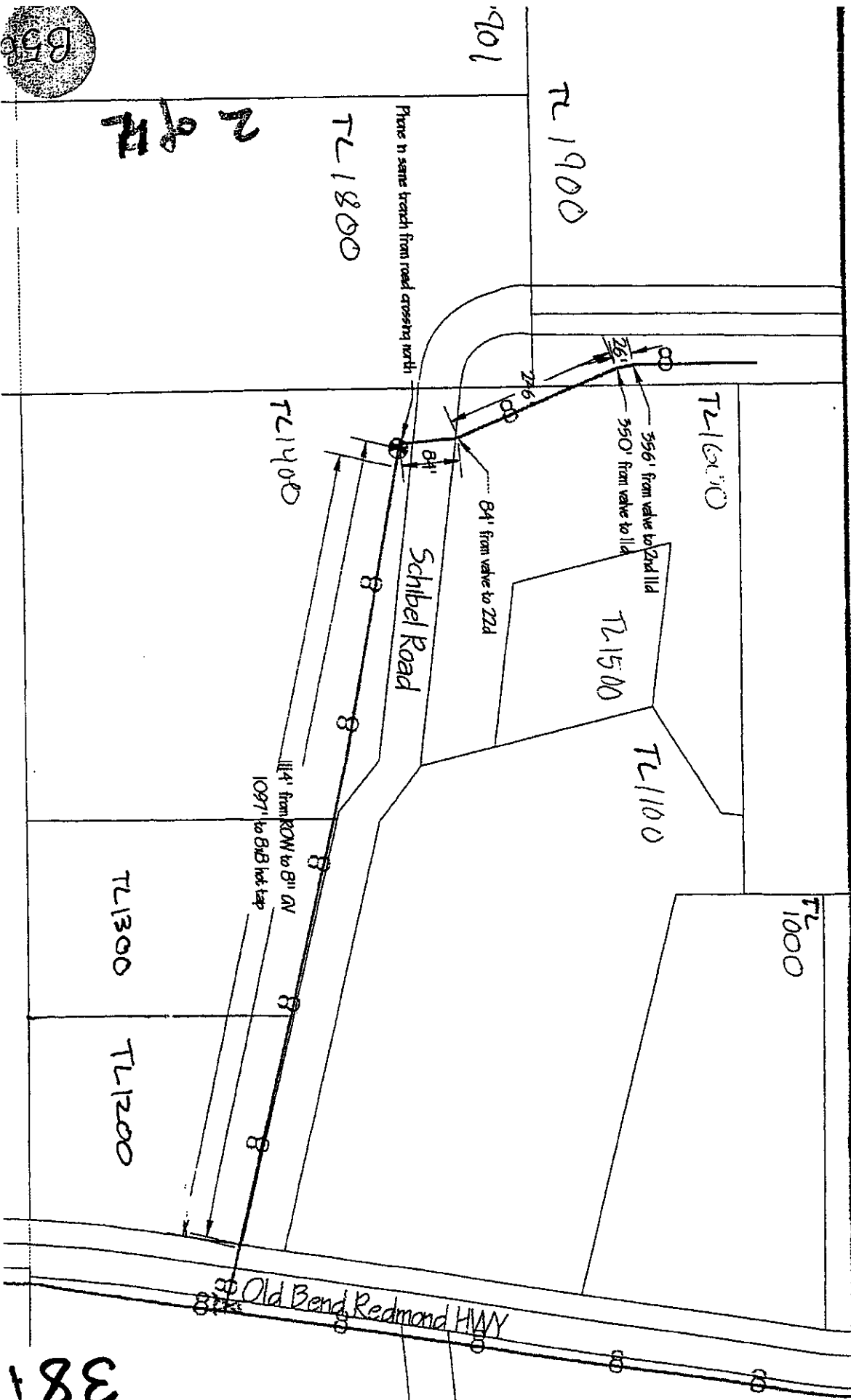
Mike Heffernan
Signature

7/27/22
Date

Ref: Schibel Road Vacation

1712 05 B

Schibel Road



381

SERVICE PROVIDER CONSENT FOR RIGHT OF WAY VACATION

Kathy Gates as Chief Petitioner, intends to submit a petition for Deschutes
(Chief Petitioner's Name)
County, Oregon to vacate the public right of way described or depicted in the attached documents.

As a utility or other service provider, Central Electric Cooperative, Inc.
(Service Provider Name)

☐ Does not have existing facilities within the area proposed for vacation.

☒ Have existing facilities within the area proposed for vacation.

Further, as a utility or other service provider, Central Electric Cooperative, Inc.
(Service Provider Name)

☐ Consents to the vacation of this section of public right of way.

☒ Consents to the vacation of this section of public right of way but requests that an easement for utilities be granted within the area to be vacated by the underlying property owner.

☐ Does not consent to the proposed right of way vacation for the following reason:

If the proposed new Road is dedicated to the public, an easement for CEC's existing facilities located within the proposed new ROW will need to be created.

Parneli Perkins
Print Name of Service Provider Representative

Land & ROW Specialist
Representative's Title

Signature

 FOR CEC

Date

8/18/22



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 16, 2023

SUBJECT: First reading of Ordinance 2023-018 – Griffin Plan Amendment / Zone Change

RECOMMENDED MOTION:

Move approval of first reading of Ordinance No. 2023-018 by title only.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will consider a first reading of Ordinance No. 2023-018 to approve a request for a Plan Amendment and Zone Change (file nos. 247-22-000792-PA, 793-ZC) for property totaling approximately 40 acres to the east of Bend and south of Highway 20. The Plan Amendment would re-designate the property from Agriculture to Rural Residential Exception Area and the Zoning Map Amendment would rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

The entirety of the record can be found on the project website at:

<https://www.deschutes.org/cd/page/247-22-000792-pa-793-zc-%E2%80%93-comprehensive-plan-amendment-and-zone-change>

BUDGET IMPACTS:

None

ATTENDANCE:

Rachel Vickers, Associate Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Rachel Vickers, Associate Planner

DATE: August 16, 2023

SUBJECT: Consideration of First Reading of Ordinance 2023-018 – A Plan Amendment and Zone Change (file nos. 247-22-000792-PA, 793-ZC).

The Board of County Commissioners (Board) will consider a first reading of Ordinance 2023-018 on August 16, 2023 to consider a request for a Plan Amendment and Zone Change (file nos. 247-22-000792-PA, 793-ZC) for one tax lot totaling approximately 40 acres, to the east of the City of Bend and south of Highway 20.

I. BACKGROUND

The applicant and property owner, Kevin Griffin, is requesting a Comprehensive Plan Amendment to re-designate the subject property from Agriculture to Rural Residential Exception Area and a Zoning Map Amendment to rezone the property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10). The applicant argues that the subject property does not meet the definition of “agricultural land” due to its poor soil quality. For this reason, it is the applicant’s position that a mistake was made when the property was originally zoned and MUA-10 zoning is more appropriate. The applicant provided a supplementary soil study that identifies non-high value (Class VII and VIII) soils on a majority (58.5%) of the subject property.

A public hearing before a Hearings Officer was conducted on February 28, 2023 with the Hearings Officer’s recommendation of approval issued on March 24, 2023. The Board held a public hearing on May 31, 2023 and closed the hearing with no open record period. On June 28, the Board deliberated to approve the requests, with a unanimous vote in favor of the subject applications.

II. NEXT STEPS / SECOND READING

The Board is tentatively scheduled to conduct the second reading of Ordinance 2023-018 on August 30, 2023, fourteen (14) days following the first reading.

ATTACHMENTS:

1. Draft Ordinance 2023-018 and Exhibits

Exhibit A: Legal Descriptions

Exhibit B: Proposed Plan Amendment Map

Exhibit C: Proposed Zone Change Map

Exhibit D: Comprehensive Plan Section 23.01.010, Introduction

Exhibit E: Comprehensive Plan Section 5.12, Legislative History

Exhibit F: Hearings Officer Recommendation

REVIEWED _____
LEGAL COUNSEL

For Recording Stamp Only

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Deschutes County *
Code Title 23, the Deschutes County *
Comprehensive Plan, to Change the *
Comprehensive Plan Map Designation for *
Certain Property From Agriculture to Rural *
Residential Exception Area, and Amending *
Deschutes County Code Title 18, the Deschutes
County Zoning Map, to Change the Zone
Designation for Certain Property From
Exclusive Farm Use to Multiple Use
Agricultural.

ORDINANCE NO. 2023-018

WHEREAS, Kevin Griffin and Libby Renfro, applied for changes to both the Deschutes County Comprehensive Plan Map (247-22-000792-PA) and the Deschutes County Zoning Map (247-22-000793-ZC), to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA), and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10); and

WHEREAS, after notice was given in accordance with applicable law, a public hearing was held on February 28, 2023, before the Deschutes County Hearings Officer and, on March 24, 2023, the Hearings Officer recommended approval of the Comprehensive Plan Map Amendment and Zone Change;

WHEREAS, pursuant to DCC 22.28.030(C), the Board heard *de novo* the applications to change the comprehensive plan designation of the subject property from Agricultural (AG) to Rural Residential Exception Area (RREA) and a corresponding zone change from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10); now, therefore,

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. AMENDMENT. DCC Title 23, Deschutes County Comprehensive Plan Map, is amended to change the plan designation for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "B" from AG to RREA, with both exhibits attached and incorporated by reference herein.

Section 2. AMENDMENT. DCC Title 18, Zoning Map, is amended to change the zone designation from EFU to MUA-10 for certain property described in Exhibit "A" and depicted on the map set forth as Exhibit "C", with both exhibits attached and incorporated by reference herein.

Section 3. AMENDMENT. DCC Section 23.01.010, Introduction, is amended to read as described in Exhibit "D" attached and incorporated by reference herein, with new language underlined.

Section 4. AMENDMENT. Deschutes County Comprehensive Plan Section 5.12, Legislative History, is amended to read as described in Exhibit "E" attached and incorporated by reference herein, with new language underlined.

Section 5. FINDINGS. The Board adopts as its findings in support of this Ordinance the Recommendation of the Hearings Officer as set forth in Exhibit "F" and incorporated by reference herein.

Section 6. EFFECTIVE DATE. This Ordinance takes effect on the 90th day after the date of adoption or, if appealed, the date the ordinance is no longer subject to appeal.

Dated this ____ of _____, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

ANTHONY DEBONE, Chair

PATTI ADAIR, Vice Chair

ATTEST:

Recording Secretary

PHIL CHANG, Commissioner

Date of 1st Reading: ____ day of _____, 2023.

Date of 2nd Reading: ____ day of _____, 2023.

Record of Adoption Vote:

Commissioner	Yes	No	Abstained	Excused
Patti Adair	—	—	—	—
Anthony DeBone	—	—	—	—
Phil Chang	—	—	—	—

Effective date: ____ day of _____, 2023. Or, if appealed, the date the ordinance is no longer subject to appeal.

ATTEST

Recording Secretary

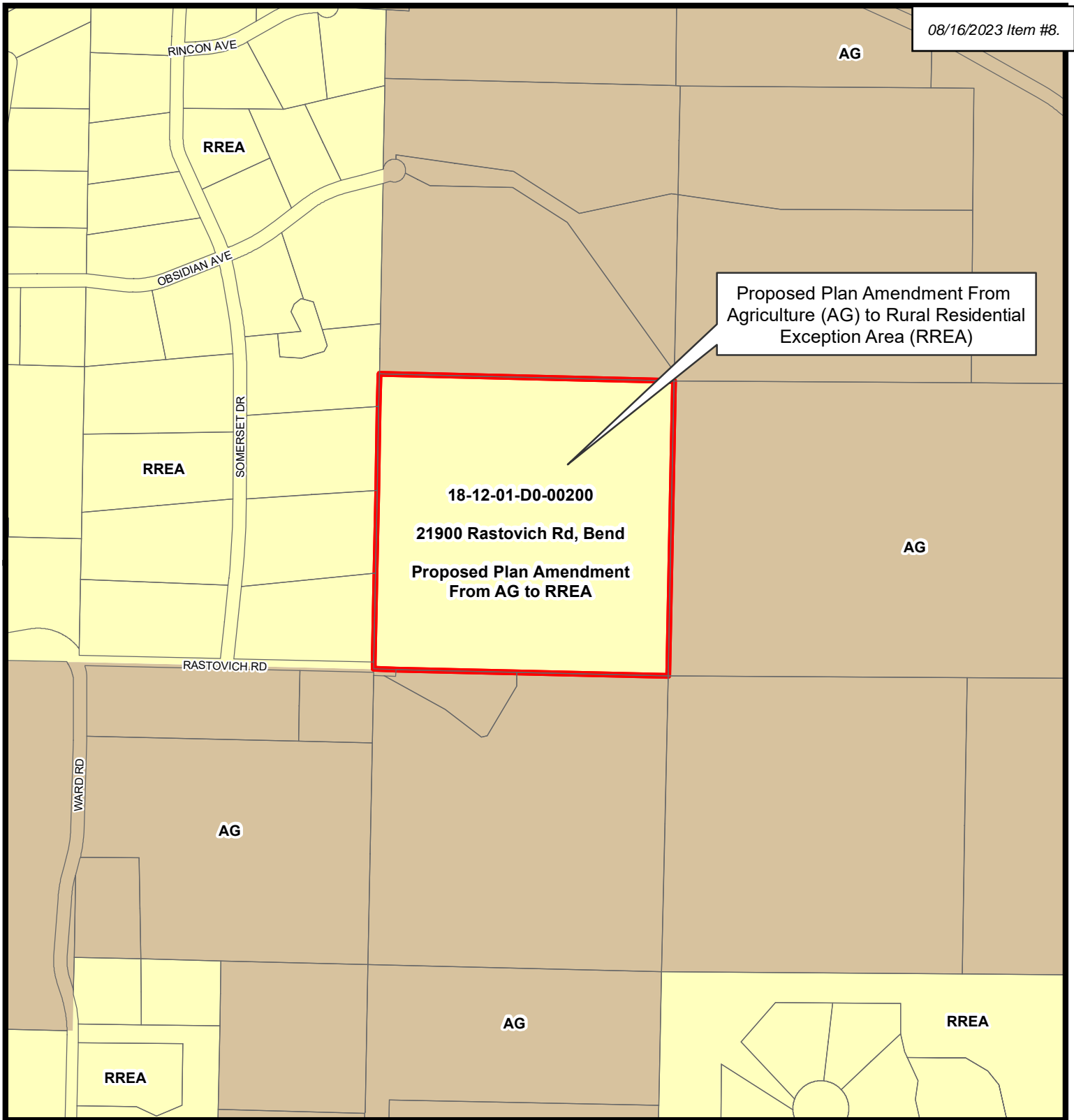
Exhibit “A” to Ordinance 2023-018

Legal Descriptions of Affected Property

For Informational Purposes Only: Parcel no. 181201D000200

(Legal Description Begins Below)

The Southeast Quarter of the Southeast Quarter (SE1/4SE1/4) of Section One (1), Township Eighteen (18) South, Range Twelve (12), East of the Willamette Meridian, Deschutes County, Oregon.



PROPOSED COMPREHENSIVE PLAN MAP

Plan Amendment From Agricultural (AG) to
Rural Residential Exception Area (RREA)

Exhibit "B"
to Ordinance 2023-018

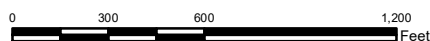
Legend

Proposed Zone Change Boundary

Comprehensive Plan Designation

AG - Agriculture

RREA - Rural Residential Exception Area



August 7, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

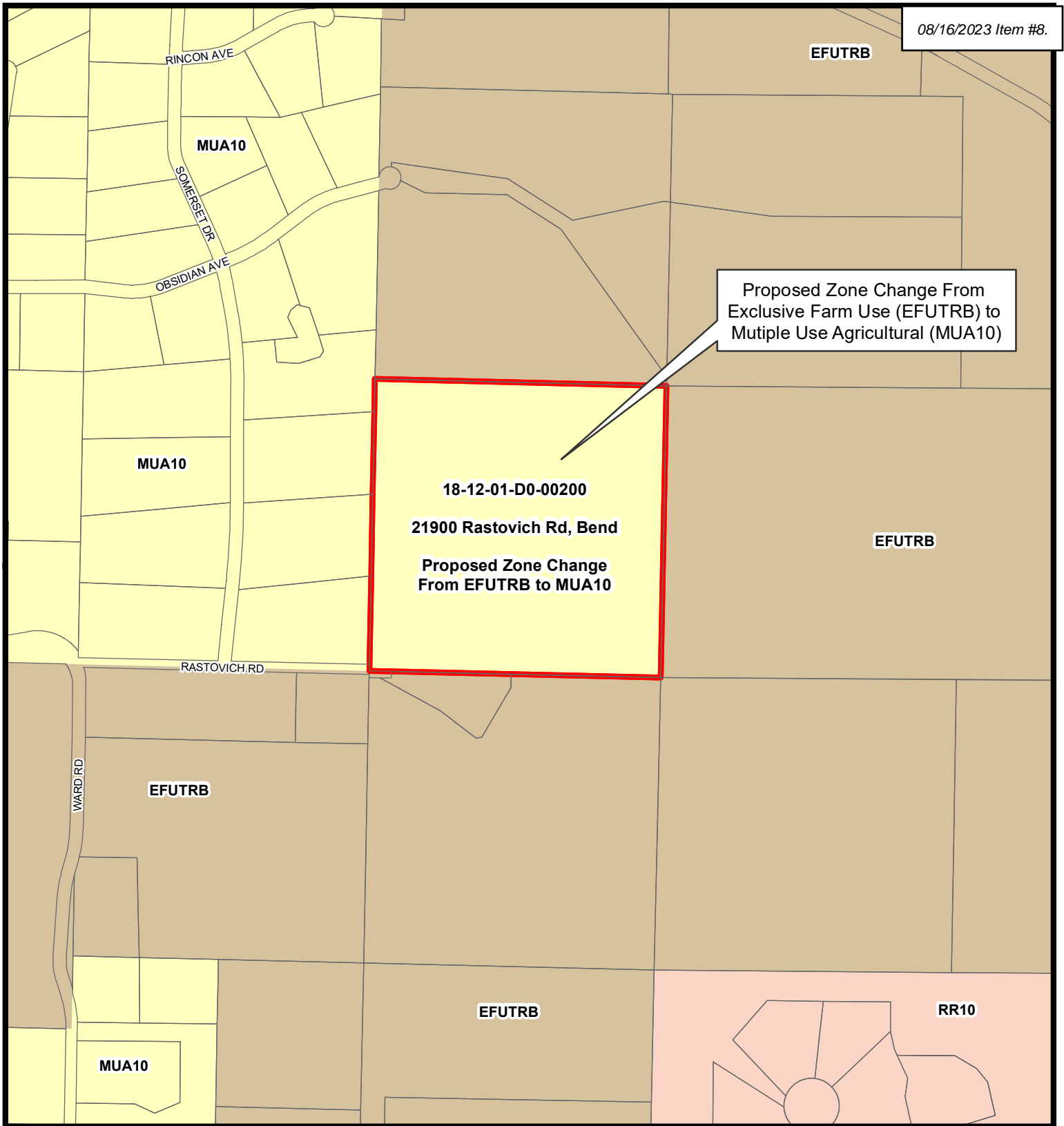
Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2023
Effective Date: _____, 2023



PROPOSED ZONING MAP

Zone Change From Exclusive Farm Use (EFUTRB) to Multiple Use Agricultural (MUA10)

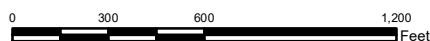
Exhibit "C"
to Ordinance 2023-018

Legend

Proposed Zone Change Boundary

Zoning

- EFUTRB - Tumalo/Redmond/Bend Subzone
- MUA10 - Multiple Use Agricultural
- RR10 - Rural Residential



August 7, 2023

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON

Tony DeBone, Chair

Patti Adair, Vice Chair

Phil Chang, Commissioner

ATTEST: Recording Secretary

Dated this _____ day of _____, 2023
Effective Date: _____, 2023

Exhibit “D” to Ordinance 2023-018

Chapter 23.01 COMPREHENSIVE PLAN

Chapter 23.01 COMPREHENSIVE PLAN

23.01.010. Introduction.

- A. The Deschutes County Comprehensive Plan, adopted by the Board in Ordinance 2011-003 and found on the Deschutes County Community Development Department website, is incorporated by reference herein.
- B. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2011-027, are incorporated by reference herein.
- C. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-005, are incorporated by reference herein.
- D. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-012, are incorporated by reference herein.
- E. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2012-016, are incorporated by reference herein.
- F. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-002, are incorporated by reference herein.
- G. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-009, are incorporated by reference herein.
- H. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-012, are incorporated by reference herein.
- I. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2013-007, are incorporated by reference herein.
- J. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-005, are incorporated by reference herein.
- K. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-006, are incorporated by reference herein.
- L. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-012, are incorporated by reference herein.
- M. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-021, are incorporated by reference herein.
- N. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2014-027, are incorporated by reference herein.
- O. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-021, are incorporated by reference herein.
- P. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-029, are incorporated by reference herein.
- Q. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-018, are incorporated by reference herein.
- R. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2015-010, are incorporated by reference herein.
- S. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-001, are incorporated by reference herein.
- T. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-022, are incorporated by reference herein.

- U. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-005, are incorporated by reference herein.
- V. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-027, are incorporated by reference herein.
- W. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2016-029, are incorporated by reference herein.
- X. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2017-007, are incorporated by reference herein.
- Y. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-002, are incorporated by reference herein.
- Z. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-006, are incorporated by reference herein.
- AA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-011, are incorporated by reference herein.
- BB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-005, are incorporated by reference herein.
- CC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2018-008, are incorporated by reference herein.
- DD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-002, are incorporated by reference herein.
- EE. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-001, are incorporated by reference herein.
- FF. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-003, are incorporated by reference herein.
- GG. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-004, are incorporated by reference herein.
- HH. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-011, are incorporated by reference herein.
- II. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-006, are incorporated by reference herein.
- JJ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-016, are incorporated by reference herein.
- KK. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2019-019, are incorporated by reference herein.
- LL. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-001, are incorporated by reference herein.
- MM. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-002, are incorporated by reference herein.
- NN. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-003, are incorporated by reference herein.
- OO. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-008, are incorporated by reference herein.
- PP. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-007, are incorporated by reference herein.
- QQ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-006, are incorporated by reference herein.
- RR. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-009, are incorporated by reference herein.

SS. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-013, are incorporated by reference herein.

TT. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2020-02, are incorporated by reference herein.

UU. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-005, are incorporated by reference herein.

VV. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2021-008, are incorporated by reference herein.

WW. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-001, are incorporated by reference herein.

XX. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-003, are incorporated by reference herein.

YY. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-006, are incorporated by reference herein.

ZZ. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-0010, are incorporated by reference herein.

AAA. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-011, are incorporated by reference herein.

BBB. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2022-013, are incorporated by reference herein.

CCC. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-007, are incorporated by reference herein.

DDD. The Deschutes County Comprehensive Plan amendments, adopted by the Board in Ordinance 2023-018, are incorporated by reference herein.

(Ord. 2023-0018 §2, 2022; Ord. 2023-007 §2, 2022; Ord. 2022-013 §2, 2022; Ord. 2022-011 §2, 2022; Ord. 2022-0010 §2, 2022; Ord. 2022-006 §2, 2022; Ord. 2022-003 §2, 2022; Ord. 2022-001 §1, 2022; Ord. 2021-008 §1; Ord. 2021-005 §1, 2021; Ord. 2021-002§3, 2020; Ord. 2020-013§1, 2020; Ord. 2020-009§1, 2020; Ord. 2020-006§1, 2020; Ord. 2020-007§1, 2020; Ord. 2020-008§1, 2020; Ord. 2020-003 §1, 2020; Ord. 2020-002 §1, 2020; Ord. 2020-001 §26, 2020; Ord. 2019-019 §2, 2019; Ord. 2019-016 §3, 2019; Ord. 2019-006 § 1, 2019; Ord. 2019-011 § 1, 2019; Ord. 2019-004 §1, 2019; Ord. 2019-003 §1, 2019; Ord. 2019-001 §1, 2019; Ord. 2019-002 §1, 2019; Ord. 2018-008 §1, 2018; Ord. 2018-005 §2, 2018; Ord. 2018-011 §1, 2018; Ord. 2018-006 §1, 2018; Ord. 2018-002 §1, 2018; Ord. 2017-007 §1, 2017; Ord. 2016-029 §1, 2016; Ord. 2016-027 §1, 2016; Ord. 2016-005 §1, 2016; Ord. 2016-022 §1, 2016; Ord. 2016-001 §1, 2016; Ord. 2015-010 §1, 2015; Ord. 2015-018 § 1, 2015; Ord. 2015-029 § 1, 2015; Ord. 2015-021 § 1, 2015; Ord. 2014-027 § 1, 2014; Ord. 2014-021 §1, 2014; Ord. 2014-12 §1, 2014; Ord. 2014-006 §2, 2014; Ord. 2014-005 §2, 2014; Ord. 2013-012 §2, 2013; Ord. 2013-009 §2, 2013; Ord. 2013-007 §1, 2013; Ord. 2013-002 §1, 2013; Ord. 2013-001 §1, 2013; Ord. 2012-016 §1, 2012; Ord. 2012-013 §1, 2012; Ord. 2012-005 §1, 2012; Ord. 2011-027 §1 through 12, 2011; Ord. 2011-017 repealed; Ord.2011-003 §3, 2011)

Click here to be directed to the Comprehensive Plan (<http://www.deschutes.org/compplan>)

Exhibit “E” to Ordinance 2023-018

Section 5.12 Legislative History

Background

This section contains the legislative history of this Comprehensive Plan.

Table 5.12.1 Comprehensive Plan Ordinance History

Ordinance	Date Adopted/ Effective	Chapter/Section	Amendment
2011-003	8-10-11/11-9-11	All, except Transportation, Tumalo and Terrebonne Community Plans, Deschutes Junction, Destination Resorts and ordinances adopted in 2011	Comprehensive Plan update
2011-027	10-31-11/11-9-11	2.5, 2.6, 3.4, 3.10, 3.5, 4.6, 5.3, 5.8, 5.11, 23.40A, 23.40B, 23.40.065, 23.01.010	Housekeeping amendments to ensure a smooth transition to the updated Plan
2012-005	8-20-12/11-19-12	23.60, 23.64 (repealed), 3.7 (revised), Appendix C (added)	Updated Transportation System Plan
2012-012	8-20-12/8-20-12	4.1, 4.2	La Pine Urban Growth Boundary
2012-016	12-3-12/3-4-13	3.9	Housekeeping amendments to Destination Resort Chapter
2013-002	1-7-13/1-7-13	4.2	Central Oregon Regional Large-lot Employment Land Need Analysis
2013-009	2-6-13/5-8-13	1.3	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2013-012	5-8-13/8-6-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2013-007	5-29-13/8-27-13	3.10, 3.11	Newberry Country: A Plan for Southern Deschutes County

2013-016	10-21-13/10-21-13	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Sisters Urban Growth Boundary
2014-005	2-26-14/2-26-14	23.01.010	Comprehensive Plan Map Amendment, including certain property within City of Bend Urban Growth Boundary
2014-012	4-2-14/7-1-14	3.10, 3.11	Housekeeping amendments to Title 23.
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-021	8-27-14/11-25-14	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Sunriver Urban Unincorporated Community Forest to Sunriver Urban Unincorporated Community Utility
2014-027	12-15-14/3-31-15	23.01.010, 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Industrial
2015-021	11-9-15/2-22-16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Surface Mining.
2015-029	11-23-15/11-30-15	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Tumalo Residential 5-Acre Minimum to Tumalo Industrial
2015-018	12-9-15/3-27-16	23.01.010, 2.2, 4.3	Housekeeping Amendments to Title 23.

Exhibit “E” to Ordinance 2023-018

2015-010	12-2-15/12-2-15	2.6	Comprehensive Plan Text and Map Amendment recognizing Greater Sage-Grouse Habitat Inventories
2016-001	12-21-15/04-5-16	23.01.010; 5.10	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial (exception area)
2016-007	2-10-16/5-10-16	23.01.010; 5.10	Comprehensive Plan Amendment to add an exception to Statewide Planning Goal II to allow sewers in unincorporated lands in Southern Deschutes County
2016-005	11-28-16/2-16-17	23.01.010, 2.2, 3.3	Comprehensive Plan Amendment recognizing non-resource lands process allowed under State law to change EFU zoning
2016-022	9-28-16/11-14-16	23.01.010, 1.3, 4.2	Comprehensive plan Amendment, including certain property within City of Bend Urban Growth Boundary
2016-029	12-14-16/12/28/16	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from, Agriculture to Rural Industrial
2017-007	10-30-17/10-30-17	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-002	1-3-18/1-25-18	23.01, 2.6	Comprehensive Plan Amendment permitting churches in the Wildlife Area Combining Zone

2018-006	8-22-18/11-20-18	23.01.010, 5.8, 5.9	Housekeeping Amendments correcting tax lot numbers in Non-Significant Mining Mineral and Aggregate Inventory; modifying Goal 5 Inventory of Cultural and Historic Resources
2018-011	9-12-18/12-11-18	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2018-005	9-19-18/10-10-18	23.01.010, 2.5, Tumalo Community Plan, Newberry Country Plan	Comprehensive Plan Map Amendment, removing Flood Plain Comprehensive Plan Designation; Comprehensive Plan Amendment adding Flood Plain Combining Zone purpose statement.
2018-008	9-26-18/10-26-18	23.01.010, 3.4	Comprehensive Plan Amendment allowing for the potential of new properties to be designated as Rural Commercial or Rural Industrial
2019-002	1-2-19/4-2-19	23.01.010, 5.8	Comprehensive Plan Map Amendment changing designation of certain property from Surface Mining to Rural Residential Exception Area; Modifying Goal 5 Mineral and Aggregate Inventory; Modifying Non-Significant Mining Mineral and Aggregate Inventory
2019-001	1-16-19/4-16-19	1.3, 3.3, 4.2, 5.10, 23.01	Comprehensive Plan and Text Amendment to add a new zone to Title 19: Westside Transect Zone.

Exhibit “E” to Ordinance 2023-018

2019-003	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the Large Lot Industrial Program
2019-004	02-12-19/03-12-19	23.01.010, 4.2	Comprehensive Plan Map Amendment changing designation of certain property from Agriculture to Redmond Urban Growth Area for the expansion of the Deschutes County Fairgrounds and relocation of Oregon Military Department National Guard Armory.
2019-011	05-01-19/05-16/19	23.01.010, 4.2	Comprehensive Plan Map Amendment to adjust the Bend Urban Growth Boundary to accommodate the refinement of the Skyline Ranch Road alignment and the refinement of the West Area Master Plan Area I boundary. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2019-006	03-13-19/06-11-19	23.01.010,	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture to Rural Residential Exception Area
2019-016	11-25-19/02-24-20	23.01.01, 2.5	Comprehensive Plan and Text amendments incorporating language from DLCD’s 2014 Model Flood Ordinance and Establishing a purpose statement for the Flood Plain Zone.

2019-019	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-001	12-11-19/12-11-19	23.01.01, 2.5	Comprehensive Plan and Text amendments to provide procedures related to the division of certain split zoned properties containing Flood Plain zoning and involving a former or piped irrigation canal.
2020-002	2-26-20/5-26-20	23.01.01, 4.2, 5.2	Comprehensive Plan Map Amendment to adjust the Redmond Urban Growth Boundary through an equal exchange of land to/from the Redmond UGB. The exchange property is being offered to better achieve land needs that were detailed in the 2012 SB 1544 by providing more development ready land within the Redmond UGB. The ordinance also amends the Comprehensive Plan designation of Urban Area Reserve for those lands leaving the UGB.
2020-003	02-26-20/05-26-20	23.01.01, 5.10	Comprehensive Plan Amendment with exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow sewer on rural lands to serve the City of Bend Outback Water Facility.

Exhibit “E” to Ordinance 2023-018

2020-008	06-24-20/09-22-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add roundabouts at US 20/Cook-O.B. Riley and US 20/Old Bend-Redmond Hwy intersections; amend Tables 5.3.T1 and 5.3.T2 and amend TSP text.
2020-007	07-29-20/10-27-20	23.01.010, 2.6	Housekeeping Amendments correcting references to two Sage Grouse ordinances.
2020-006	08-12-20/11-10-20	23.01.01, 2.11, 5.9	Comprehensive Plan and Text amendments to update the County’s Resource List and Historic Preservation Ordinance to comply with the State Historic Preservation Rule.
2020-009	08-19-20/11-17-20	23.01.010, Appendix C	Comprehensive Plan Transportation System Plan Amendment to add reference to J turns on US 97 raised median between Bend and Redmond; delete language about disconnecting Vandevent Road from US 97.
2020-013	08-26-20/11/24/20	23.01.01, 5.8	Comprehensive Plan Text And Map Designation for Certain Properties from Surface Mine (SM) and Agriculture (AG) To Rural Residential Exception Area (RREA) and Remove Surface Mining Site 461 from the County's Goal 5 Inventory of Significant Mineral and Aggregate Resource Sites.
2021-002	01-27-21/04-27-21	23.01.01	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)

2021-005	06-16-21/06-16-21	23.01.01, 4.2	Comprehensive Plan Map Amendment Designation for Certain Property from Agriculture (AG) To Redmond Urban Growth Area (RUGA) and text amendment
2021-008	06-30-21/09-28-21	23.01.01	Comprehensive Plan Map Amendment Designation for Certain Property Adding Redmond Urban Growth Area (RUGA) and Fixing Scrivener's Error in Ord. 2020-022
2022-001	04-13-22/07-12-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-003	04-20-22/07-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Agriculture (AG) to Rural Residential Exception Area (RREA)
2022-006	06-22-22/08-19-22	23.01.010	Comprehensive Plan Map Amendment, changing designation of certain property from Rural Residential Exception Area (RREA) to Bend Urban Growth Area
2022-010	07-27-22/10-25-22	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) To Rural Industrial (RI)
2022-011	12-12-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Industrial (RI)
2022-013	12-14-22/03-14-23	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)

Exhibit “E” to Ordinance 2023-018

2023-007	TBD	23.01.010	Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)
<u>2023-018</u>	<u>TBD</u>	<u>23.01.010</u>	<u>Comprehensive Plan Map Designation for Certain Property from Agriculture (AG) to Rural Residential Exception Area (RREA)</u>

HEARING OFFICER FINDINGS AND RECOMMENDATIONS

FILE NUMBERS: 247-22-000792-PA, 793-ZC

HEARING DATE: February 28, 2023, 6:00 p.m.

HEARING LOCATION: Videoconference and Barnes and Sawyer Rooms
Deschutes Services Center
1300 NW Wall Street
Bend, OR 97708

**SUBJECT PROPERTIES/
OWNER:** Mailing Name: GRIFFIN, KEVIN J
Map and Taxlot: 181201D000200
Account: 109857
Situs Address: 21900 RASTOVICH RD, BEND, OR 97702

APPLICANT: Kevin Griffin and Libby Renfro

**ATTORNEY
FOR APPLICANT:** Tia Lewis

REQUEST: The Applicant requests approval of a Comprehensive Plan Amendment to change the designation of the Subject Property from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicant also requests a corresponding Zone Change to rezone the Subject Property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA-10).

HEARINGS OFFICER: Alan A. Rappleyea

STAFF CONTACT: Rachel Vickers, Associate Planner
Phone: (541) 388-6504
Email: Rachel.Vickers@deschutes.org

RECORD: Record items can be viewed and downloaded from:
<https://www.deschutes.org/cd/page/247-22-000792-pa-793-zc-%E2%80%93-comprehensive-plan-amendment-and-zone-change>

**SUMMARY OF
RECOMMENDATION:** The Hearings Officer finds that the Applicants have met their burden of proof with respect to the requested Comprehensive Plan Amendment and Zone Change and, therefore, recommends APPROVAL of the Application based on the Findings set forth in this Recommendation.

I. APPLICABLE CRITERIA

Title 18 of the Deschutes County Code, the County Zoning Ordinance:

- Chapter 18.04, Title, Purpose, and Definitions
- Chapter 18.16, Exclusive Farm Use Zones (EFU)
- Chapter 18.32, Multiple Use Agricultural (MUA10).
- Chapter 18.136, Amendments

Title 22, Deschutes County Development Procedures Ordinance

Deschutes County Comprehensive Plan

- Chapter 2, Resource Management
- Chapter 3, Rural Growth Management
- Appendix C, Transportation System Plan

Oregon Administrative Rules (OAR), Chapter 660

- Division 12, Transportation Planning
- Division 15, Statewide Planning Goals and Guidelines
- Division 33, Agricultural Land

Oregon Revised Statutes (ORS)

- Chapter 215.010, Definitions
- Chapter 215.211, Agricultural Land, Detailed Soils Assessment

II. BACKGROUND AND PROCEDURAL FINDINGS

NATURE OF PROCEEDING: This matter comes before the Hearings Officer as a request for approval of a Comprehensive Plan Map Amendment (“Plan Amendment”) to change the designation of the Subject Property from Agricultural (AG) to Rural Residential Exception Area (RREA). The Applicants also request approval of a corresponding Zoning Map Amendment (“Zone Change”) to change the zoning of the Subject Property from Exclusive Farm Use (EFU) to Multiple Use Agricultural (MUA10). The basis of the request in the Application is the Applicants’ assertion that the Subject Property does not qualify as “agricultural land” under the applicable provisions of the Oregon Revised Statutes or Oregon Administrative Rules governing agricultural land. Based on that assertion, the Applicants are not seeking an exception to Statewide Planning Goal 3 for the Plan Amendment or Zone Change.

NOTICES: The Application was filed on April 14, 2022. On October 5, 2022, the County issued a Notice of Application to several public agencies and to property owners in the vicinity of the Subject Property (together, “Application Notice”). The Application Notice invited comments on the Application.

Following additional submittals by the Applicants, the County mailed a Notice of Public Hearing on February 3, 2023 (“Hearing Notice”) announcing an evidentiary hearing (“Hearing”) for the requests in the Application. Notice of the hearing was published in the Bend Bulletin on February 5, 2023. Notice was given to the DLCD of the hearing on January 17, 2023. Pursuant to the Hearing Notice, I presided over the Hearing as the Hearings Officer on February 28, 2023, opening the Hearing at 6:00 p.m. The Hearing was held via videoconference, with Staff and a representative of the Applicants in the hearing room. The Hearings Officer appeared remotely. On February 21, 2023, the

Deschutes County Planning Division ("Staff") issued a report setting forth the applicable criteria and presenting the evidence in the record at that time ("Staff Report"). The Hearings Officer finds that all procedural notice requirements were met.

HEARING: At the beginning of the Hearing, I provided an overview of the quasi-judicial process and instructed participants to direct comments to the approval criteria and standards, and to raise any issues a participant wanted to preserve for appeal if necessary. I stated I had no *ex parte* contacts to disclose or bias to declare. I asked for but received no objections to the County's jurisdiction over the matter or to my participation as the Hearings Officer. Next, Staff provided a summary of the staff report. The applicant's attorney, Ms. Lewis then made a presentation. The Applicant, Mr. Kevin Griffin also testified in support of the application. There was no one present either in person or remotely to offer neutral testimony or opposition testimony. Staff reported on the letters in opposition from Kristen Sabo and Carol Macbeth of COLW, Devin Kesner of 1000 Friends of Oregon including one that recently arrived from Ms. Macbeth from Central Oregon Land Watch (COLW), and Mr. Jerry Wilke. I noted that I had read the letters that were submitted but had not yet seen the COLW most recent letter. I have now reviewed that letter.

The applicant stated that the letter in opposition from Jerry Wilke was likely addressing a different application as the current application does not propose a drug rehabilitation facility. I concur in that statement.

The applicant also rebutted the arguments provided by COWL and 1000 Friends. The applicant and staff then responded to my questions. I mentioned that the Board would be hearing a similar application in Marken 247-22-000353-PA and 247-22-000354-ZC. I wanted to take judicial notice of that decision when it is issued for the record. The applicant did not have an issue with having that decision reviewed by the Hearings Officer. I noted that I have a contractual obligation to issue timely decisions.

No participant requested that the record remain open. The Hearing concluded at approximately 6:59 p.m. At that time, I closed the Hearing and the record, and I took this matter under advisement.

150-DAY CLOCK: Because the Application includes a request for the Plan Amendment, the 150-day review period set forth in ORS 215.427(1) is not applicable. ORS 215.427(7). The Staff Report also notes that the 150-day review period is not applicable by virtue of Deschutes County Code ("DCC" or "Code") 22.20.040(D). No participant to the proceeding disputed that conclusion.

III. SUBSTANTIVE FINDINGS AND CONCLUSIONS

Adoption of Factual Findings in Staff Report:

The Staff Report contains a comprehensive summary of evidence in the record as it relates to each of the applicable criteria. The Staff Report, although it expresses agreement with the Applicants in many places, does not make a final recommendation. Instead, the Staff Report asks the Hearings Officer to determine if the Applicants have met the burden of proof necessary to justify the Plan

Amendment and the Zone Change. Comments have challenged some specific evidence or findings presented in the Staff Report. Where the staff legal finding have been challenged, those will be addressed below. There is only one area that challenges the factual finding and will be addressed here. For those factual and legal findings that are not challenged, I hereby adopt as fact the evidentiary findings in the Staff Report as my evidentiary findings. To the extent any of the findings in this Recommendation conflict with the findings in the Staff Report, my intent is to have these findings control. The remainder of this Recommendation sets forth the legal criteria and adopts legal findings based on those factual findings.

The factual finding that is challenged by COWL is the determination of the soils report provided by the applicant. Although there is also a legal aspect to this challenge as COWL believes that the County's NRCS maps should prevail over the applicant's soil study (which will be addressed subsequently), a primary factual challenge is the make up of the soil. COWL's testimony is that the soil is predominantly Class 3-6. Macbeth COLW Public Comment 2/28/23. The Applicant's soil study finds that the property is predominantly Class 7-8 (hereinafter, except for quotes, I will use the Arabic numerals instead of Roman for ease of reading). The Hearings Officer finds that the expert testimony provided by the applicant concerning soils along with staff's analysis of Applicants submittal is more persuasive than the testimony provided by Ms. Macbeth. 2022-09-30 App Materials 22-792-PA, 793-ZC Page 176. Ms. Macbeth relies on the more general NRCS studies and the applicant's study is more detailed. The applicant has met the burden of proof that the soil is predominantly class 7-8 and is not predominantly class 3-6.

Title 18 of the Deschutes County Code, County Zoning

Chapter 18.136, Amendments

Section 18.136.010, Amendments

DCC Title 18 may be amended as set forth in DCC 18.136. The procedures for text or legislative map changes shall be as set forth in DCC 22.12. A request by a property owner for a quasi-judicial map amendment shall be accomplished by filing an application on forms provided by the Planning Department and shall be subject to applicable procedures of DCC Title 22.

FINDING: The Applicants are the owners of the Subject Property and have requested a quasi-judicial Plan Amendment and filed applications for that purpose, together with the request for a Zone Change. No participant to this proceeding objects to this process. It is therefore appropriate to review the Application using the applicable procedures contained in Title 22 of the Deschutes County Code.

Section 18.136.020, Rezoning Standards

The applicant for a quasi-judicial rezoning must establish that the public interest is best served by rezoning the property. Factors to be demonstrated by the applicant are:

A. *That the change conforms with the Comprehensive Plan, and the change is consistent with the plan's introductory statement and goals.*

FINDING: According to the Applicants, the County applies this Code provision by considering whether: (1) the zone change conforms to the Comprehensive Plan; and (2) the change is consistent with the Comprehensive Plan's introduction statement and goals.

With respect to the first factor, the Applicants note that they are also seeking a Plan Amendment, which will change the Comprehensive Plan designation of the Subject Property from Agriculture to Rural Residential Exception Area. If that Plan Amendment is approved, which is addressed in more detail below, the proposed change from the EFU zone to the MUA-10 zone will be consistent with the new Comprehensive Plan designation. No participant to this proceeding disputes that conclusion.

With respect to the second factor, the Staff report goes into detail describing the criteria which the hearings officer has to apply relying on past Hearing Officers decision on a similar application. Powell/Ramsey decision (PA-14-2 / ZC-14-2) and Landholdings Decision (247-16-000317-ZC / 318-PA). The staff report states that "introductory statement and goals are not approval criteria for the proposed plan amendment and zone change." The Hearings Officer adopts the Applicant's statement and the staff report's legal analysis on the standards that apply. The staff report then proceeds to address the relevant requirements.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

B. *That the change in classification for the subject property is consistent with the purpose and intent of the proposed zone classification.*

FINDING: Only the Applicants and Staff offer any evidence or argument with respect to the purpose of the MUA-10 zone. The purpose of the MUA-10 zoning district is stated in DCC 18.32.010 as follows:

The purposes of the Multiple Use Agricultural Zone are to preserve the rural character of various areas of the County while permitting development consistent with that character and with the capacity of the natural resources of the area; to preserve and maintain agricultural lands not suited to fulltime commercial farming for diversified or part-time agricultural uses; to conserve forest lands for forest uses; to conserve open spaces and protect natural and scenic resources; to maintain and improve the quality of the air, water and land resources of the County; to establish standards and procedures for the use of those lands designated unsuitable for intense development by the Comprehensive Plan, and to provide for an orderly and efficient transition from rural to urban land use.

According to the Applicants, the Subject Property is not suited to full-time commercial farming. The MUA-10 zone will instead allow the owners to engage in hobby farming, and the low-density of development allowed by the MUA-10 zone will conserve open spaces and protect natural and scenic resources. As a result, the MUA-10 zoning provides a proper transition zone from city, to rural, to

EFU zoning. Additionally, the staff report finds that the maximum density of the approximately 40.0-acre property is 7 lots, if developed with a cluster development under Title 18. This low density will preserve open space, allow owners to engage in hobby farming, if desired, and preserve natural and scenic resources and maintain or improve the quality of air, water, and land resources. The MUA-10 zoning provides a proper transition zone from the City, to rural zoning, to EFU zoning.

The Staff Report agrees that the change in classification is consistent with the purpose and intent of the MUA10 Zone, and no participant to this proceeding disputes that conclusion. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

C. *That changing the zoning will presently serve the public health, safety and welfare considering the following factors:*

1. *The availability and efficiency of providing necessary public services and facilities.*

FINDING: As noted in the Staff Report, this criterion specifically asks if the Zone Change will *presently* serve public health, safety, and welfare. The Applicants and the Staff Report provided the following as support for why this criterion is met:

- Necessary public facilities and services are available to serve the Subject Property including power and water.
- Transportation access to the Subject Property is available off a Rastovich Road, and the impact of increased traffic on the transportation system is negligible.
- The Subject property receive police services from the Deschutes County Sheriff and fire service from Rural Fire Protection District # 2, which has a fire station two miles from the Subject Property.
- The close proximity of the Subject property to urban development will allow for efficient service provision.
- Prior to development of the properties, the Applicants would be required to comply with the applicable requirements of the Code, including possible land use permit, building permit, and sewage disposal permit processes. Through these development review processes, assurance of adequate public services and facilities will be verified.

Staff concludes and the Hearings Officer finds that there are no known deficiencies in public services or facilities that would negatively impact public health, safety, or welfare. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

2. *The impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.*

FINDING: Only the Applicants and Staff offer any evidence or argument with respect to this criterion. Specifically, the Applicants noted the following:

The MUA-10 zoning is consistent with the specific goals and policies in the comprehensive plan discussed above. The MUA-10 zoning is the same as the zoning of many other properties in the area west and south of the subject property. In addition, the MUA-10 zoning provides a proper transition zone from the City, to rural zoning, to EFU zoning.

The zone change will not impose new impacts on the EFU-zoned land adjacent to the subject property because many of those properties are residential properties, hobby farms, already developed with dwellings, not engaged in commercial farm use, are idle, or are otherwise not suited for farm use due to soil conditions, topography, or ability to make a profit farming.

Some of the properties adjacent and near the subject property are in small, hobby farm use and are receiving farm tax deferral. Tax Lots 1100, 100, 301, and 200 are adjacent to the east and southwest and are in common ownership and part of Rastovich Farm. Most of the Rastovich properties are receiving farm tax deferral and are being used for raising livestock. One of the Rastovich parcels adjacent to the subject property is a nonfarm parcel developed with a nonfarm dwelling. Submitted herewith as Exhibit 12 is a letter from Robert and Colleen Rastovich stating they have no objection to the requested zone change and attesting to the fact that the subject property is not intermingled and is not necessary or useful to them for any farming on the Rastovich parcels.

The adjacent properties to the north and northeast, Tax Lots 101, 102, 1101, are currently receiving farm tax deferral and appear to be used as residential properties with hobby farms. Attached hereto as Exhibit 13 are letters from David Nader, owner of Tax lot 101 adjacent to the north of the subject property and Steve and Keri Sawyer, owners of Tax lot 1101 adjacent to the northeast of the subject property stating they have no objection to the requested zone change and attesting to the fact that the subject property is not intermingled and is not necessary or useful to them for any farming occurring on their parcels. These properties will not suffer new impacts from the proposed zone change because they are hobby farms, already developed with dwellings, not engaged in commercial farm use, and are smaller size than the subject property. The zone change would allow the subject property to be divided into parcels similar size to the adjacent properties to the north and be used for similar hobby farming uses.

As discussed below, the subject property is not agricultural land, is comprised of predominantly Class 7 and 8 soils, and as described by the soil scientist, Mr. Gallagher, the nonproductive soils on the subject property make it not suitable for commercial farming or livestock grazing. The subject property is not land that could be used in conjunction with the adjacent property and any future development of the subject property would be subject to building setbacks.

The Staff Report agrees that the Applicants have demonstrated the impacts on surrounding land use will be consistent with the specific goals and policies contained within the Comprehensive Plan.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

D. *That there has been a change in circumstances since the property was last zoned, or a mistake was made in the zoning of the property in question.*

FINDING: Only the Applicants offer any evidence or argument with respect to this criterion. According to the Applicants, a mistake in zoning was made and the EFU zoning designation on the Subject property was likely based on the best soils data that was available to the County at the time it was originally zoned, during the late 1970's, when the Comprehensive Plan and Map were first adopted. The Applicants also assert that there has been a change in circumstances since that time. Specifically, the Applicants note that there are new data regarding soils on the Subject Property and that the updated soils report shows the Subject Property do not have agricultural soils. The Applicants also assert that the economics of farming and the viability of commercial farm uses in Deschutes County have significantly changed, and farming for a profit has become increasingly difficult. The applicant also notes the encroachment of the urban area to the Subject Property. Although the Hearings Officer agrees with the applicant that the urban area is encroaching on this property, he does not find that this encroachment would be a change in circumstance that should be considered as any such plan change would further create encroachment for other properties.

Staff finds that “[i]t is unclear to staff why the Subject Property was initially zoned EFU. Staff is unaware of any evidence such as soil classification, availability of irrigation, or historic farming, which explains its current zoning.” Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that this Code provision is satisfied.

Deschutes County Comprehensive Plan

Chapter 2, Resource Management

FINDING: Chapter 2 of the Comprehensive Plan relates to Resource Management. Section 2.2 of that Chapter relates specifically to Agricultural Lands. The Applicants and Staff have identified the following goals and policies as relevant to the Application.

Section 2.2 Agricultural Lands

Goal 1, Preserve and maintain agricultural lands and the agricultural industry.

FINDING: According to the Applicants, they are pursuing the Plan Amendment and Zone Change because the Subject Property do not constitute "agricultural lands", and therefore, it is not necessary to preserve or maintain the Subject Property as such. In support of that conclusion, the Applicants rely on a soils report showing the Subject Property consist predominantly (58.5%) of Class 7 and 8 nonagricultural soils. Such soils have severe limitations for agricultural use as well as low soil fertility, shallow and very shallow soils, abundant rock outcrops, low available water capacity, and major management limitations for livestock grazing.

The Staff Report notes the property has 5 acres of water rights. The fact that the property has some water rights and that the soils are only 58% class 7 and 8 makes this decision more difficult. It is

likely that many properties in Deschutes County are used for farming, particularly hobby farming, have worse soil conditions. However, the majority of the soils are predominantly class 7 and 8.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Policy 2.2.2 Exclusive Farm Use sub-zones shall remain as described in the 1992 Farm Study and shown in the table below, unless adequate legal findings for amending the sub-zones are adopted or an individual parcel is rezoned as allowed by Policy 2.2.3.

FINDING: The Applicants have not asked to amend the subzone that applies to the Subject Property. Instead, the Applicants requested a change under Policy 2.2.3 and have provided evidence to support rezoning the Subject Property as MUA-10.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Policy 2.2.3 Allow comprehensive plan and zoning map amendments, including for those that qualify as non-resource land, for individual EFU parcels as allowed by State Statute, Oregon Administrative Rules and this Comprehensive Plan.

FINDING: The Applicants request approval of the Plan Amendment and Zone Change to re-designate the Subject Property from Agricultural to Rural Residential Exception Area and rezone the Subject Property from EFU to MUA-10. The Applicants do not seek an exception to Goal 3 for that purpose, but rather seek to demonstrate that the Subject Property does not meet the state definition of "Agricultural Land" as defined in Statewide Planning Goal 3 (OAR 660-033-0020).

In support of this approach, the Applicants rely in part on the Land Use Board of Appeals' decision in *Wetherell v. Douglas County*, 52 Or LUBA 677 (2006), where LUBA states as follows:

As we explained in DLCD v. Klamath County, 16 Or LUBA 817, 820 (1988), there are two ways a county can justify a decision to allow nonresource use of land previously designated and zoned for farm use or forest uses. One is to take an exception to Goal 3 (Agricultural Lands) and Goal 4 (Forest Lands). The other is to adopt findings which demonstrate the land does not qualify either as forest lands or agricultural lands under the statewide planning goals. When a county pursues the latter option, it must demonstrate that despite the prior resource plan and zoning designation, neither Goal 3 or Goal 4 applies to the property.

The Applicants assert that the facts presented in the Application are sufficiently similar to those in the *Wetherell* decision and in other Deschutes County plan amendment and zone change applications. The Staff Report agrees and concludes the Applicants have the potential to prove the Subject Property is not agricultural land and do not require an exception to Goal 3 under state law.

The opposition letter submitted by Ms. Kesner from 1000 Friends argues that the applicant did not adequately address the agricultural land factors in the rule. This argument will be addressed specifically under OAR 660-033-0020.

Based on the foregoing, I find that the Application is consistent with this portion of the Comprehensive Plan.

Policy 2.2.4 Develop comprehensive policy criteria and code to provide clarity on when and how EFU parcels can be converted to other designations.

FINDING: The Applicants assert this plan policy provides direction to Deschutes County to develop new policies to provide clarity when EFU parcels can be converted to other designations and that the Application is consistent with this policy. The Staff Report also concludes the proposal is consistent with this policy.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Goal 3, Ensure Exclusive Farm Use policies, classifications and codes are consistent with local and emerging agricultural conditions and markets.

Policy 2.2.13 Identify and retain accurately designated agricultural lands.

FINDING: The Applicants assert that this Comprehensive Plan policy requires the County to identify and retain agricultural lands that are accurately designated. The Applicants propose that the Subject Property was not accurately designated as demonstrated by the soil study in the record.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Section 2.5, Water Resources Policies

FINDING: Section 2.5 of Comprehensive Plan Chapter 2 relates specifically to Water Resource Policies. The Applicants and Staff have identified the following goal and policy in that section as relevant to the Application.

Goal 6, Coordinate land use and water policies.

Policy 2.5.24 Ensure water impacts are reviewed and, if necessary, addressed for significant land uses or developments.

FINDING: The Applicants and Staff assert that the Applicants are not required to address water impacts associated with development because they have not proposed a specific development application at this time. Instead, the Applicants will be required to address this criterion during

development of the Subject Property, which would be reviewed under any necessary land use process for the site.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Section 2.7, Open Spaces, Scenic Views and Sites

FINDING: Section 2.7 of Comprehensive Plan Chapter 2 relates specifically to Open Spaces, Scenic Views and Sites. The Applicants and Staff have identified the following goal and policies in that section as relevant to the Application.

Goal 1, Coordinate with property owners to ensure protection of significant open spaces and scenic view and sites.

Policy 2.7.3 Support efforts to identify and protect significant open spaces and visually important areas including those that provide a visual separation between communities such as the open spaces of Bend and Redmond or lands that are visually prominent.

Policy 2.7.5 Encourage new development to be sensitive to scenic views and sites.

FINDING: The Applicants assert these policies are fulfilled by the County's Goal 5 program. The County protects scenic views and sites along major rivers and roadways by imposing Landscape Management (LM) Combining Zones to adjacent properties. Because there is no LM combining zone applicable to the Subject Property, the Subject Property is not identified as a Goal 5 resource, and no new development is proposed, the Applicants argue there is no applicable regulation that requires the Subject Property to be protected as open space or for scenic views.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Chapter 3, Rural Growth

Section 3.2, Rural Development

FINDING: Chapter 3 of the Comprehensive Plan relates to Rural Growth. Within that chapter, Section 3.2 relates specifically to Rural Development. The Applicants and Staff have identified the following language in that section as relevant to the Application.

Growth Potential

As of 2010, the strong population growth of the last decade in Deschutes County was thought to have leveled off due to the economic recession. Besides flatter growth patterns, changes to State regulations opened up additional opportunities for new rural

development. The following list identifies general categories for creating new residential lots, all of which are subject to specific State regulations.

- **2009 legislation permits a new analysis of agricultural designated lands**
- **Exceptions can be granted from the Statewide Planning Goals**
- **Some farm lands with poor soils that are adjacent to rural residential uses can be rezoned as rural residential**

FINDING: This section of the Comprehensive Plan does not contain Goals or Policies but does provide the guidance above. In response to this section, the Applicant provided the following response in the burden of proof:

The above part of the plan is not a plan policy and is not an applicable approval criterion but rather an explanation of how the County calculated expected growth. As shown above, the County's Comprehensive Plan provisions anticipate the need for additional rural residential lots as the region continues to grow. This includes providing a mechanism to rezone farm lands with poor soils to a rural residential zoning designation. While this rezone application does not include the creation of new residential lots, the applicant has demonstrated the subject property is comprised of poor soils that are adjacent to rural residential, MUA-10 zone, uses to the west as well as near rural residential, RR-10 zone and MUA-10 zone, uses to the south and is near (within 1 mile) of the City limits of Bend to the west and even closer to the Stevens Road Tract, which will be brought inside the UGB pursuant to HB 3318.

Rezoning the subject property to MUA-10 is consistent with this criterion, as it will provide for an orderly and efficient transition from the Bend Urban Growth Boundary to rural and agricultural lands. Additionally, it will link the non-productive lands of the subject property with existing residential development and street systems to the west, furthering the creation a buffer of MUA-10 zoned land along the City's eastern boundary where the quality of soils are poor and the land is not conducive for commercial agriculture.

Staff noted that the MUA-10 zone is a rural residential zone and as discussed in the Basic Findings section, there are several nearby properties to the north and northeast that are zoned MUA-10 as well as nearby EFU zoned properties developed with residential uses. Staff noted this policy references the soil quality, which staff has discussed above. Staff agreed with the Applicant's response and finds the proposal complies with this policy.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Section 3.3, Rural Housing

Rural Residential Exception Areas

In Deschutes County most rural lands are designated for farms, forests or other resources and protected as described in the Resource Management chapter of this Plan. The majority of the land not recognized as resource lands or Unincorporated Community is designated

Rural Residential Exception Area. The County had to follow a process under Statewide Goal 2 to explain why these lands did not warrant farm or forest zoning. The major determinant was that many of these lands were platted for residential use before Statewide Planning was adopted.

In 1979 the County assessed that there were over 17,000 undeveloped Rural Residential Exception Area parcels, enough to meet anticipated demand for new rural housing. As of 2010 any new Rural Residential Exception Areas need to be justified through initiating a nonresource plan amendment and zone change by demonstrating the property does not meet the definition of agricultural or forest land, or taking exceptions to farm, forest, public facilities and services and urbanization regulations, and follow guidelines set out in the OAR.

FINDING: Prior Hearings Officer's decisions have found that Section 3.3 is not a plan policy or directive. PA-11-17/ZC-11-2; 247-16-000317-ZC/318-PA; 247-18-000485-PA/486-ZC. I hereby adopt the findings in the staff report for this criterion.

Based on the above, the Hearings Officer agrees with the past Deschutes County Hearings Officer interpretations and with the staff interpretation and finds that the above language is not a policy and does not require an exception to the applicable Statewide Planning Goal 3. Staff finds the proposed RREA plan designation is the appropriate plan designation to apply to the Subject Property. In the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

Section 3.7, Transportation

FINDING: Section 3.7 of Comprehensive Plan Chapter 3 relates specifically to Transportation. The Applicants and Staff have identified the following goal and policy in that section as relevant to the Application.

Appendix C – Transportation System Plan ARTERIAL AND COLLECTOR ROAD PLAN

...

Goal 4. Establish a transportation system, supportive of a geographically distributed and diversified economic base, while also providing a safe, efficient network for residential mobility and tourism.

...

Policy 4.4 Deschutes County shall consider roadway function, classification and capacity as criteria for plan map amendments and zone changes. This shall assure that proposed land uses do not exceed the planned capacity of the transportation system.

FINDING: The Applicants and the Staff Report assert this policy advises the County to consider the roadway function, classification and capacity as criteria for Comprehensive Plan amendments and zone changes. Compliance with OAR 660-012, also known as the Transportation Planning Rule (TPR),

is described below in subsequent findings, and the Applicants and Staff assert that such compliance is sufficient to demonstrate compliance with these transportation goals and policies.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this portion of the Comprehensive Plan.

OREGON ADMINISTRATIVE RULES CHAPTER 660, LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FINDING: The Applicants and the Staff Report identify several administrative rules as potentially applicable to the Application.

Division 6, Goal 4 – Forest Lands

OAR 660-006-0005

- (7) “Forest lands” as defined in Goal 4 are those lands acknowledged as forest lands, or, in the case of a plan amendment, forest lands shall include:**
- (a) Lands that are suitable for commercial forest uses, including adjacent or nearby lands which are necessary to permit forest operations or practices; and**
 - (b) Other forested lands that maintain soil, air, water and fish and wildlife resources.**

FINDING: The Applicants and the Staff Report assert that the Subject Property does not appear to qualify as forest land and, therefore, the administrative rules relating to forest land are not applicable. The Subject Property is not zoned for forest lands, nor are any of the Subject Property within a 3-mile radius of forest lands. The Subject Property does not contain merchantable tree species and there is no evidence in the record that the Subject Property has been employed for forestry uses historically.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with these administrative rules.

Division 33 - Agricultural Lands & Statewide Planning Goal 3 - Agricultural Lands;

OAR 660-015-0000(3)

To preserve and maintain agricultural lands.

Agricultural lands shall be preserved and maintained for farm use, consistent with existing and future needs for agricultural products, forest and open space and with the state's agricultural land use policy expressed in ORS 215.243 and 215.700.

FINDING: Goal 3 continues on to define “Agricultural Land,” which is repeated in OAR 660-033-0020(1). Staff makes findings on this topic below and incorporates those findings herein by reference.

OAR 660-033-0020, Definitions

For purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals, and OAR Chapter 660 shall apply. In addition, the following definitions shall apply:

(1)(a) "Agricultural Land" as defined in Goal 3 includes:

(A) Lands classified by the U.S. Natural Resources Conservation Service (NRCS) as predominantly Class I-IV soils in Western Oregon and I-VI soils in Eastern Oregon];

FINDING: The Applicant’s basis for not requesting an exception to Goal 3 is based on the premise that the Subject Property is not defined as “Agricultural Land.” In support, the Applicant offers the following response as included in the submitted burden of proof statement:

ORS 215.211 grants a property owner the right to rely on more detailed information that provided by the NRCS Web Soil Survey of the NRCS to “assist the county to make a better determination of whether land qualifies as agricultural land.” Statewide Goal 3, discussed above, and OAR 660-033-0030(5) also allow the County to rely on the more detailed and accurate information by a higher order soil survey rather than information provided by the NRCS. The law requires that this survey use the NRCS soil classification system in conducting the survey, making it clear that the point of the survey is to provide better soil classification information than provided by the NRCS for use in making a proper decision whether land is or is not “Agricultural Land.” The Subject Property is not properly classified as Agricultural Land and does not merit protection under Goal 3. The soils are predominately Class 7 and 8, as demonstrated by the site-specific soils assessment conducted by Mr. Gallagher, a certified soils scientist. State law, OAR 660-033-0030, allows the County to rely on for more accurate soils information, such as Mr. Gallagher’s soil assessment. Mr. Gallagher found that approximately 58.5 percent of the soils on the Subject Property (approximately 23.4 acres) are Land Capability Class 7 and 8 soils that have severe limitations for farm use. He also found the site to have low soil fertility, shallow and very shallow soils, abundant rock outcrops, rock fragments on the soil surface, restrictive for livestock accessibility, and low available water holding capacity, all of which are considerations for the determination for suitability for farm use.

Because the Subject Property is comprised predominantly of Class 7 and 8 soils, the property does not meet the definition of “Agricultural Land” under OAR 660-033-020(1)(a)(A), listed above as having predominantly Class I-VI soils.

Ms. Macbeth from COLW argued that applicant misconstrues this rule in its burden of proof statement. Ms. Macbeth finds fault with the applicant referring to OAR 660-033-0030 to provide “more accurate soils information.” She argues that a “more detailed study is not more accurate”. Page 2, February 28, 2023 testimony. Ms. Macbeth argues that the applicant’s soil study cannot “change or replace the NRCS data...”

The applicants responded to this testimony in its February 28, 2023, submittal.

Goal 3 specifically allows local governments to rely on more detailed soils data than provided by the NRCS. It says:

"More detailed soil data to define agricultural land may be utilized by local governments if such data permits achievement of this goal."

The purpose of Goal 3 is to preserve agricultural land. It is not intended to preserve land that does not meet the definition of "agricultural land."

The applicants then argues that ORS 215.211(1) the legislature specifically provided the rights for applicants to provide more detailed soils information. The applicant argues that the rules support this finding:

DLCD understands that the more detailed soils surveys allowed by Statewide Goal 3 and ORS 197.211 may be used in lieu of NRCS soils surveys. On its website, DLCD explains:

*"Soil mapping done by the USDA Natural Resources Conservation Service (NRCS) is the most common tool used for identifying the types of soils in an area. The NRCS provides a rating for each soil type that indicates how suited the soil is for agriculture. ****

*NRCS does not have the ability to map each parcel of land, so it looks to larger areas. This means that the map may miss a pocket of different soils. DLCD has a process landowners can use to challenge NRCS soils information on a specific property. Owners who believe soil on their property has been incorrectly mapped may retain a 'professional soil classifier ... certified by and in good standing with the Soil Science Society of America ' *** through a process administered by DLCD. This soils professional can conduct an assessment that may result in a change of the allowable uses for the property."*

I find that the applicant's argument is more convincing. That statutes and the rules and the DLCD's interpretation of their rules allow applicants to submit more detailed soils information which can be used to determine whether the property meets the definition of "agricultural lands." See following sections.

Staff reviewed the soil study provided by Andy Gallagher of Red Hill Soils (dated September 26, 2022) and agree with the Applicant's representation of the data for the Subject Property. Staff found that based on the submitted soil study and the above OAR definition, that the Subject Property is comprised predominantly of Class 7 and 8 soils and, therefore, does not constitute "Agricultural Lands" as defined in OAR 660-033-0020(1)(a)(A) above.

Based on the foregoing, I find that the Subject Property should not be considered agricultural land under this part of the administrative rules.

(B) Land in other soil classes that is suitable for farm use as defined in ORS 215.203(2)(a), taking into consideration soil fertility; suitability for grazing;

climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

FINDING: According to the Applicants, this part of the definition of "Agricultural Land" requires the County to consider whether the Class 7 and 8 soils found on the Subject Property are suitable for farm use despite their Class 7 and 8 soil classification. The Applicants rely on a decision by the Oregon Supreme Court that determined the term "farm use" as used in this rule and Goal 3 means the current employment of land for the primary purpose of obtaining a profit in money through specific farming-related endeavors.¹ Applying that definition, the Applicants describe various limitations on the ability of the Subject Property to support farm uses, including, among other factors, a limited water rights and low soil fertility. Applicant argues that these factors demonstrate that the property is not agricultural land.

Mr. Kesner from 1000 Friends of Oregon argues in its February 28th submittal that:

The applicant's analysis as to whether the property is agricultural land as defined by DC 18.04.030 and OAR 660-033-0020(1)(a) is faulty in several ways. First, the applicant fails to demonstrate that the property is not suitable for any "farm use" as defined under ORS 215.203(2)(a). See OAR 660-033-0020(1)(a)(B) (agricultural land includes "[l]and in other soil [soil] classes that is suitable for farm use as defined in ORS 215.203(2)(a)). "Farm use" is defined as "current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof." ORS 215.203(2)(a). The applicant has only addressed capacity for raising crops and livestock, and has not considered the capability of the land to support other activities classified as a "farm use."

Mr. Kesner makes an interesting argument here that the applicant and the County must consider other farm uses such poultry, fur-bearing animals or honeybees etc. in making the determination of whether the property is agricultural land. Mr. Kesner would require a review of the general definition of "farm use" found in the statute for the determination of whether the property is "agricultural land."

I find that Mr. Kesner's interpretation is not persuasive. The legislature would not have adopted ORS 215.211 and allowed a county to consider more detailed soils information "to make a better determination of whether land qualifies as agricultural land..." if they also had to consider whether the applicants could raise bees etc.. The rules also specifically allow for the consideration of soil types in determining "agricultural land". This statute and the rules implementing it all lead to my conclusion that this additional analysis of whether the property must meet the broad definition of agricultural in ORS 205.203(2)(a) is not required.

¹ *Wetherell v. Douglas County*, 342 Or 666, 160 P3d 614 (2007).

Mr. Kesner also argues that since the property has a significant amount of class 3-6 soils and that there are many farms in Deschutes County that operate with much smaller acreage than the Subject Property. Mr Kesner argues that this demonstrates that these small farms are “an accepted and predominant farm practice in Deschutes County.” This is also an interesting argument. However, under the statute and administrative rules the County is examining whether this property is “agricultural land” based on its soils and other factors. I find that based on the above-described law as applied to soils types and the other factors described in the staff report, that the property is not property classified as “agricultural land.”

Staff agrees with the Applicant that many of the factors surrounding the Subject Property – such as nearby residential and non-agricultural related land uses, high-cost of dryland grazing, soil fertility, and lack of availability of water rights result in an extremely low possibility of farming on the Subject Property.

Based on the foregoing, I find that the Subject Property should not be considered agricultural land and is not suitable for farming under this part of the administrative rules.

(C) *Land that is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands.*

FINDING: The staff report found that the Applicant provided an analysis of land uses and agricultural operations surrounding the Subject Property. The Applicant analysis determined that barriers for the Subject Property to engage with these properties in a farm use include: poor quality soils, lack of irrigation, proximity and significant topography changes.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Subject Property is not necessary to permit farm practices to be undertaken on adjacent or nearby agricultural land under this part of the administrative rules.

(b) *Land in capability classes other than I-IV/I-VI that is adjacent to or intermingled with lands in capability classes I-IV/I-VI within a farm unit, shall be inventoried as agricultural lands even though this land may not be cropped or grazed;*

FINDING: Staff report agrees with the Applicant’s findings that this property is not part of a farm unit with the surrounding agricultural lands.

The staff report include the applicant’s response to arguments from 1000 Friends as to the Farm Unit rule.

Goal 3 applies a predominant soil type test to determine if a property is "agricultural land." If a majority of the soils are Class 1-6 in Central or Eastern Oregon, it must be classified "agricultural land." 1000 Friends position is that this is a 100% Class 7-8 soils test rather than a 51% Class 7 and 8 soils test because the presence of any Class 1-6 soil requires the County to identify the entire property as "agricultural land." Case law indicates that the Class 1-6 soil test applies to a subject

property proposed for a non-agricultural plan designation while the farm unit rule looks out beyond the boundaries of the subject property to consider how the subject property relates to lands in active farming in the area that was once a part of the area proposed for rezoning. It is not a test which requires that 100% of soils on a subject property be Class 1-6.

I find that the applicant's argument is more persuasive. The law allows for land that is not predominantly class 1-6 soils to not be considered agricultural lands. As such, it makes sense that the test under the farm unit rule would not require property to be 100% class 7-8 soils to meet this test. The applicants also argue:

The farm unit rule is written to preserve large farming operations in a block. It does this by preventing property owners from dividing farmland into smaller properties that, alone, do not meet the definition of "agricultural land." The subject property is not formerly part of a larger area of land that is or was used for farming operations and was then divided to isolate poor soils so that land could be removed from EFU zoning. As demonstrated by the historic use patterns and soils reports, it does not have poor soils adjacent to or intermingled with good soils within a farm unit. The subject property is not in farm use and has not been in farm use of any kind. It has no history of commercial farm use and contains soils that make the property generally unsuitable for farm use as the term is defined by State law. It is not a part of a farm unit with other land.

I agree with the applicant that the property was not formerly part of a larger area of land that was used for farming operations. As such, I find that the application complies with this part of the administrative rules.

OAR 660-033-0030, Identifying Agricultural Land

- (1) All land defined as "agricultural land" in OAR 660-033-0020(1) shall be inventoried as agricultural land.**
- (2) When a jurisdiction determines the predominant soil capability classification of a lot or parcel it need only look to the land within the lot or parcel being inventoried. However, whether land is "suitable for farm use" requires an inquiry into factors beyond the mere identification of scientific soil classifications. The factors are listed in the definition of agricultural land set forth at OAR 660-033-0020(1)(a)(B). This inquiry requires the consideration of conditions existing outside the lot or parcel being inventoried. Even if a lot or parcel is not predominantly Class I-IV soils or suitable for farm use, Goal 3 nonetheless defines as agricultural "lands in other classes which are necessary to permit farm practices to be undertaken on adjacent or nearby lands". A determination that a lot or parcel is not agricultural land requires findings supported by substantial evidence that addresses each of the factors set forth in 660-033-0020(1).**

FINDING: The Applicant addressed the factors in OAR 660-033-0020(1) above. I find that the properties are not "agricultural land," as referenced in OAR 660-033-0030(1) above and contain barriers for farm use including poor quality soils and lack of irrigation as described in the soil study produced by Mr. Gallagher. I also find that the Applicant has provided adequate responses

indicating the Subject Property is not necessary to permit farm practices undertaken on adjacent and nearby lands. Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the administrative rules do not require the Subject Property to be inventoried as agricultural land.

- (3) *Goal 3 attaches no significance to the ownership of a lot or parcel when determining whether it is agricultural land. Nearby or adjacent land, regardless of ownership, shall be examined to the extent that a lot or parcel is either "suitable for farm use" or "necessary to permit farm practices to be undertaken on adjacent or nearby lands" outside the lot or parcel.***

FINDING: As concluded in other findings above, the Subject Property is not suitable for farm use and are not necessary to permit farm practices to be undertaken on adjacent or nearby lands. The ownership of the Subject Property is therefore not being used as a factor to determine whether the Subject Property is agricultural land.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this part of the administrative rules.

- (5)(a) *More detailed data on soil capability than is contained in the USDA Natural Resources Conservation Service (NRCS) soil maps and soil surveys may be used to define agricultural land. However, the more detailed soils data shall be related to the NRCS land capability classification system.***
- (b) *If a person concludes that more detailed soils information than that contained in the Web Soil Survey operated by the NRCS as of January 2, 2012, would assist a county to make a better determination of whether land qualifies as agricultural land, the person must request that the department arrange for an assessment of the capability of the land by a professional soil classifier who is chosen by the person, using the process described in OAR 660-033-0045.***

FINDING: Mr. Gallagher's soil study concludes that the Subject Property contains 58 percent Class 7 and 8 soils. The submitted soil study prepared by Mr. Gallagher is accompanied in the submitted application materials by correspondence from the Department of Land Conservation and Development (DLCD). The DLCD correspondence confirms that Mr. Gallagher's prepared soil study is complete and consistent with the reporting requirements for agricultural soils capability as dictated by DLCD. Based on Mr. Gallagher's qualifications as a certified Soil Scientist and Soil Classifier, the staff found the submitted soil study to be definitive and accurate in terms of site-specific soil information for the Subject Property.

I find that the Applicants have elected to provide a more detailed agricultural soil assessment, conducted by Mr. Gallagher, a Certified Professional Soil Scientist approved by the Department of Land Conservation and Development. The analysis under section OAR 660-033-0020(1)(a), above, also applies here to address the comments by COWL. Based on the undisputed facts in that report, the Subject Property do not qualify as "agricultural land."

- (c) ***This section and OAR 660-033-0045 apply to:***
 (A) ***A change to the designation of land planned and zoned for exclusive farm use, forest use or mixed farm-forest use to a non-resource plan designation and zone on the basis that such land is not agricultural land; and***

FINDING: I find that this administrative rule does not establish a particular standard and simply confirms when this section of the administrative rules applies.

- (d) ***This section and OAR 660-033-0045 implement ORS 215.211, effective on October 1, 2011. After this date, only those soils assessments certified by the department under section (9) of this rule may be considered by local governments in land use proceedings described in subsection (c) of this section. However, a local government may consider soils assessments that have been completed and submitted prior to October 1, 2011.***

FINDING: The Applicant submitted a soil study by Mr. Gallagher of Red Hill Soils dated September 26, 2022. The soils study was submitted following the ORS 215.211 effective date. The Applicant submitted to the record an acknowledgement from Hilary Foote, Farm/Forest Specialist with the DLCD, dated October 27, 2022, that the soil study is complete and consistent with DLCD's reporting requirements. Staff found this criterion to be met based on the submitted soil study and confirmation of completeness and consistency from DLCD

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application is consistent with this part of the administrative rules.

DIVISION 12, TRANSPORTATION PLANNING

OAR 660-012-0060 Plan and Land use Regulation Amendments

- (1) ***If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:***
- (a) ***Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);***
 - (b) ***Change standards implementing a functional classification system; or***
 - (c) ***Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand***

management. This reduction may diminish or completely eliminate the significant effect of the amendment.

- (A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;***
- (B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or***
- (C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.***

FINDING: This above language is applicable to the proposal because it involves an amendment to an acknowledged comprehensive plan. The proposed plan amendment would change the designation of the Subject Property from AG to RREA and change the zone from EFU to MUA-10. The Applicant is not proposing any land use development of the properties at this time.

As referenced in the staff report, the Senior Transportation Planner for Deschutes County requested additional information to clarify the conclusions provided in the traffic study. The Applicant submitted an updated report from Joe Bessman, PE of Transight Consulting, LLC dated January 3, 2023, to address trip distribution, traffic volumes, and Transportation Planning Rule (TPR) criteria. The updates were reviewed by the Senior Transportation Planner who indicated his concerns were satisfied with the amended report. Mr. Bessman includes the following conclusions in the traffic impact analysis dated January 3, 2023:

- *Rezoning of the 40-acre property from EFU-TRB to MUA provides nearly identical potential impacts as the existing zoning, with the potential for a reduction in weekday daily and weekday p.m. peak hour trips, even with inclusion of the conditionally allowed uses within the MUA zoning.*
- *With a comparative assessment of outright allowable uses the rezone reduces the trip generation of the property in comparison to what could be built within the EFU zoning.*
- *The lack of a change in trip generation potential trip generation potential between reasonable build-out scenarios does not meet Deschutes County, ODOT, or City of Bend thresholds of significance at any nearby locations.*
- *Comparison of the maximum outright development in the MUA zoning to the single existing home would only show seven additional weekday p.m. peak hour trips and 66 additional weekday daily trips.*
- *Operational analysis shows that the Stevens Road and Ward Road corridors remain within Deschutes County's performance thresholds using either the adopted 2030 TSP or values within the pending 2040 TSP Update.*

Based on the County Senior Transportation Planner's comments and the traffic study from Transight Consulting, LLC, staff found compliance with the Transportation Planning Rule had been effectively demonstrated. Based on the revised traffic study, staff believed that the proposed plan amendment and zone change would be consistent with the identified function, capacity, and performance standards of the County's transportation facilities in the area.

Based on the foregoing, and in the absence of any countervailing evidence or argument, I find that the Application satisfies this administrative rule.

DIVISION 15, STATEWIDE PLANNING GOALS AND GUIDELINES

OAR 660-015, Division 15, Statewide Planning Goals and Guidelines

FINDING: Division 15 of OAR chapter 660 sets forth the Statewide Planning Goals and Guidelines, with which all comprehensive plan amendments must demonstrate compliance. The Applicants assert the Application is consistent with all applicable Goals and Guidelines, which no participant to this proceeding disputes. In light of the foregoing, and in the absence of any counter evidence or argument, I adopt the Applicants' position and find that the Plan Amendment and Zone Change are consistent with the applicable Goals and Guidelines as follows:

“Goal 1, Citizen Involvement. Deschutes County will provide notice of the application to the public through mailed notice to affected property owners and by requiring the Applicants to post a "proposed land use action sign" on the Subject Property. Notice of the Hearings held regarding this application was placed in the Bend Bulletin. A minimum of two public hearings will be held to consider the Application.

Goal 2, Land Use Planning. Goals, policies and processes related to zone change applications are included in the Deschutes County Comprehensive Plan and Titles 18 and 23 of the Deschutes County Code. The outcome of the Application will be based on findings of fact and conclusions of law related to the applicable provisions of those laws as required by Goal 2.

Goal 3, Agricultural Lands. The Applicants have shown that the property is not agricultural land because it consists predominantly of Class 7 and 8 soils that are not suitable for farm use.

Goal 4, Forest Lands. Goal 4 is not applicable because the Subject Property does not include any lands or soils that are zoned for, or that support, forest uses.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces. The subject property does not contain any inventoried Goal 5 resources.

Goal 6, Air, Water, and Land Resources Quality. The approval of this Application will not impact the quality of the air, water, and land resources of the County. Any future development of the Subject Property will be subject to applicable local, state, and federal regulations that protect these resources.

Goal 7, Areas Subject to Natural Disasters and Hazards. According to the Deschutes County DIAL property information and Interactive Map, the entirety of Deschutes County, including the Subject Property, is located in a Wildfire Hazard Area. The Subject Property is also located in Rural Fire Protection District #2. Rezoning the property to MUA-10 does not change the Wildfire Hazard

Area designation. Any future development of the Subject Property will need to demonstrate compliance with any fire protection regulations and requirements of Deschutes County.

Goal 8, Recreational Needs. *This goal is not applicable because no development is proposed and the Subject Property is not planned to meet the recreational needs of Deschutes County. Therefore, the proposed rezone will not impact the recreational needs of Deschutes County.*

Goal 9, Economy of the State. *This goal is not applicable because the Subject Property is not designated as Goal 9 economic development land. In addition, the approval of this application will not adversely affect economic activities of the state or area.*

Goal 10, Housing. *The County's comprehensive plan Goal 10 analysis anticipates that farm properties with poor soils, like the Subject Property, will be converted from EFU to MUA-10 or RR-10 zoning and that these lands will help meet the need for rural housing. Approval of this Application, therefore, is consistent with Goal 10 as implemented by the acknowledged Deschutes County Comprehensive Plan.*

Goal 11, Public Facilities and Services. *The approval of this Application will have no adverse impact on the provision of public facilities and services to the Subject Property. Pacific Power has confirmed that it has the capacity to serve the Subject Property and the proposal will not result in the extension of urban services to rural areas.*

Goal 12, Transportation. *This application complies with the Transportation System Planning Rule, OAR 660-012-0060, the rule that implements Goal 12. Compliance with that rule also demonstrates compliance with Goal 12.*

Goal 13, Energy Conservation. *The approval of this application does not impede energy conservation. The Subject Property is located within 1 mile from the city limits of Bend. If the property is developed with additional residential dwellings in the future, providing homes in this location as opposed to more remote rural locations will conserve energy needed for residents to travel to work, shopping and other essential services provided in the City of Bend.*

Goal 14, Urbanization. *Staff found that this goal is not applicable because the Applicants' proposal does not involve property within an urban growth boundary and does not involve the urbanization of rural land. The MUA-10 zone is an acknowledged rural residential zoning district that limits the intensity and density of developments to rural levels. The compliance of this zone with Goal 14 was recently acknowledged when the County amended its Comprehensive Plan. The Comprehensive Plan recognizes the fact that the MUA-10 and RR zones are the zones that will be applied to lands designated Rural Residential Exception Areas.*

Mr. Kesner, 1000 Friends of Oregon, argues that the application does not adequately consider this goal or seek an exception. February 28, 2023, submittal. At the hearing, the applicant testified that the MUA-10 zone has been acknowledged to be in compliance with Goal 14. The staff concurred with that decision.

I find that this Goal is not applicable for the reasons above.

Goals 15 through 19. *These goals do not apply to land in Central Oregon."*

IV. CONCLUSIONS

Based on the foregoing findings, I find the Applicants have met their burden of proof with respect to the standards for approving the requested Plan Amendment and Zone Change. I therefore recommend to the County Board of Commissioners that the Application be APPROVED.

Dated this 17th Day of March, 2023

Alan A. Rappleyea

Alan A. Rappleyea
Deschutes County Hearings Officer



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 16, 2023

SUBJECT: Deliberations: Remand of LBNW LLC Plan Amendment and Zone Change application 247-21-000881-PA, 882-ZC (247-23-000398-A)

RECOMMENDED MOTION:

The Board will deliberate on the proposed Plan Amendment and Zone Change request.

BACKGROUND AND POLICY IMPLICATIONS:

The Board will deliberate in consideration of a remand decision of the Oregon Land Use Board of Appeals regarding a Plan Amendment and Zone Change application proposed by LBNW LLC and originally approved by the Board under files 247-21-000881-PA, 882-ZC. The full record is located on the project webpage: <https://www.deschutes.org/cd/page/247-23-000398-luba-remand-lbnw-llc-comprehensive-plan-amendment-and-zone-change>

The 120-day deadline for the Board to render a decision on this matter is September 14, 2023.

BUDGET IMPACTS:

None

ATTENDANCE:

Tarik Rawlings, Senior Transportation Planner



COMMUNITY DEVELOPMENT

MEMORANDUM

TO: Deschutes County Board of Commissioners (Board)

FROM: Tarik Rawlings, Senior Transportation Planner

DATE: August 9, 2023

SUBJECT: Deliberations – LBNW LLC Plan Amendment/Zone Change Remand

On August 16, 2023, the Board of Commissioners (Board) will hold a *limited de novo* public hearing held to consider a remanded decision of the Oregon Land Use Board of Appeals (LUBA) regarding a Plan Amendment and Zone Change application proposed by LBNW LLC (Applicant). The record associated with this remanded review is located on the project webpage¹.

I. BACKGROUND

On September 30, 2021, an application was filed for a Plan Amendment and Zone change application for a 19.12-acre property located at 65301 N Hwy 97, Bend (Taxlot ID 1612230000305), 65315 Hwy 97, Bend (Taxlot ID 1612230000500), and 65305 Hwy 97, Bend (Taxlot ID 1612230000301) approximately 4.5 miles south of Redmond and approximately 4.25 miles north of Bend. The applicant is requesting to rezone and re-designate the property from Agriculture/Exclusive Farm Use - Tumalo/Redmond/Bend subzone (EFU-TRB) to Rural Industrial (RI).

The Deschutes County Hearings Officer issued a decision recommending approval of the application on July 12, 2022. The second hearing, as required by the County procedures ordinance, was held before the Board on September 7, 2022. The Board then adopted Ordinance 2022-011 on December 14, 2022 approving the application with conditions.

Central Oregon Landwatch appealed the county decision to LUBA. On April 24, 2023 LUBA issued its Final Opinion and Order remanding the decision to the County for further findings and conclusions of law. On May 17, 2023, the Applicant initiated remand proceedings under local file no. 247-23-000398-A. A work session was held before the Board on June 26, 2023. The final day on which the County must issue a final decision on this application is September 14, 2023.

II. BOARD DELIBERATIONS

¹ <https://www.deschutes.org/cd/page/247-23-000398-luba-remand-lbnw-llc-comprehensive-plan-amendment-and-zone-change>

On August 16, 2023, the Board will deliberate on the proposed request. If the Board finds that additional deliberations are necessary, the Board may schedule a future date for continued deliberations. This would, however, potentially conflict with the state-mandated 120-day clock, the deadline of which is September 14, 2023. If the Board finds no additional deliberations are necessary, the Board may then vote on the proposal.

The record is available for inspection at the Planning Division and at the following link: <https://www.deschutes.org/cd/page/247-23-000398-luba-remand-lbnw-llc-comprehensive-plan-amendment-and-zone-change>

Board Decision Matrix

A more thorough review and discussion of the subject proposal's compliance with the applicable approval criteria and issues is provided in Attachment 1 - Board Decision Matrix, prepared in conjunction with this deliberation memorandum.

III. NEXT STEPS

If the Board determines that additional deliberations are necessary, staff will work with the Board to schedule a future meeting for continued deliberations. As mentioned previously this would potentially conflict with the state-mandated 120-day clock, the deadline of which is September 14, 2023. If the Board concludes their deliberations during the August 16, 2023 meeting, the Board may then vote on whether to approve the proposal. If the Board renders a vote during the August 16, 2023 meeting, staff will intends to come back to the Board for a 1st reading of the Ordinance on Wednesday August 30th, 2023 and a 2nd reading of the Ordinance on Wednesday September 13th, 2023.

ATTACHMENTS:

1. Board Decision Matrix

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
1	<p><u>Does LUBA’s remand require the County to conduct an analysis beyond considering the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties?</u></p>	<ul style="list-style-type: none">The Applicant argues that the ESEE analysis should not consider issues beyond the enumerated economic, social, environmental, and energy consequences (<i>Applicant Final Legal Argument pg. 3</i>)	<ul style="list-style-type: none">The Opponent argues that applying Goal 5 pursuant to OAR 660-023-0250(3) requires a “broad inquiry” into impacts on inventoried Goal 5 resources of a decision to allow, limit, or prohibit various conflicting uses (<i>Opponent New Evidence and Testimony, pg. 2</i>)Staff notes that this identified issue really considers the scope of LUBA’s remand, asking whether a “broad inquiry” requires an ESEE to consider issues beyond economic, social, environmental and energy consequences	<p>Does the Board agree with the Applicant’s testimony suggesting that LUBA’s remand does not require more than an analysis considering the ESEE consequences of allowing uses under the RI Zone?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may find that the proposal <u>does not</u> require analysis beyond the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties and move onto the next matrix issue.</p> <p>If no, the Board may find that the proposal <u>does</u> require analysis beyond the economic, social, environmental, and energy consequences of allowing uses under the RI Zone (that differ from the uses currently allowed under EFU Zoning) on the subject properties and move onto the next matrix issue.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
2	<u>Is the County required to amend or modify its Goal 5 scenic view inventory under OAR 660-023-0030 or may the County rely on the existing inventory set forth in the Comprehensive Plan?</u>	<ul style="list-style-type: none">The Applicant argues that nothing in LUBA’s remand decision suggests or requires the County to amend or modify its long-standing Goal 5 scenic view inventory. The Applicant’s understanding is that LUBA’s decision relied on the County’s existing Goal 5 program to conclude that uses allowed under the RI Zone could be conflicting uses (<i>Applicant Final Legal Argument pg. 3-4</i>)The Applicant further provided draft findings responding to OAR 660-023-0030 consistent with the understanding that the County was continuing to relying on its existing Goal 5 scenic view inventory currently set forth in the Comprehensive Plan (<i>Applicant July 19, 2023 submittal</i>)	<ul style="list-style-type: none">The Opponent. argues that the County needs to address OAR 660-023-0030 (Inventory Process) to locate and evaluate resources and develop programs to protect such resources (<i>Opponent New Evidence and Testimony, pg. 2</i>)Staff notes there are four steps as part of a Goal 5 inventory process: (a) Collect information about Goal 5 resources; (b) Determine the adequacy of the information; (c) Determine the significance of resource sites; and (d) Adopt a list of significant resource sites.	<p>Does the Board agree with the Applicant’s testimony suggesting that the County should continue relying on the existing Goal 5 scenic view inventory set forth in the Comprehensive Plan?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings responding to OAR 660-023-0030 relying on the existing Goal 5 inventory of scenic view resources set forth in the Comprehensive Plan and move onto the next matrix issue.</p> <p>If no, the Board may direct staff to amend or modify the established Goal 5 scenic view inventory in the Comprehensive Plan and then proceed with conducting a new ESEE analysis if the amended or modified inventory determines that there are still significant Goal 5 scenic view resources on the subject properties.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
3	<u>Are the conflicting uses identified pursuant to OAR 660-023-0040(2) those uses allowed under the RI Zone that are not allowed under the EFU Zone?</u>	<ul style="list-style-type: none"> Applicant argues that LUBA has already identified the conflicting uses as those uses allowed under the RI Zone on the subject properties that are not otherwise allowed under the current EFU zoning such that no further identification of conflicting uses need be made pursuant to OAR 660-023-0040(2). (<i>Applicant Final Legal Argument pg. 5</i>) Staff notes that OAR 660-023-0040(2) states, "Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site." 	<ul style="list-style-type: none"> Opponent argues the County cannot make a decision pursuant to OAR 660-023-0040(5) and adopt comprehensive plan provisions and land use regulations to implement the decision pursuant to OAR 660-023-0050 without first properly analyzing conflicting uses pursuant to OAR 660-023-0040(2)-(4) (<i>Opponent New Evidence and Testimony pg. 3</i>) 	<p>Does the Board agree with the Applicant's testimony that the County complied with OAR 660-023-0040, ESEE Decision Process, by considering as "conflicting uses," those uses allowed under the RI Zone that are not otherwise allowed under the current EFU zoning?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings identifying the conflicting uses as those uses allowed under the RI Zone on the subject properties that are not otherwise allowed under the current EFU zoning and move onto the next matrix issue.</p> <p>If no, the Board may either make alternative findings identifying additional conflicting uses on the subject properties, which are beyond the uses allowed under the RI Zone and not otherwise allowed under the current EFU zoning and move onto the next matrix issue, or the Board may find that the applicant's ESEE analysis regarding "conflicting uses" is insufficient under OAR 660-023-0040(2) and deny the application.</p>
4(a)	<u>What does the County identify as the "impact area" pursuant to OAR 660-023-0040(3)?</u>	<ul style="list-style-type: none"> Applicant argues that the impact area includes all properties west of Hwy 97 in the LM Combining Zone between the 61st Street intersection and the Tumalo Road off-ramp (<i>Applicant Final Legal Argument pg. 5</i>) Applicant revised and broadened the "impact area" to include properties beyond the three subject properties in response to Opponent's arguments. Staff notes that OAR 660-023-0040(3) states, "Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site." The Applicant's final legal argument noted that the ESEE analysis includes consideration of "consequences," which may be documented outside of the "impact area" 	<ul style="list-style-type: none"> Opponent argues that the impact area must be larger than the three subject properties. It argues that minimizing the impacts of conflicting uses on the subject property's Goal 5 scenic view resources based on conditions outside of the identified impact area is contrary to OAR 660-023-0040(3), which requires that the "impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site" (<i>Opponent New Evidence and Testimony pg. 4</i>) 	<p>Is the Applicant's proposed "impact area" consistent with OAR 660-023-0040(3)?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings identifying the impact area as including all properties west of Hwy 97 in the LM Combining Zone between the 61st Street intersection and the Tumalo Road off-ramp and move onto the next matrix issue, which includes two subparts of Issue 4.</p> <p>If no, the Board may make alternative findings as they see fit and move onto the next matrix issue, which includes two subparts of Issue 4.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
4(b)	Is there a distinction between “ESEE consequences” and the “impact area” such that consequences may be documented outside of the identified “impact area”?	<ul style="list-style-type: none"> The Applicant argues that ESEE consequences outside of the identified “impact area” are appropriately included because the applicable state definitions draw a distinction between such ESEE consequences (defined at OAR 660-023-0010(2)) and the impact area (defined at OAR 660-023-0010(3)) (<i>Applicant Final Legal Argument pg. 5</i>) 	<ul style="list-style-type: none"> The Opponent did not provide information responsive to this specific issue area. 	<p>Does the Board agree with the Applicant’s testimony suggesting that there is a distinction in the definitions set forth in OAR 660-023-0010 such that ESEE consequences were appropriately documented by the applicant even if outside of the identified “impact area”?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that there is a distinction between “ESEE consequences” and the “impact area” such that consequences may be documented outside of the identified “impact area” and move onto the next matrix issue. Additionally, the Board may make findings confirming that any identified “ESEE consequences” outside of the “impact area” where nevertheless not dispositive to the Board’s ultimate decision under OAR 660-023-0040(5).</p> <p>If no, the Board may make alternative findings as they see fit and move onto the next matrix issue. Specifically, the Board may adopt findings enlarging the “impact area” to include a geographical area that includes all consequences described in the ESEE Analysis, or the Board may disregard such identified consequences in the ESEE Analysis that are outside of the specified impact area.</p>
4(c)	Can the identified “impact area” be amended at a later proceeding to match the ESEE analysis?	<ul style="list-style-type: none"> The Applicant argues that it is acceptable to adjust the identified impact area because the ESEE process is supposed to be iterative under OAR 660-023-0040(1) (<i>Applicant Final Legal Argument pg. 5</i>) Staff notes that OAR 660-023-0040(1) states that local governments are not required to follow the four steps in conducting an ESEE analysis sequentially. 	<ul style="list-style-type: none"> The Opponent did not provide information responsive to this specific issue area or OAR 660-023-0040(1). 	<p>Does the Board agree with the Applicant’s testimony suggesting that “impact area” may be amended in an iterative manner along with updating the ESEE Analysis pursuant to OAR 660-023-0040(1)?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the identified “impact area” <u>can</u> be amended at a later proceeding to match the ESEE analysis pursuant to OAR 660-023-0040(1) and move onto the next matrix issue.</p> <p>If no, the Board may make findings that the identified “impact area” <u>cannot</u> be amended at a later proceeding to match the ESEE analysis pursuant to OAR 660-023-0040(1) and move onto the next matrix issue.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
5(a)	<u>Does the County accept and adopt as its own the Applicant's Updated ESEE Analysis as appropriately documenting the economic, social, environmental, and energy consequences of allowing or prohibiting the conflicting uses on the subject properties?</u>	<ul style="list-style-type: none"> The Applicant requests that the Board adopt as their own the updated ESEE analysis provided as Exhibit 6 to the Applicant's July 19 record submittal (<i>Applicant Final Legal Argument pg. 12</i>) The Applicant updated its initial ESEE Analysis to address the Opponent's argument that the initial ESEE Analysis inappropriately grouped uses together. This issue is set forth in Issue 5(b) below. 	<ul style="list-style-type: none"> The Opponent argues that many of the uses allowed in RI zoning are different from each other and that the Applicant's initial ESEE analysis fails to address such differences and fails to comply with OAR 660-023-0040(3) by not analyzing the ESEE consequences for each conflicting use the proposed RI zoning would allow (<i>Opponent New Evidence and Testimony, pg. 4</i>) The Opponent argued that the Applicant's initial ESEE Analysis inappropriately grouped uses together. This issue is set forth in Issue 5(b) below 	<p>Does the Board accept and adopt as its own the Applicant's Updated ESEE Analysis on the basis that the ESEE consequences of allowing or prohibiting conflicting uses on the subject properties have been appropriately documented? Staff notes that the standard for an acceptable ESEE Analysis is set forth in OAR 660-023-0040(1) stating that "[t]he ESEE analysis need not be lengthy or complex but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected."</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings accepting and adopting as its own the Applicant's Updated ESEE Analysis as appropriately documenting the economic, social, environmental, and energy consequences of allowing or prohibiting the conflicting uses on the subject properties and move onto the next matrix issue.</p> <p>If no, the Board may make alternative findings as they see fit and move onto the Matrix Issue 6 or deny the subject application.</p>
5(b)	<u>Does the Applicant's Updated ESEE Analysis address Opponent's objection that conflicting uses were inappropriately grouped together?</u>	<ul style="list-style-type: none"> The Applicant argues that it has addressed any concern around grouped uses through its Updated ESEE Analysis which analyzes most the uses allowed under the RI zone separately. (<i>Applicant Final Legal Argument pg. 6</i>) 	<ul style="list-style-type: none"> The Opponent argues that many of the uses allowed in RI zoning are different from each other and that the Applicant's initial ESEE analysis failed to address such differences and failed to comply with OAR 660-023-0040(3) by not analyzing the ESEE consequences for each conflicting use the proposed RI zoning would allow (<i>Opponent New Evidence and Testimony, pg. 4</i>) The Opponent did not provide information or argument responding to Applicant's Updated ESEE Analysis. 	<p>Does the Board find that the Updated ESEE Analysis addresses concerns regarding grouping conflicting uses together in the Initial ESEE prepared by the Applicant?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the Applicant's Updated ESEE Analysis <u>does not</u> inappropriately group uses together and move onto the next matrix issue.</p> <p>If no, the Board may make findings that the Applicant's Updated ESEE Analysis <u>does</u> inappropriately group uses together and may make alternative findings as they see fit or deny the subject application.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
6(a)	Does the Board wish to allow fully, allow in a limited way or prohibit conflicting uses under OAR 660-023-0040(5)?	<ul style="list-style-type: none"> The Applicant recommends the Board decide to <u>allow the conflicting uses fully</u> pursuant to OAR 660-023-0040(5)(c) (<i>Applicant Final Legal Argument pg. 10-11</i>) While the Applicant originally supported a limiting option as allowed by OAR 660-023-0040(5)(b) in addition to the allow fully option, the Opponent has urged that the Board not consider the limiting option in response to Opponent’s arguments. Therefore, the Applicant in its final legal argument submits the Board should proceed under the “allow fully” option. The Applicant’s final argument and recommendation is to allow the conflicting uses fully. 	<ul style="list-style-type: none"> The Opponent argues that the Board should decide to <u>prohibit</u> the conflicting uses pursuant to OAR 660-023-0040(5)(a) (<i>Opponent New Evidence and Testimony pg. 6</i>) The Opponent argues against the limiting option allowed by OAR 660-023-0040(5)(b) because, as asserted by the Opponent, the LM Zone was not developed to address visual impacts caused by rural industrial uses. The Opponent further argues that Deschutes County Comprehensive Plan Policy 2.7.3 and relevant open space and scenic view goals can only ensure protection of the scenic resources through a prohibition on the conflicting industrial uses. (<i>Opponent New Evidence and Testimony pg. 7</i>). 	<p>Consistent with the Applicant’s testimony, does the Board find the conflicting uses should be allowed fully pursuant to OAR 660-023-0040(5)(c)?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the proposal’s conflicting uses should be allowed fully under the existing zoning provisions and move onto Matrix Issue 7 below.</p> <p>If no, the Board has two options:</p> <p>A. Prohibiting the conflicting uses and deny the subject application.</p> <p>B. Allow the conflicting uses in a limited way, against both the Applicant’s and Opponent’s recommendations, and proceed to Matrix Issues 6(b) and 6(c) below.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
6(b)	<p><u>If the Board decides to allow the conflicting uses in a limited way, does the Board wish to continue applying the LM Combining Zone to the subject properties?</u></p>	<ul style="list-style-type: none"> The Applicant recommends the Board decide to <u>allow the conflicting uses fully</u> pursuant to OAR 660-023-0040(5)(c) (<i>Applicant Final Legal Argument pg. 10-11</i>) The Applicant disagrees with the Opponent's arguments that the LM Zone was not developed to address the visual impacts of industrial uses, and the Applicant provided evidence to the record demonstrating the LM Zone has always overlaid other RI Zoned properties along Highway 97. Accordingly, if the Board finds the conflicting uses may be allowed in a limited way, the Board may continue to apply the LM Combining Zone to the subject properties. 	<ul style="list-style-type: none"> The Opponent argues that the LM Zone was not originally crafted to address industrial development such as those uses allowed by the RI Zone. (<i>Opponent New Evidence and Testimony pg. 5</i>) 	<p>If the Board answered "No" to Matrix Issue 6(a) above and does not find that the conflicting uses should be prohibited, does the Board find the conflicting uses may be allowed in a limited way pursuant to OAR 660-023-0040(5)(b) by application of the LM Combining Zone to the subject properties?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make alternative findings as they see fit and move onto Matrix Issue 7.</p> <p>If no, the Board has two options:</p> <p>A. Revisit Matrix Issue 6(a) and decide whether to allow the conflicting use fully or prohibit the conflicting uses, or</p> <p>B. Proceed to Matrix Issue 6(c) and decide whether to allow the conflicting uses in a limited way in accordance with an entirely new Goal 5 scenic view program applicable only to the three subject properties.</p> <p>Staff notes, however, that no alternative proposed zoning overlay and comprehensive plan amendment are presently before the Board for consideration, and such an alternative zoning overlay and comprehensive plan amendment would need to be subsequently developed and brought back to the Board for its further consideration.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
6(c)	<p><u>If the Board decides to allow the conflicting uses in a limited way, does the Board want to develop an entirely new Goal 5 scenic view program applicable to only the three subject properties?</u></p>	<ul style="list-style-type: none">The Applicant noted that it does not support the development of a new overlay zone that is only applicable to the subject properties because the RI Zone has always sufficiently overlaid RI Zoned properties along Highway 97, such a limited overlay zone covering only three properties could be considered “spot zoning,” and a new overlay zone only covering three properties would be an administrative burden on County staff. <i>(Applicant Final Legal Argument pg. 10-11)</i>	<ul style="list-style-type: none">The Opponent did not provide information responsive to this option.	<p>If the Board answered “No” to Matrix Issue 6(a) and 6(b) above and does not find that the conflicting uses should be prohibited, does the Board find the conflicting uses may be allowed in a limited way pursuant to OAR 660-023-0040(5)(b) by developing an entirely new Goal 5 scenic view program applicable only to the three subject properties?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that it will develop a new Goal 5 scenic view program applicable to only the three subject properties and make findings reflecting that choice. However, staff again notes that no alternative proposed zoning overlay and comprehensive plan amendment are presently before the Board for consideration, and such an alternative zoning overlay and comprehensive plan amendment would need to be subsequently developed and brought back to the Board for its further consideration.</p> <p>If no, the Board has two options:</p> <p>A. Revisit Matrix Issue 6(a) and decide whether to allow fully or prohibit the conflicting uses, or</p> <p>B. Revisit Matrix Issue 6(b) and decide whether to allow the conflicting uses in a limited way through application of the LM Overlay Zone to the subject properties. The Board may make findings that a new Goal 5 scenic view program for the three subject properties is not necessary for approval of the subject application.</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
7(a)	<p><u>If the Board elects to allow the conflicting uses fully, additional findings are required pursuant to OAR 660-023-0040(5)(c). Does the ESEE analysis demonstrate that the conflicting use is of sufficient importance relative to the resource site?</u></p>	<ul style="list-style-type: none">The Applicant argues that the ESEE analysis documents that the impacts caused by the unique topography and existing development on the hillside to the west of the subject properties already diminishes the Goal 5 scenic view resources at this particular location compared to other locations within the impact area, thus indicating that allowing RI uses is now of “sufficient importance” to justify allowing the conflicting use outright pursuant to OAR 660-023-0040(5)(c) (<i>Applicant Final Legal Argument pg. 11</i>)	<ul style="list-style-type: none">The Opponent did not provide information responsive to this specific issue area.	<p>If the Board answers Matrix Issue 6(a) in the affirmative and elects to allow the conflicting uses fully, does the Board find, consistent with the Applicant’s testimony, that the ESEE analysis demonstrates that the conflicting uses is of sufficient importance relative to the resource site?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings consistent with the Applicant’s arguments or additional findings as the Board may see fit.</p> <p>If no, the Board should revisit Matrix Issues 6(a) and/or 6(b).</p>

BOCC DECISION MATRIX – REMAND OF LBNW LLC PLAN AMENDMENT/ZONE CHANGE APPLICATION

NO.	ISSUE	APPLICANT TESTIMONY	OPPONENT TESTIMONY	BOARD DECISION POINTS
7(b)	<u>Continuing to stem from OAR 660-023-0040(5)(c), does the ESEE Analysis demonstrate why measures to protect the Goal 5 scenic view on the subject properties should not be provided?</u>	<ul style="list-style-type: none"> The Applicant argues that the ESEE analysis documents that the County's existing Goal 5 scenic view program has not been successful in protecting the sought after scenic views in this particular location to containing to allow the conflicting use in a limited way. (<i>Applicant Final Legal Argument pg. 11</i>) 	<ul style="list-style-type: none"> The Opponent did not provide information responsive to this specific issue area. 	<p>Does the Board find, consistent with the Applicant's testimony, that the ESEE Analysis demonstrates why measures to protect the Goal 5 scenic view on the subject properties should not be provided?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings consistent with the Applicant's arguments or additional findings as the Board may see fit.</p> <p>If no, the Board should revisit Matrix Issues 6(a) and/or 6(b).</p>
8(a)	<u>If the Board decides to fully allow the conflicting uses, OAR 660-023-0050(1) requires the County to adopt comprehensive plan provisions and land use regulations to implement the decision made pursuant to OAR 660-023-0040(5). is compliance with OAR 660-023-0050(1) demonstrated by the Applicant's consent to the subject properties' continuing to be subject to the LM Combining Zone land use regulations because there are no proposed amendments to the Comprehensive Plan and the LM Combining Zone land use regulations before the Board in the application?</u>	<ul style="list-style-type: none"> The Applicant noted that it did not request any amendment to the LM Combining Zone and no such amendment was noticed as part of the subject application. There are no such applications that are before the Board in these proceedings. Significantly, the Applicant further consented to the subject properties remaining within the LM Combining Zone until such time as the County undertakes more comprehensive revisions to that zone in a manner directly affecting the subject properties (<i>Applicant Final Legal Argument, pg. 11-12</i>) Staff suggests that by the Applicant's consenting to the subject properties' continuing to be subject to the LM Combining Zone until such time that the County otherwise elects to amend or alter the LM Combining Zone, compliance with OAR 660-023-0050(1) is achieved because all required comprehensive plan provisions and land use regulations are already in place until such time that the County elects to amend the LM Combining Zone. 	<ul style="list-style-type: none"> The Opponent did not provide information responsive to this specific issue area. 	<p>Consistent with the Applicant's argument, does the Board find that compliance with OAR 660-023-0050(1) is already achieved because the Applicant consented to the subject properties remaining in the LM Combining Zone means that all required comprehensive plan provision and land use regulations are already in place?</p> <p>A. Yes</p> <p>B. No</p> <p>If yes, the Board may make findings that the conflicting uses may be fully allowed without any corresponding amendments to the LM Combining Zone and Comprehensive Plan. The Board may make findings explaining that any amendment to the LM Combining Zone will be undertaken at a later date when the Board otherwise elects to amend or alter the LM Combining Zone</p> <p>If no, the Board may find that it cannot fully allow the conflicting uses without adoption of new Comprehensive Plan and land use regulations, requiring the Board to revisit Matrix Issues 6(a) and/or 6(b).</p>



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: August 16, 2023

SUBJECT: 2023 Spay & Neuter Grant Program Award Recommendations

RECOMMENDED MOTION:

Based on recommendations from Dog Board, award 2023 spay & neuter grants to program applicants.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County's Dog License and Pet Identification Application forms provide an opportunity for residents to make a voluntary donation to support spay and neuter services. These donations, typically supplemented by general fund, are offered to local non-profit organizations, which provide spay and neuter services in Deschutes County for both feral animals and pets whose owners are unable or unlikely to access or afford the procedure. Grant funds may also be used for educational or promotional programs focused on encouraging or expanding spay and neuter procedures in Deschutes County. To be eligible for the program, applicants must be designated by the Internal Revenue Service as a 501(c)3 tax-exempt organization, located in Deschutes County and able to certify that grant proceeds will be used to support services benefiting Deschutes County residents.

On June 21, 2023, the Board of Commissioners approved a total of \$10,000 for multiple awards. Staff then issued a news release, posted a solicitation, and notified past applicants of the available funding. Four applications were received in response to the solicitation. Those applications were then reviewed and evaluated by the Dog Control Board of Supervisors, whose scores were averaged to provide the grant award recommendations included in today's meeting packet.

BUDGET IMPACTS:

The Spay & Neuter Grant program is funded by donations made during dog license registration as well as the general fund.

ATTENDANCE:

Stephanie Robinson, Administrative Analyst

**Deschutes County Spay and Neuter Grant Program
2023 Funding Recommendations**

Organization	Location	Funding focus	Project Description	Recommendation
Companion Animal Medical Project (CAMP)	Offer monthly clinics in Bend and Redmond, support all Deschutes County	Companion animals of people experiencing houselessness or significant financial distress	Coordinate s/n services through monthly clinics, which currently provide wellness exams, immunizations, and preventative care.	\$2,535
Ember's Wildflower Animal Sanctuary & Bunny Rescue	Located in Redmond, rescue bunnies throughout Deschutes County	Bunnies surrendered to organization for adoption	Each bunny is s/n prior to its adoption, as the only bunny sanctuary in Central Oregon.	\$2,394
Furry Friends Foundation	Sisters; honors requests for s/n sponsorship for clients living in Bend, Redmond and La Pine areas	Dogs and cats of seniors and families in financial hardship	Sponsor and promote "The Fix is FREE Program" - educating around benefits of s/n and sponsoring s/n procedures.	\$2,428
Street Dog Hero	Located in Bend, rescue dogs locally and around the world	Rescued dogs and pet owners of dogs or cats experiencing significant financial distress	Local low cost or no cost monthly s/n services at onsite clinic and 1-2 off-site no-cost clinics at Warm Springs Reservation each year.	\$2,643
Total				\$10,000